

Securities Regulation Daily Wrap Up, PROXIES—NYC comptroller expresses 'strong opposition' to SEC proxy proposals, (Nov. 22, 2019)

Securities Regulation Daily Wrap Up

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In a strongly worded letter to the Commission, the comptroller of the City of New York criticized recent proxy proposals and called for longer comment periods.

According to the letter, the comptroller wrote to the SEC to provide preliminary comments in strong opposition to the proposal, "Amendments to Exemptions from the Proxy Voting Rules for Proxy Voting Advice," (the "Proposal") and to request that the SEC extend the comment period from 60 to 120 days so that interested parties have the time necessary to prepare responsive comments. He also opposed the concurrently issued proposal, "Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8" (the ("Shareholder Proposal Rule")), and requested a similar extension of its comment period.

The Commissioners voted 3-2 to approve issuing the proposals for comment on November 5, 2019.

Remedy for nonexistent problems? The proposals seek to remedy problems that do not exist and will radically tilt an already uneven playing field further in favor of corporate management and away from investors, who actively and responsibly exercise longstanding rights to cast informed proxy votes and to submit shareowner proposals to hold companies accountable for runaway CEO pay, excessive risk taking, and irresponsible and harmful business practice, the comptroller claimed, calling them a two-pronged attack on rights—proxy voting and shareowner proposals.

In his role as the proxy voting fiduciary for the New York City Retirement Systems (NYCRS), the comptroller stated that in response to the "steady drumbeat" from corporate management and their lobbyists for the regulation of proxy advisory firms in recent years, evaluation criteria with respect to any potential regulation has been clear and consistent: "We oppose any SEC or other regulatory actions that would compromise the independence of research, reduce the amount of time we have to review research in advance of our portfolio companies' annual meetings, or that would otherwise impose additional costs on our participants and beneficiaries in terms of either added burdens on staff resources or additional compliance costs imposed on our advisors," which paying clients would ultimately bear.

In light of the harm and costs that the Proposal is likely to impose on investors, and the benefits it will bestow upon the corporate management "who have aggressively lobbied for it," the comptroller said, investors are left to wonder what problems that the SEC is seeking to remedy here.

Quality of advice. According to the comptroller, instead of improving the quality of the proxy advisors' research, the Proposal is likely to have the opposite effect. By giving companies (at least those that file their proxy statement at least 25 days before the annual meeting) at least three business days to review the proxy research report and two business days of notice before the report is issued, the advisers will have less time to collect, verify, analyze, and present data and provide their research and present data and provide their research reports to clients well in advance of the annual meeting.

Insidious conflict of interest. While proxy advisory firms should and do have procedures in place to mitigate any potential conflicts of interest, the comptroller could not imagine a conflict of interest more "insidious" than the one created by a proposal that would grant a company that is the subject of proxy voting advice the right to review and provide feedback on that advice. FINRA Rule 2241, which the SEC approved, he commented, explicitly prohibits stock analysts from sharing draft research reports with target companies (other than to check

facts after approval from the firm's legal or compliance department) in order to "help protect research analysts from influences that could impair their objectivity and independence," he pointed out.

Long-term. "We recognize our responsibility to vote proxies with diligence and integrity, and in the best long-term interests of our participants and beneficiaries." the comptroller said. "We do not want company management interposed between us and our research service providers, and this is even more problematic if it involves additional cost and delay, giving us less time for our due diligence on each proxy vote." Therefore "[W]e strongly oppose the proposed rule as unnecessary, costly and harmful not only to investors, but also to the promotion of fair and efficient markets," he concluded.

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