Securities Regulation Daily Wrap Up, PROXIES—CII: SEC proxy advisor proposal aggravates already compressed proxy season, (Feb. 25, 2020)

Securities Regulation Daily Wrap Up

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By Amanda Maine, J.D.

CII hit out at the Commission for assuming without evidence that companies would be incentivized to file their proxy materials at an earlier date under the proposal.

The Council of Institutional Investors (CII) has again expressed criticism of the SEC's proposed amendments regarding proxy advisory firms. In its latest letter, CII criticized the proposal for shortening the already limited time frame of the proxy season by requiring proxy advisory firms to clear their research reports with the company that is the subject of their proxy voting advice.

Incentive to file proxies earlier? CII has already submitted comment letters critical of the Commission's proposals on proxy voting advice and shareholder proposal submissions. In its latest letter, CII focused its criticism on the proxy advice proposal's requirement that issuers be given an opportunity to review and provide feedback on proxy voting advice before it is issued.

According to CII, one justification cited by the Commission for this proposed requirement is that companies would have an incentive to file their proxy materials at an earlier date. CII rejected this notion, noting that proxy firms face the same or even more difficult challenges during the spring proxy season as companies do. CII cited research stating that the benefits of expert proxy research and analysis are greater when proxy advisors have more time and fewer distractions to complete their work, undermining the SEC's "weak" justification for the requirement.

CII pointed out that, as stated in its earlier communication with the Commission, claims of errors in proxy advisory firms' analysis and reports have been unsubstantiated and overstated. Rather than encouraging companies to file their proxies earlier, the proposed amendments would aggravate the problem of the compressed proxy season by forcing proxy advisors to clear their research with the subject companies.

Research and lack of evidence. The proposal would give companies the "review and feedback" privilege only if they file proxy statements at least 25 days before the shareholder meeting. According to CII, nearly all companies already file their proxy materials at least 25 days before the shareholder meeting, so the proposal, if implemented, would not affect companies' behavior in any significant way. In addition, CII asserted, the SEC provides no evidence that the purported incentive to file proxy materials earlier would change company behavior.

Citing data from Broadridge, CII advised that 2,900 companies (or 75.8 percent) filed their 2018 proxy materials between 40 and 48 days before the annual shareholder meeting. Only 95 companies (2.5 percent) filed their proxy materials 25 days or less before the annual meeting.

While CII opposes the proposed amendments in their entirety, the letter states that if the SEC does proceed with a review and feedback right for companies, it should be for a maximum of two days and be limited to factual information and data only. This right should only be provided to a company that files its proxy materials at least 50 days before the shareholder meeting, CII recommended.

Because the proposal as written would require that a proxy advisory firm's report be furnished to the company two business days before it can be provided to the firm's own paying customers, the proxy advisor will be under pressure to consider comments from company management. Between that and the minimum five business-day review period, the actual delay for investors receiving the proxy advisory firm's report would be at least eight and as many as 11 calendar days, according to CII. This would reduce the time for investors to evaluate the reports and consider their proxy voting choices, CII advised.

Companies: Council of Institutional Investors

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