National Investor Relations Institute

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U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-2521

Submitted via e-mail: PerformancePlanning@sec.gov

Re: Comment Letter on the SEC's Draft Strategic Plan

Dear Mr. Mohan:

This letter is submitted on behalf of the members of the National Investor Relations Institute (NIRI). Founded in 1969, NIRI is the professional association of corporate officers and investor relations consultants responsible for communication among corporate management, shareholders, securities analysts, and other financial community constituents. NIRI is the largest professional investor relations (IR) association in the world with more than 3,300 members representing over 1,600 publicly held companies and $9 trillion in stock market capitalization.

NIRI appreciates the opportunity to comment on the Securities and Exchange Commission's strategic plan for fiscal years 2014 to 2018. Given the many issues that are competing for the Commission's attention, NIRI is pleased that the SEC is seeking input on its priorities over the next five years.

IR practitioners serve as the "chief disclosure officers" for their companies and help ensure compliance with the Securities Exchange Act of 1934, Regulation Fair Disclosure, Regulation G, and other SEC rules. In addition, IR practitioners play a key role in making sure that their companies and board members understand and respond to investors' concerns.

The following are NIRI's comments on some of the strategic objectives and initiatives outlined in the draft Strategic Plan:

Strategic Objective 1.1: The SEC establishes and maintains a regulatory environment that promotes high-quality disclosure, financial reporting, and governance, and prevents abusive practices by registrants, financial intermediaries, and other market participants.

Initiative: *Improve the quality and usefulness of disclosure: The SEC will continue to evaluate and, where necessary, amend its requirements to improve the quality and usefulness of*

registrants' disclosures to investors. Areas of focus will include disclosure about registrants' financial condition, operations, risk management, and executive compensation decisions and practices.

NIRI supports the Commission's efforts to modernize and streamline corporate disclosure rules, and NIRI encourages the SEC to use its regulatory discretion to minimize the burden of new disclosure mandates, such as those required by the Dodd-Frank Act.

NIRI was encouraged by SEC Chair Mary Jo White's remarks in October 2013 about the need to overhaul corporate disclosure rules, and her comments on February 21, 2014, that disclosure reform will be a staff priority in the coming year.[1] NIRI believes that the current Regulation S-K rules could be streamlined in a way that would reduce costs for issuers while still ensuring that all investors receive material information on an equal basis. As the staff of the Corporation Finance Division prepares its recommendations, NIRI would be pleased to provide issuers' insights about the types of disclosure that are most relevant to shareholders. Many NIRI members communicate with investors and analysts every workday and can share their valuable perspectives on these issues.

Initiative: *Engage in rulemaking mandated by Congress: The SEC will continue to fulfill its obligations under the Dodd-Frank Act and the JOBS Act to develop and promulgate mandated rules and regulations with appropriate notice and comment and economic analysis.*

NIRI appreciates all the hard work the Commission staff has done to implement the many provisions of the Dodd-Frank Act and the JOBS Act. While parts of the Dodd-Frank Act have been controversial, the SEC's Say-on-Pay rules have encouraged more issuer-investor engagement and better disclosure, and IR practitioners have played a key role in those efforts.

As the Commission finishes its mandated rulemakings, NIRI hopes that corporate disclosure reform and other priorities will receive more staff attention. While NIRI recognizes that the Commission is required by the Dodd-Frank Act to issue new disclosure rules on executive pay, resource extraction payments, and other topics, NIRI urges the SEC to proceed carefully and fully consider suggestions from issuers and their advocates about reducing compliance burdens while carrying out the intent of the legislation. As NIRI noted in its October 2013 comment letter on the SEC's draft CEO pay ratio disclosure rule, the SEC should avoid imposing significant compliance costs on issuers to produce non-material disclosure that would not be useful for most investors.[2]

Initiative: *Strengthen proxy infrastructure: The SEC will consider issues related to the mechanics of proxy voting and shareholder-company communications, including the role of proxy advisory firms.*

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[1] See Chairman's Address at SEC Speaks 2014, February 21, 2014, available at: http://www.sec.gov/News/Speech/Detail/Speech/1370540822127

[2] See NIRI's Comment Letter on Pay Ratio Disclosure, October 17, 2013, File No. S7-07-13, available at: http://www.sec.gov/comments/s7-07-13/s70713-228.pdf.

NIRI is pleased that the Commission has included this long-overdue initiative in its strategic plan. The Commission staff already has done significant analysis in this area while preparing the 2010 Concept Release on the U.S. Proxy System.[3] Unfortunately, there has been limited SEC attention to proxy voting issues since then, as the Commission staff, as we understand, has focused on a long list of Congressional mandates.

NIRI urges the SEC to make shareholder communications a priority over the next five years. The current shareholder voting and communications system is more than 30 years old and needs to be updated and reformed. With more than 75 percent of U.S. public company shares held in street name, companies are forced to go through brokers and other intermediaries to reach their beneficial owners, many of whom are individual investors. As a result, companies are not able to use modern technology to directly communicate with most of their shareholders. For the protection of individual investors, the SEC should consider the following recommendations:

1. The SEC should eliminate the "Non-Objecting Beneficial Owner" (NOBO) and "Objecting Beneficial Owner" (OBO) classifications, which greatly hinder the ability of companies to communicate with their retail investors. Public companies should have access to contact information for all of their beneficial owners and should be permitted to communicate with them directly. If these classifications are eliminated, those beneficial owners wishing to remain anonymous should be permitted to register their shares in a nominee account (or enter into a custodial arrangement) with their broker, bank, or other intermediary.

2. The SEC should continue to examine how to encourage proxy voting by individual investors, who often have no motivation to vote their shares. Current statistics indicate that only 14 percent of retail shareholder accounts vote their proxy ballots, according to Broadridge Financial Solutions. The SEC should encourage participation by brokers in the new Enhanced Broker Internet Platform/Investor Mailbox program. NIRI believes that broker and investment advisor websites, which individual shareholders increasingly look to as the sole portal for their investment needs, offer one of the most viable paths for engaging individual shareholders in the voting process.

3. Brokers, banks, and other intermediaries should not stand in the way of direct communications between companies and the beneficial owners of their securities. Companies should have the ability to determine the distributors of their communications, and all costs for the system should be transparent and verifiable. Fees should be monitored and evaluated regularly by an oversight body that seeks to promote fairness and competition. Unfortunately, the NYSE Proxy Fee Advisory Committee's recommended rule changes, which were approved by the SEC in October 2013, did not call for an independent audit of proxy fees. NIRI believes that a third-party audit of proxy

[3] Concept Release on the U.S. Proxy System, 75 Fed. Reg. 42,982 (July 22, 2010).

distribution fees is the best way to ensure that fees are reimbursed fairly, equitably, and objectively.[4]

4. The proxy voting process should be fully transparent and verifiable, starting with the compilation of a reconciled list of beneficial owners eligible to vote and ending with the final tabulation of votes cast at a shareholder meeting. The vote counts on matters before a shareholder meeting should be auditable and capable of third-party verification, so that a validation of the final tabulation of the votes of both registered and beneficial owners can occur.

NIRI also is pleased that the Commission plans to address the role of proxy advisors. The Commission's December 2013 roundtable was a helpful first step, and it clearly illustrated the need for greater SEC oversight in this area. NIRI urges the Commission staff to move quickly to prepare a proposed rule, or at least provide regulatory guidance, to improve the accuracy of proxy reports and provide more disclosure of conflicts of interest to help investors make better informed voting decisions. In developing a rule or regulatory guidance, the SEC should consider the following recommendations:[5]

1. All proxy advisory firms should be required to register under the Investment Advisers Act of 1940, and be subject to a regulatory framework that reflects the unique role that proxy advisors perform in giving advice with respect to voting securities. This regulatory framework should, at a minimum, address conflicts of interest and internal controls and provide for public disclosure of the policies, procedures, and methodologies used by each proxy advisory firm to develop voting recommendations.

2. Proxy advisory firms should provide each public company with an advance copy (i.e., 5 business days before issuance) of any report that includes a proxy voting recommendation about such company, to permit the company to review and comment on the factual accuracy of statements made in the report.

3. Proxy advisor methodologies should be transparent and made available to issuers *at no charge*, so that investors can better evaluate their recommendations, and issuers can offer suggestions that would improve these methodologies.

4. Proxy advisors should fully disclose all possible conflicts of interest (including whether an investor client is a proponent of a shareholder proposal or a "vote no" campaign) in sufficient detail (and in specific research reports) to allow assessment of the proxy advisor's independence and better informed voting by investors.

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[4] For more details on NIRI's concerns, please see NIRI Comment Letter on Proxy Fee Changes, File No. SR-NYSE-2013-07, March 7, 2013, available at: http://www.niri.org/Main-Menu-Category/advocate/Regulatory-Positions/NIRI-SEC-Comment-Letter-on-Proxy-Fee-Changes-Proposal-March-2013.aspx

[5] NIRI supports the comments made by the Shareholder Communications Coalition in its December 4, 2013, letter on the Proxy Advisory Services Roundtable, File Number 4-670, available at: http://www.sec.gov/comments/4-670/4670-7.pdf

5. Proxy advisors should make available on their websites without charge (or file with the Commission) a copy of each report that contains a proxy voting recommendation about a public company, no later than 90 days after the shareholder meeting to which the voting recommendation relates.

6. The SEC should withdraw the two staff no-action letters issued in 2004 that are generally read as permitting investment managers to vote client proxies in accordance with pre-determined policies based on the recommendations of an independent third party. Regrettably, these no-action letters have prompted many mid-size and small institutions to outsource their voting decisions to proxy advisory firms.

7. The Commission should issue a rule (or staff guidance) emphasizing the responsibility of each registered investment advisor to exercise appropriate oversight over its proxy voting process, including its use of proxy advisory firms, to ensure that its voting decisions with respect to client securities are in the best interests of its clients. Investment advisors should provide disclosure (at least annually) on how they utilize the advice of proxy advisory firms in making their voting decisions.

8. As required by Section 951 of the Dodd-Frank Act, the Commission should finalize a rule to require institutional investment managers, who are subject to Section 13(f), to annually report their Say-on-Pay votes (and the other compensation-related votes mandated by Section 951). The SEC proposed a rule in October 2010 to implement this provision but has not finalized this rulemaking.[6] Both issuers and investors would benefit from greater transparency around how these institutions are voting.

Initiative: *Modernize beneficial ownership reporting: The SEC will consider how to modernize its beneficial ownership reporting requirements to, among other things, address the disclosure obligations relating to the use of equity swaps and other derivative instruments.*

NIRI believes that both issuers and investors would greatly benefit from improved transparency within the investment community. NIRI supports a reporting regime that promotes more timely and frequent long position reporting, as well as commensurate full and fair short position disclosure. Section 929X of the Dodd-Frank Act requires the Commission to promulgate rules obligating investment managers to publicly report short sale activity *at a minimum* of once every month. NIRI also believes that the benefits to investors and public companies of long-position reporting would justify a similarly substantial increase of the frequency of Form 13F reporting. Accordingly, NIRI makes the following recommendations:

1. The SEC should require the same level of disclosure from *all* institutional investors (investment funds, hedge funds, activists, etc.) maintaining short equity positions as are required of the funds that maintain long equity positions. NIRI believes short sale

[6] See Proposed Rule, Reporting of Proxy Votes on Executive Compensation and Other Matters, File No. S7-30-10, October 18, 2010, available at http://www.sec.gov/rules/proposed/2010/34-63123.pdf. Mutual fund companies already report their proxy votes in annual Form N-PX filings; this disclosure has helped issuers better understand their concerns and contributed to greater engagement.

reporting and corresponding share lending reporting should be publicly available in the same manner as long position reporting. In addition, NIRI believes long and short sale reporting should occur on a more frequent basis, and that requirements should be the same for all investors.

2. The ability of companies to know the identity of many of their investors is significantly hindered by outdated Form 13F reporting rules. Currently, institutional investors only have to disclose share ownership positions on a quarterly basis, and may wait 45 days after the end of the quarter to make that disclosure. NIRI, along with the Society of Corporate Secretaries and Governance Professionals and NYSE Euronext, has petitioned[7] the Commission to shorten this reporting deadline to two business days after the end of the quarter. Given the advances in recordkeeping technology in the more than 30 years since the 13F reporting requirement was adopted, there does not seem to be any justification for the existing 45-day deadline. Investor advocates have raised concerns about preserving the confidentiality of their trading strategies. As an alternative to shortening the 13F reporting deadline to two days, NIRI would support the confidential reporting of equity positions to the SEC on a rolling basis with a 30-day delay to protect confidentiality. After receiving this information from an investor, the SEC would then privately forward this equity information to the specific issuers where the positions are held. A 30-day delay would ensure fairness for all market participants while providing more current information to issuers about the institutions that hold their shares.

3. Current SEC requirements require a Schedule 13D to be filed by any person or group that becomes a 5 percent holder within 10 days after crossing that threshold. Based on technology improvements over the last several decades and the speed at which information now flows, NIRI sees no reason for such a delay in reporting this material shareholder ownership information. NIRI believes reporting rules should be amended to reduce the reporting requirement to two days from the current 10 days. This reporting requirement should be expanded to include long and short selling information, as well as share lending.

4. The SEC should undertake a Section 13 rulemaking project to modernize the definition of beneficial ownership to include securities-based swaps. NIRI agrees with former Chair Mary Schapiro that it is important to bring the Commission's beneficial ownership rules up to date "in light of modern investment strategies and innovative financial products."[8]

Strategic Objective 3.1: The SEC works to ensure that investors have access to high-quality disclosure materials that facilitate informed investment decision-making.

[7] See Petition for Rulemaking Under Section 13(f) of the Securities Exchange Act of 1934, submitted by NIRI, NYSE Euronext, and the Society of Corporate Secretaries and Governance Professionals, February 1, 2013, available at: http://www.sec.gov/rules/petitions/2013/petn4-659.pdf

[8] *See* Remarks at the Transatlantic Corporate Governance Dialogue by Chairman Mary L. Schapiro, December 15, 2011, available at: http://www.sec.gov/news/speech/2011/spch121511mls.htm

Initiative: *Update disclosure and reporting requirements to reflect the informational needs of today's investors: The SEC will continue its efforts to enhance disclosure requirements for the benefit of investors, including a reassessment of current core corporate disclosure requirements. In proposing changes for the Commission to consider, the staff will seek to modernize disclosure requirements and eliminate redundant reporting requirements. The staff's efforts will continue to include a review of proxy voting and shareholder communications to identify ideas and proposals for potential improvements to those rules.*

As noted previously in this letter, NIRI welcomes the Commission's efforts to modernize disclosure requirements and eliminate redundant mandates, and would be pleased to offer our input on specific disclosure rules.

As Chair White and several commissioners have observed, investors today often face disclosure overload, and very few have the time to read all the disclosures that public companies now are required to provide. NIRI is encouraged by the recent comments made by Commissioner Daniel Gallagher and agrees that the SEC staff should look for specific areas where disclosure burdens can be eased, instead of waiting years to undertake a more comprehensive overhaul of corporate disclosure rules.[9]

NIRI appreciates this opportunity to comment on the Commission's draft strategic plan.

Sincerely,

Jeffrey D. Morgan, CAE
President & CEO

[9] See Remarks of Commissioner Daniel M. Gallagher to the Forum for Corporate Directors, Orange County, California, January 24, 2014, available at: http://www.sec.gov/News/Speech/Detail/Speech/1370540680363 ("Where disclosure reform is concerned, though, I would prefer to address discrete issues now rather than risk spending years preparing an offensive so massive that it may never be launched.").