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SEC RELEASES NEW GUIDANCE ON PROXY ADVISORS

Meridian Expects to See Change, but it Might not be as Much as Some Would Like

Posted by Michael Brittian on July 10, 2014

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After months of speculation, the SEC has recently released its highly anticipated guidance on investment advisors and on proxy advisors (see our recent client alert). I know many Boards and senior executives will be pleased to see progress in this area in order to hold proxy advisors more accountable. But what should we really expect from proxy advisors in response to this guidance?

Because the SEC has focused more on offering "guidance" on the interpretation of current laws rather than on hard new rules for proxy advisors, we may not see as much change as many would like; however, it would be reasonable to assume that we may see proxy advisors revise their conflicts of interest disclosure policies and review their quality assurance procedures at a minimum. Beyond that we are unlikely to see any significant changes to methodologies for say on pay evaluations merely as a result of the SEC's guidance. In our view, a thoughtful response from proxy advisors which would address the spirit of this guidance as well as broader criticism of their approaches and influence would include the following outcomes:

- Higher accuracy and quality of comments and conclusions
- More consistency in say on pay evaluations across companies (see ISS Continues its Unpredictability for more on this topic)
- More consistency in policies between ISS and Glass Lewis
- Refinements to proxy advisors' peer group methodologies (specifically ISS's approach) to provide more relevance and reliability, particularly in the oil & gas industry
- A greater willingness by proxy advisors to engage more directly with issuers to gain a better understanding of their pay programs
- A longer window period for issuers to review draft research reports from proxy advisors to ensure accuracy
- A commitment to understanding how the energy industry works and how companies' programs and metrics are designed to support a unique and dynamic industry

In addition, greater transparency about proxy advisors' potential conflicts of interest would be a welcome enhancement.

The good news is that there appears to be a healthy degree of momentum in scrutinizing the impact of proxy advisors and potential conflicts of interest. My hope is that this leads to some common sense improvements to their methodologies and processes as well.