Georgeson Report

Expert advice on proxy voting and trends related to corporate governance

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Conducting Effective Shareholder and Third-Party Outreach Programs

Now more than ever, public companies in the United States are faced with increasing shareholder activism and new and challenging legislative and regulatory requirements, as well as heightened and ongoing public scrutiny. At such a time, it is critical that company management and, depending on the situation, boards reach out year-round to their shareholders to understand and evaluate their concerns. It is also imperative to remain in contact with corporate governance rating and advisory firms that issue proxy season reports, such as ISS and Glass Lewis, and other third party opinion-makers, such as the Council of Institutional Investors (CII). For these reasons, companies are well advised to develop or enhance cohesive, efficient and effective outreach program to these constituencies.

What is the First Step in an Effective Outreach Program?

The first step in any effective outreach program is a thorough analysis of a company's shareholder base. Companies should work with an experienced proxy solicitor to prepare a list of their top 30-100 institutional investors, depending on the company's size and concentration of shareholder ownership. A proxy solicitor should be able to provide not only the names of a company's top institutional investors, but also the proxy voting contacts at each firm, to which proxy advisory services they subscribe and whether they follow voting guidelines developed by a proxy advisory firm or internally at their own firm. In the case of significant investors with their own internal voting guidelines, companies should additionally obtain specific advice on the investors' voting guidelines and any likely proposals and recommendations that these investors are likely to propose to companies whose stock they hold.

This type of analysis is also valuable in creating vote projections for companies, so that they can anticipate and plan for the percentage of shareholder support that both management- and shareholder-sponsored proposals will attain and any other activism that may be expected from different institutional investors. Highly accurate vote projections rely on not only analyses of institutional investor voting policies and voting decisions and activism compiled over decades, but also the effects of market influences, such as stock prices and performance (current and historical), board composition, and corporate governance records and trends.

How is an Effective Outreach Program Developed and Refined?

Companies generally begin to develop strategies to reach out to the proxy voting/governance contacts at their institutional shareholders who are likely to be receptive to their engagement efforts. In cases where their shareholders rely more on their portfolio managers for voting decisions, a company's investor relations team may be the primary executive(s) to reach out to these shareholders.

Companies can work with their proxy solicitors to discuss which times of year are most effective for this outreach, which company executives to consider involving in these efforts, how best to explain a company's particular business strategy and governance practices, what are the "hot buttons" for certain shareholders, and possible responses to difficult questions that may be posed by these institutions. These "hot buttons" and difficult questions often arise when a company's practices diverge from investor or proxy advisory firm voting guidelines. Companies should be prepared to explain why such divergence is appropriate for them at that particular time.

Proxy solicitors can also discuss with companies when it may be appropriate to bring senior members of management and board members into discussions with their institutional investors and how to begin or continue to educate their senior management and board about the possibility of such situations in the future. In any event, members of management who conduct any form of engagement are well advised to emphasize that a company's board is very interested in what their shareholders are thinking and that shareholder views will be shared and discussed with the most senior members of management and the board.

After receiving feedback from engagement with investors and proxy advisory firms, companies often decide to go beyond what is legally required in their proxy statement, to address, head-on, specific concerns that have been raised. This additional disclosure can later be useful to better inform voting recommendations and decisions during the actual proxy solicitation period.

Should Companies Engage Proponents of Shareholder Resolutions Submitted to Them?

Engaging a shareholder proponent can be a valuable step for a company, even if the company eventually concludes that it is not appropriate for it to take the requested shareholder action.

Before initiating such engagement, a company should be aware of the following factors:

1. **Who is the Proponent** making the proposal, their history, their other interests in the company and its industry and the success of the proponent and their proposals with other companies,
2. **What is the Proposal**, whether it has a high likelihood of success or failure and how much time and expense the company is willing to spend to defeat the proposal, and
3. **What is the Likelihood of Success** for the proposal, based on the earlier-mentioned analysis of the company's shareholder base, the various positions of its shareholders on the issues raised by the proposal and the likelihood of how its shareholders would vote on the proposal.

Once a company understands these factors, it is often the case that the company, through discussion with the shareholder proponent, may succeed in getting the shareholder to withdraw its proposal. Often times, many shareholder proponents are not looking to be combative, but sincerely want to negotiate or simply communicate with a company. Some proponents use the proposal process to catch a company's attention and to discuss an entirely different issue. Usually, these other objectives would not succeed as a shareholder proposal and, therefore, the proponent may withdraw its submitted proposal if it is able to discuss its other agenda with the company.

Shareholder engagement may also open the way for a company to see how it might modify its plans further to satisfy the proponent (and perhaps even learn something from a proponent's expertise in the particular area), without compromising certain principles that its management and board believe are important for a company to maintain. Engagement may also buy the company some time to study further the subject matter of the proposal with its management and board. In some cases, the proponent may agree to withdraw the proposal for the current year while continuing the engagement and seeing what action the company takes in the coming year.

Shareholder engagement – whether at the management or board level – also enables a company to explain later to the proxy advisory firms (such as ISS and Glass Lewis) and its other shareholders that it openly and honestly discussed the issue with the proponent, but that it could not come to a mutually acceptable solution without compromising important company principles. This can be particularly valuable to a company if it later talks to the proxy advisory firms and solicits its other shareholders to vote against the proponent's proposal.

How Should Companies Engage during the Height of the Proxy Season?

In the midst of a proxy solicitation campaign, a company can work closely with its proxy solicitor to reach out to the proxy advisory firms and its shareholders to explain its positions. This can range from a call from one or more members of management to an in-person meeting with both management and independent directors present. Depending on a company's shareholder base, the shareholder outreach may vary from reaching out to only a few large institutional shareholders or to launching a full-scale call center campaign to a large group of the company's retail shareholders. Written communications can be sent by email or physically delivered, depending on the type of shareholder, the issues and the projected closeness of the voting results.

In the case of the proxy advisory firms and the company's institutional shareholders, a company's proxy solicitor can be very helpful in identifying the key voting contacts and helping to craft messaging (as noted above), as well as in setting up the necessary calls and meetings. While a proxy solicitor can have the discussions on behalf of a company, it is generally much more effective for the company when it has one or more of its own representatives conduct those discussions directly. Depending on the circumstances, a proxy solicitor may also suggest further steps such as taking part in open webcasts sponsored by ISS or Glass Lewis, sending out additional solicitation materials to its shareholders, and/or launching a simultaneous PR campaign in the mainstream press.

Companies should remember that if their solicitation communications touch anything that is not covered by their proxy statements, they generally will file those communications as additional solicitation materials with the Securities and Exchange Commission.

How Should Companies Respond to Investor Outreach to Them?

Companies should almost always respond relatively promptly and respectfully to any outreach by an investor or an association of investors, such as CII. In some cases, companies may be targeted by an investor as part of a letter-writing campaign to hundreds of companies on a particular issue, such as majority voting for directors. In the case of CII, companies can expect to receive letters asking their boards to explain their positions, if they have had shareholder proposals receive majority shareholder support or directors receive a majority of withhold/against votes. As in the case of responding to shareholder proposals, it is very important to respond in a timely and respectful manner, even if a company ultimately ends up agreeing to disagree with the investor or association, after a thoughtful independent board or committee analysis of the issues raised.

Some companies take the opportunity of investor outreach on a particular issue to engage the investor more broadly on company governance practices. Often an informal call in response to such outreach is a useful way to initiate that broader discussion.

What are the Current and Expected Trends in Shareholder Engagement?

Over the past few years, companies and investors have been experimenting with different types of engagement, which can be expected to continue. Although initial discussions generally take place on a confidential basis, companies and institutional investors have tried such things as:

- holding larger investor meetings with company management and some independent directors
- having investors meetings alone with a company's chairman and/or one or more independent directors
- having a group of companies meet with a group of investors on common issues of concern or interest
- expressing investor concerns through a company's advisers by, e.g., using surveys
- providing an opportunity for investors to provide feedback on a specific part of a company's website
- posting thoughtful interviews of independent directors on a company's website, to give investors a better understanding of how the board understands and approaches various issues

The new proxy disclosure rules, as well as the new governance reforms under the Dodd-Frank Wall Street Reform and Consumer Protection Act, will likely result in increased and new forms of company-shareholder engagement. With Say-on-Pay votes potentially annually for most public companies and the possibility of proxy access nominees in future proxy seasons, investors can be expected to use these new disclosures and tools to encourage further engagement with companies about issues that concern them.

Conclusion.

Pro-active companies should be alert to opportunities to engage their significant investors both during and outside of their proxy seasons. Each opportunity may present unique challenges. However, by embracing the engagement process and dialogue, companies should find that they are better prepared to successfully meet these challenges for the long-term benefit of both the company and all of its shareholders.

For more information, please contact your Account Executive or either of the following executives at Georgeson:

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