TOP TAKEAWAYS

SHAREHOLDER ENGAGEMENT AND PROXY ACCESS

Shareholder Engagement

1. **There is no one-size-fits-all approach to shareholder engagement.**

   In 2015, in a letter to the boards of its largest holdings, Vanguard Group said there is no one-size-fits-all approach to shareholder engagement. Directors should work with their CEOs, CFOs and investor relations and corporate governance teams to figure out how those executives see shareholder engagement and what approach works best for them and the company. Regardless of whether that means road shows, calls or in-person meetings, the key is to find an approach that fits the vision of the people presenting it.

2. **Shareholder engagement works best if you plan ahead.**

   Shareholder engagement meetings tend to be most productive if you plan ahead. Before you meet with your shareholders, ask what issues are important to them, and who they plan to have attending the meeting. Set expectations and keep the meeting focused by developing an agenda based on shareholders' answers to your questions.

3. **Anticipate potential shareholder questions based on past events.**

   Even meticulously planned meetings will deviate from the script. If your company has recently had a shareholder vote that turned out differently than expected or failed to draw significant support, or if there is an elephant in the room that shareholders are sure to ask about, be prepared for questions about those topics, even if they are not on the agenda. Likewise, when meeting with a shareholder, become familiar with the shareholder's key issues. Failing to take these steps can lead to awkward situations where the shareholder knows more about the issues than the company's representatives do.

4. **With institutional shareholders, connect the portfolio manager to the governance team.**

   At institutional shareholders, the portfolio manager may be a natural starting place for shareholder contact, but when the conversation turns to corporate and governance issues, the portfolio manager will often redirect the company to a governance professional. Still, it's worth keeping the portfolio manager involved—the strength of a company's relationship with the portfolio manager may sway his or her vote on matters where latitude for decision-making exists.

5. **Companies and shareholders often have different perceptions of successful engagement.**

   Be aware that shareholders may have a different gauge for success than companies when it comes to shareholder engagement. Companies often view engagement as discrete, one-off encounters undertaken with specific goals in mind. Shareholders, on the other hand, will often judge the engagement based on the quality of the dialogue rather than the outcome, and will seek to influence the company's direction over the course of multiple meetings, in some cases spanning several years. Companies can balance these two competing views with one simple principle—at every meeting, strive to leave the shareholder impressed.

6. **Getting directors involved is still more of an art than a science.**

   Directors are becoming more and more involved in shareholder engagement, and there are plenty of positives to having directors in the room—establishing relationships between directors and key shareholders can help the company in contested situations, and shareholders may be impressed when directors know the issues facing the company in detail. But remember that these interactions usually cannot be stage-managed. Directors must be "camera ready," must avoid appearing too deferential to management and must be well prepared to discuss the shareholder's specific issues in order to make a positive impression.

Proxy Access

7. **Arguing against proxy access with institutional investors is becoming a losing battle.**

   Institutional investor support for proxy access is continuing to increase, and it's becoming a tough sell to convince institutional investors that proxy access doesn't fit your company.

8. **Proxy access is quickly becoming accepted as a tenet of good governance.**

   Institutional investors are coming to view proxy access as a standard tenet of good governance, and it appears set to become a majority practice among the S&P 500 by 2017. To avoid adopting proxy access on potentially unfavorable terms proposed by shareholders, an increasing number of companies may adopt proxy access bylaws voluntarily.

9. **Proxy access is a good opportunity for shareholder engagement.**

   Regardless of whether the push for proxy access begins with the company or the investors, it is a good opportunity for shareholder engagement. Start by soliciting input from key shareholders—for some companies, this process can occur over multiple meetings that can take a year or more to carry out. Keep directors involved and aware of the company's progress, so that by the time the issue reaches the board for a vote, the proposal is agreed in principle and essentially a non-issue with directors.

10. **For companies considering voluntarily adopting proxy access, however, there is no immediate rush to adopt.**

    For certain key terms of proxy access bylaws, there is no widely accepted standard, and proxy advisory firms aren't yet issuing governance "demerits" for not having proxy access. Additionally, if a company receives a shareholder proposal, it can still "voluntarily" adopt a proxy access bylaw before a vote on the proposal, which is usually sufficient to defeat the proposal. As a result, companies considering the issue may opt to wait another year or two to allow trends and standards to settle before making a decision on how to proceed.

For more information on Shareholder Engagement and Proxy Access, please feel free to contact the moderator directly:

John Wilson
Foley & Lardner LLP
jwilson@foley.com