Crossing the Wall

Insights from the M&A and Activism Communications Team

FTI CONSULTING

ARTICLE

Effectiveness to Relevance:

Universal Proxy Signals New Phase in Board Engagement with Investors

The implementation of the universal proxy rules[1] has led many to project a marked increase in shareholder activism.[2] However, instead of waiting to see if the rule change sparks an uptick in activism, board directors should instead recognize this as an inflection point that ushers in a new era of engagement between boards and investors.

The new regulation reflects a steady evolution from focusing on evaluating overall board effectiveness toward questioning the relevance of individual directors - with significant implications for how boards approach investor relations.

Since the financial crisis of 2008, boards of publicly traded companies have been under an ever-increasing level of scrutiny. The advent of Environmental, Social, and Governance (ESG) only amplified this attention as investors demanded to know how the board was effectively overseeing risk, long-term strategy and shareholder returns. Nowhere has this been more evident than in the evolution of the proxy statement. This once arcane legal filing is now the most pivotal annual filing for any company with exhaustive, descriptive and colorful descriptions of the company's effective board oversight.

Best-in-class companies now disclose ample information on the operations of their board. A proxy statement will now often include details on the board refreshment process, constantly evolving director skills matrices and even attention on the highly sensitive board self-evaluation process. All of this disclosure is designed to meet investor expectations. Institutional holders now want to understand in great detail how a board can demonstrate it is a highly effective body acting on their behalf. The demands for more information have shown no signs of easing.

The universal proxy rules for contested director elections were put into place in September of this year by the U.S. Securities and Exchange Commission (SEC). In summary, historically, investors in contested elections were forced to vote on either the management card or the dissident card, essentially leaving them with only two options to pick between. Now, all nominees (whether incumbent or dissident) will appear on one slate – even when multiple activists put forth dissident nominees at the same annual general meeting (AGM). This change is significant because now, investors will be able to hand-pick their own combination of directors they would like to elect.

The pivotal truth of this rule change is that investors picking and choosing directors of preference on one card forces a closer evaluation of individual directors. When this is coupled with the relentless push for further board oversight disclosure even outside of contested elections, there is an inevitability to growing questions about each individual director's role on the board. There is now more reason for investors to ask (and good reason for boards to address) what each director brings to the board.

Right now, most companies tell a strong board effectiveness story, but few have truly started to grapple with how to tell a director relevance story. As investors turn their attention to this topic and the universal proxy rules force a shift in focus, it would be prudent for directors to evaluate how their disclosure meets this new challenge.

In beginning to enhance disclosure and meet the demands of this new era, companies should think about the following:

- Build relevance into director descriptions. A d irector's biography should clearly show 1) why they are qualified to be on the board and 2) what skillset they bring to or role they play within the board in plain spoken, easily accessible language. Most of all, director descriptions should move past generic governance platitudes and connect a director's skillset to stated corporate strategy, values and purpose.

- Make individual directors' backgrounds more accessible. Optimizing individual directors' digital profiles helps make information more easily accessible to investors. Simple improvements, such as incorporating Search Engine Optimization (SEO) functionality into the investor relations website as well as directors' biographies, can guide investors to the relevant information. Working with directors to enhance their LinkedIn profiles can take this one step further, providing a channel for thought leadership and a more detailed picture of directors' expertise and interests.

- Engage investors on directors' skills. While it should be part of regular board-level engagement with investors, these regulatory changes are a good prompt to gauge investors' perspectives on board skills. Engaging investors can provide insight into what investors consider to be priorities and is an opportunity to ensure investors know the board is continually seeking to improve and enhance directors' skills.

- Enhance director visibility and voice. It can be difficult for investors to appreciate how involved and what value an individual director can bring to the boardroom. Look for ways to elevate the visibility of individual directors. Whether this is posting a video interview on the investor relations page or encouraging a director to pen a blog post on the company website, these incremental steps can have an outsized impact in demonstrating the director's engagement, insight and effectiveness.

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[1] "SEC Adopts New Rules for Universal Proxy Cards in Contested Director Elections," U.S. Securities and Exchange Commission, November 17, 2021, https://www.sec.gov/news/press-release/2021-235.

[2] Kimberly Chin, "Universal Proxy Card Could Turbocharge Activists," Axios, September 6, 2022, https://www.axios.com/pro/retail-deals/2022/09/06/universal-proxy-card-could-turbocharge-activists.

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