



Comp Talks Proxy Season Rundown – Scrutinizing 2017 to Improve 2018

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“Whatcha Talking Bout?”

1. Shareholder engagement
2. Say on pay
3. Equity plan proposals
4. 162(m) proposals
5. Director compensation
6. Dodd-Frank Act implementation
7. Shareholder proposals & hot topics



Prediction 1: Shareholder Engagement

Governance engagement will continue to increase and will result in less congruency with negative ISS and Glass Lewis recommendations

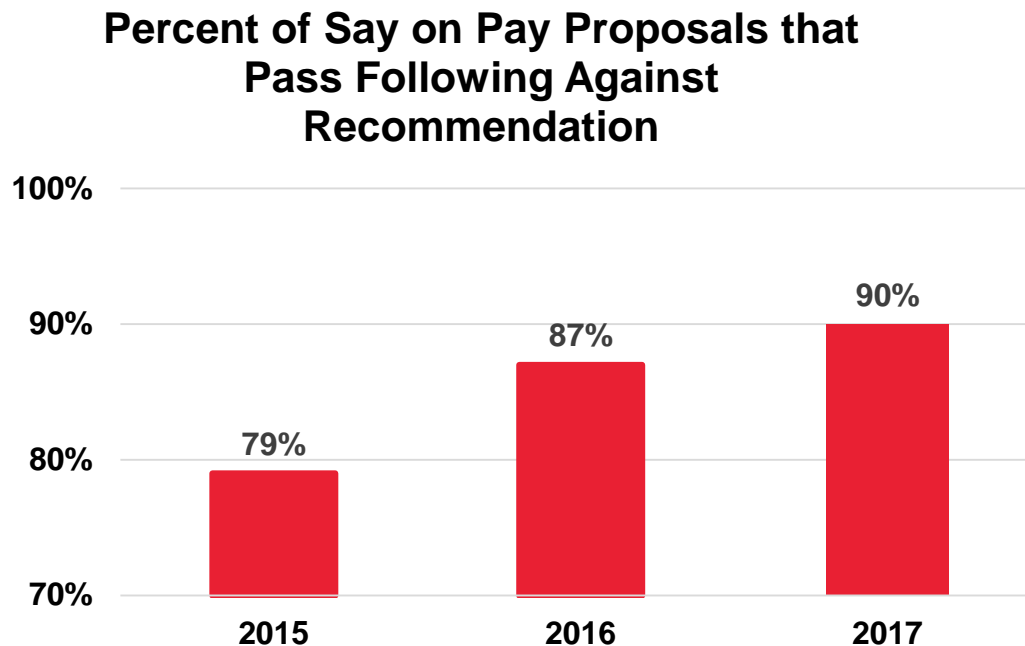


What Did We See in 2017?

- Steady climb over the past six years of increase in shareholder engagement and proxy disclosure of that engagement (especially on compensation-related topics)
- No longer just a focus for S&P 500 companies; small-cap and recently public companies are engaging too
- Engagement continued to be more proactive than reactive and more entrenched in corporate culture

What Did We See in 2017?

- Continued trend in less congruency with ISS recommendations – a byproduct of increased engagement



Shareholder Engagement – Advice for 2018

- Know *when* you need to engage
- Understand *why* you are reaching out to shareholders
- Determine *who* should be involved
- Have a targeted agenda
- Understand each investors' hot governance topics
- Technical reminders: be mindful about topics discussed and ensure compliance with Reg FD and filing requirements

Prediction 2: Say on Pay

Roughly 1% - 2% of proposals will fail (<50%) and another 5% of proposals will “fail” (<70%) and most of those will have received strong support in 2017

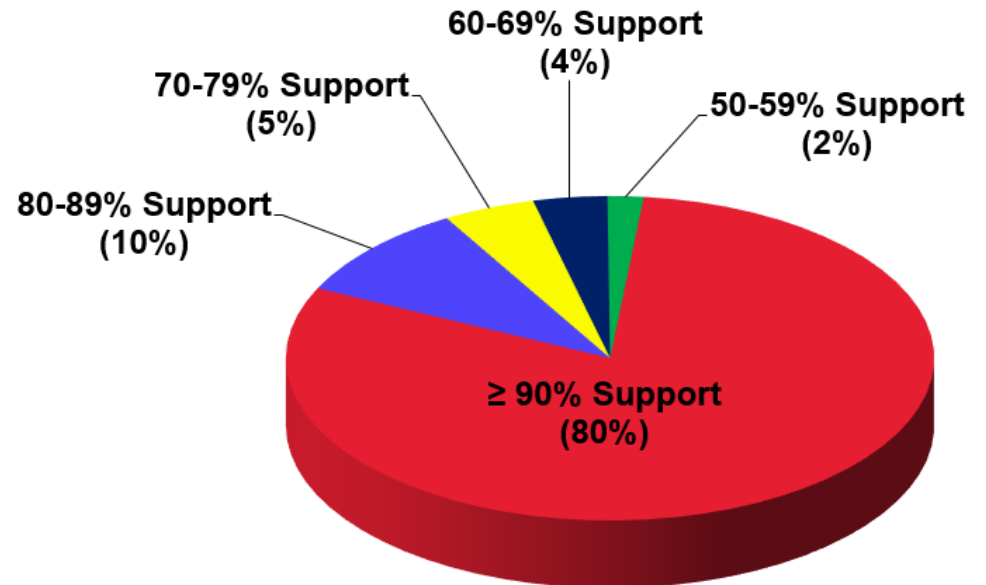


What Did We See in 2017?

Results of All Proposals



Results of “Passed” Proposals[^]



Data based on results from over 2,000 meetings reported as of July 31, 2017; source: ISS Voting Analytics database

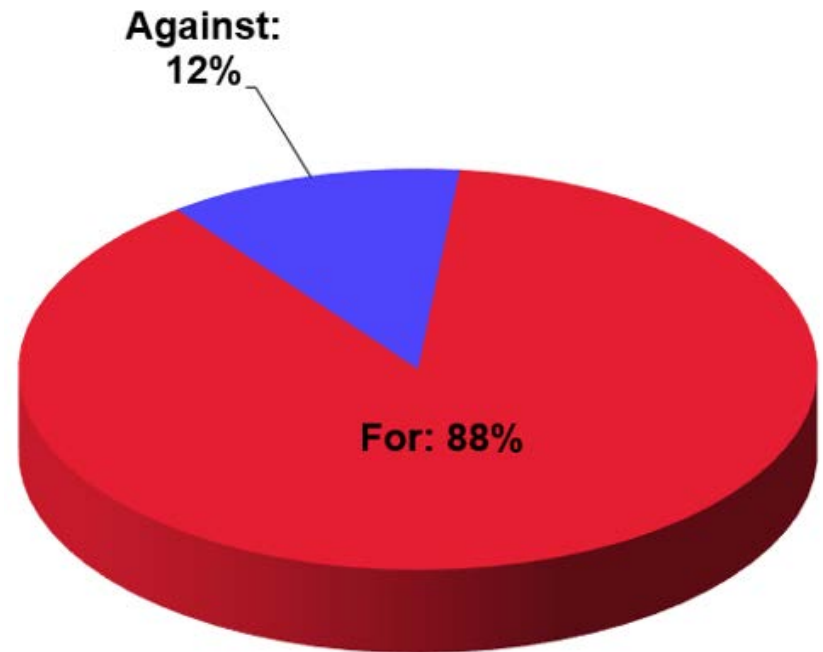
[^] Percentages do not add to 100% due to rounding

2017 ISS Voting Recommendations for Say-on-Pay Proposals

Most common reason → **pay for performance disconnect** (dominant reason is relative alignment of CEO pay and TSR)

Other common reasons:

- Compensation committee responsiveness
- One or more “problematic pay practices” (e.g., severance/ClC practices, peer group benchmarking, lack of performance-based pay, “one off” awards)
- Growing increase in scrutiny on performance metrics

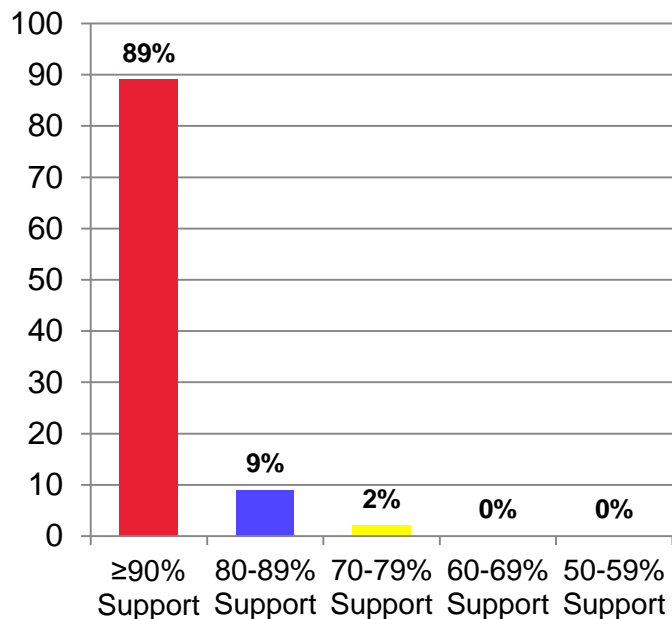


Data based on results from over 2,000 meetings reported as of July 31, 2017; source: ISS Voting Analytics database

Results of 2017 Passed Say-on-Pay Proposals Following...

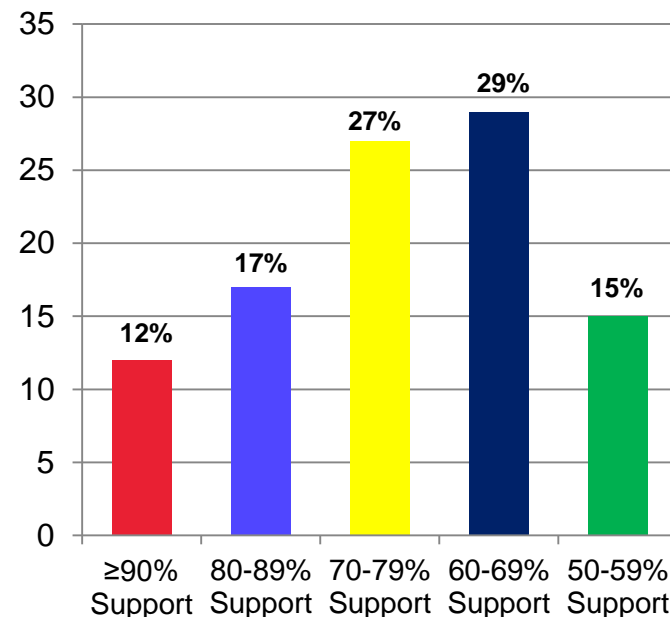
Positive ISS Recommendation[^]

95% average support



Negative ISS Recommendation

73% average support

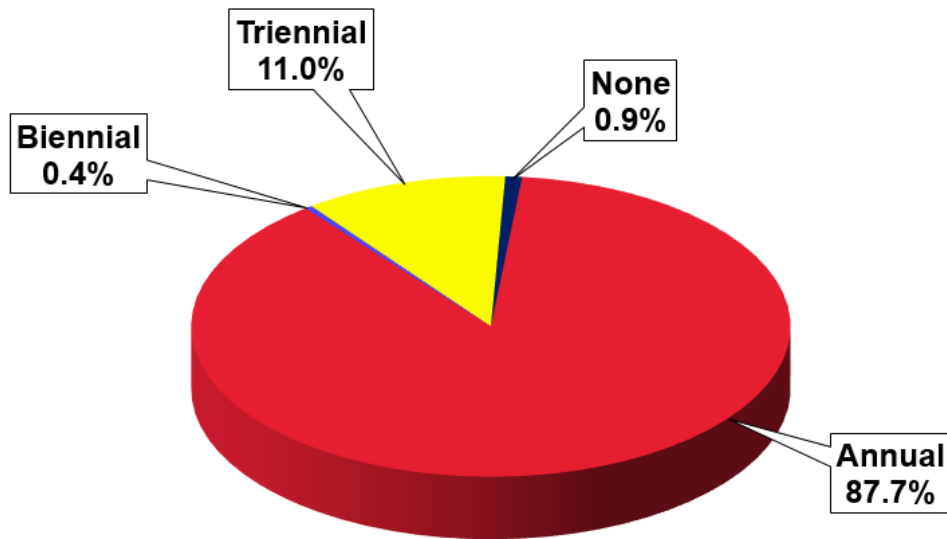


Data based on results from over 2,000 meetings reported as of July 31, 2017; source: ISS Voting Analytics database

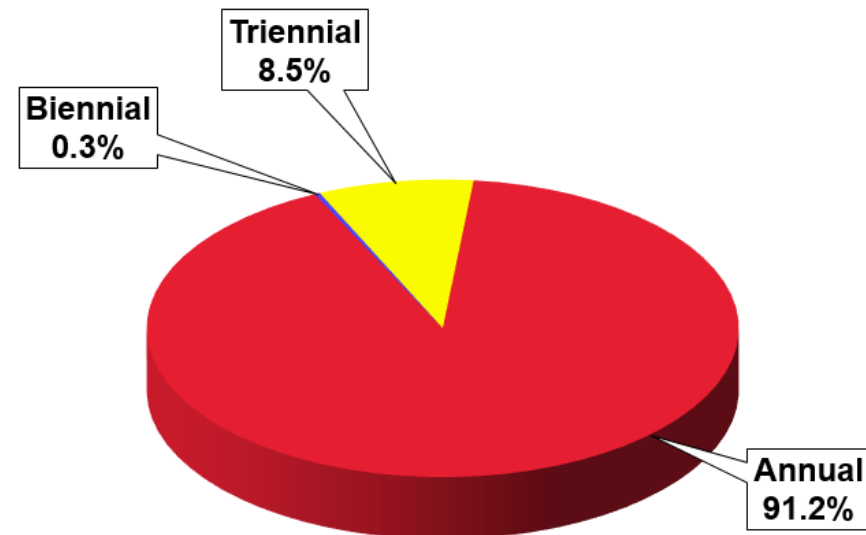
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Say on Frequency

Board Recommendation



Shareholder Preference



Based on approximately 1,800 filings as of July 31, 2017; source: ISS Voting Analytics database

Say on Pay – Advice for 2018

- Understand/monitor the ISS and Glass Lewis pay-for-performance screens and annual risk of triggering heightened scrutiny
- Pay close attention to levels of shareholder support
- A successful vote does not guarantee success in the following year
- Consider certain disclosure enhancements and start early
- Engage!

Prediction 3: Equity Plan Proposals

Nearly all proposals submitted will pass but the trend toward smaller increases and more frequent proposals will continue

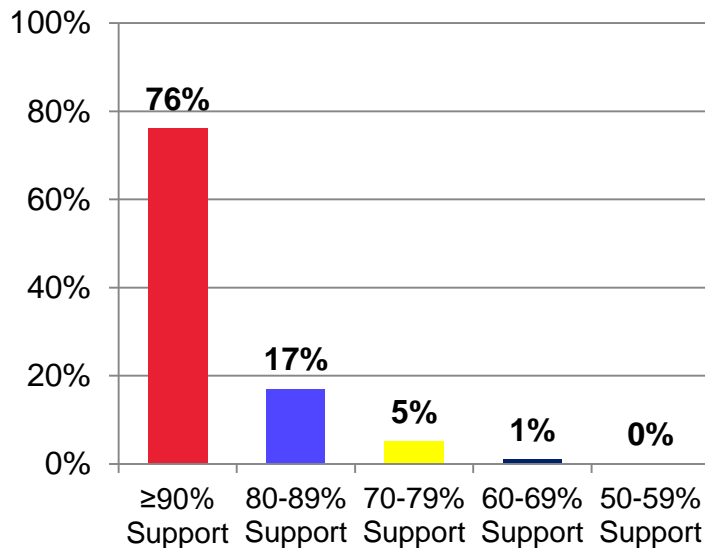


What Did We See in 2017?

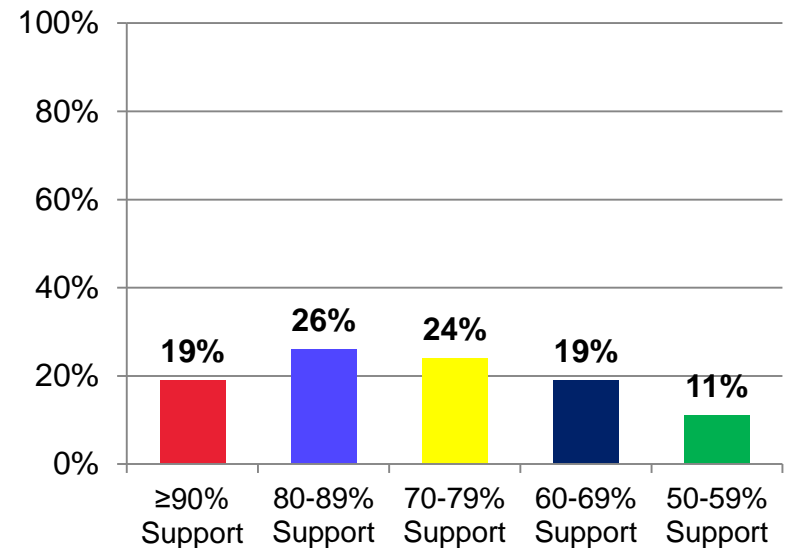
- ***Broad shareholder support (~90% average support)*** for equity plan proposals, with similar numbers similar to 2016
- Less proposals received ISS negative recommendations than in 2016 (24% in 2016 overall v. 19% in 2017 so far)
- ISS recommendations impact voting results: Average support for proposals was 92% when ISS recommended “for” v. 77% when ISS recommended “against” (down from 2016)
- Increasingly common to include supplemental disclosures in the proxy proposal (qualitative rationale for proposal, burn rate and dilution information)

Results of 2017 Passed Equity Plan Proposals Following...

Positive ISS Recommendation 92% average support



Negative ISS Recommendation 77% average support



Data based on results from approximately 820 meetings reported as of July 31, 2017; source: ISS Voting Analytics database

Equity Plan Proposals – Advice for 2018

- Most proposals are based on serious homework and designed to pass – *don't be fooled by statistics!*
- Invest the resources necessary to design a proposals that will pass
- Consider enhanced proxy disclosure

Prediction 4: Section 162(m) Proposals

We'll see one fail (or come close to it)



What Did We See in 2017?

- Roughly 80 Section 162(m) proposals filed in past year – only 1 has failed
- BUT: not so easy...investors are putting more pressure on companies to eliminate “problematic” provisions (e.g., repricing, evergreens) despite conventional wisdom

Section 162(m) Proposals – Advice for 2018

- Consider whether it is necessary to keep “problematic” provisions” (e.g., might be ok to eliminate repricing provision)
- Evaluate the importance of 162(m), weigh against potential loss of important provisions/proposal failure
- Pay close attention to any changes being made to the plan that might trigger heightened scrutiny and if this is the first time the plan is submitted to public company shareholders

Prediction 5: Director Compensation

Most equity plan proposals will include limits on director compensation, and there will be increased attention on director compensation

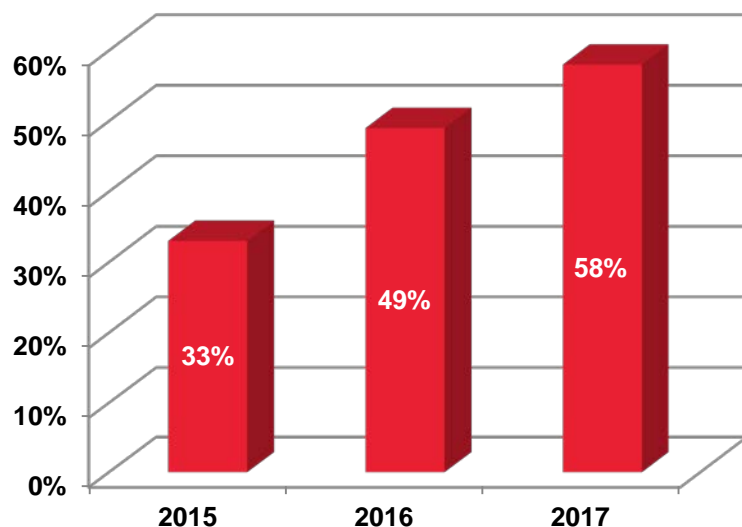


What Did We See in 2017?

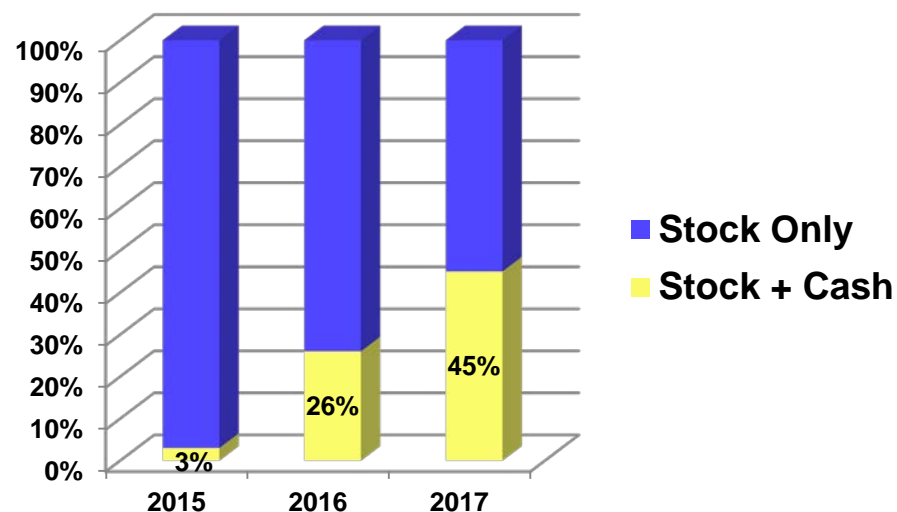
- Increased percentage of equity plan proposals filed included ***director compensation limits*** in plans
 - Limit is usually expressed as cap on the maximum compensation that can be granted in any one year to any one director
 - More limits on share *and cash* compensation
- **Litigation risk** sparked this trend and most boards of directors want the protection that shareholder ratification provides
- More investor interest in director compensation generally

What Did We See in 2017?

Prevalence of Limits in Plans



Type of Limit



Average size of limit on stock + cash in 2017 ~ 2.5x highest director compensation in preceding year

Director Compensation – Advice for 2018

- Explain the recent director compensation litigation landscape to the board of directors
- If a limit is proposed, have it cover stock and cash and express it as a dollar value
- Carefully evaluate appropriate size of limit to make sure it is “reasonable”
- Pay attention to process for setting director compensation and disclosure and regularly assess

Prediction 6: Dodd-Frank Act Implementation

Pay ratio disclosure will apply for the 2018 proxy season and we may see other changes in proposed/new regulation



What Did We See in 2017?

- Some earlier indications that pay ratio effectiveness required for 2018 would be delayed or repealed
 - Acting SEC Chair Michael Piwowar sought public input on unexpected challenges and directed the Corp Fin Staff to revisit the rules
 - Financial CHOICE Act of 2017 passed by the House would repeal the pay-ratio provision; unlikely to advance in the Senate
- Many companies have already calculated or begun the process of calculating the pay ratio, few have disclosed it
- SEC's published agenda shifts other DFA rulemaking regulations, including final rules on pay versus performance and clawback policies to the longer-term agenda

Dodd-Frank Act Implementation – Advice for 2018

- Assume pay ratio disclosure will apply for 2018 and start planning now
- Other possible regulatory changes:
 - Further delay of pay for performance disclosure, clawback rules and hedging disclosure
 - Eligibility requirements for shareholder proposals
 - Regulation of proxy advisory firms
- Stay informed

Prediction 7: Shareholder Proposals & Hot Topics

We'll continue to see very few compensation-related proposals and they'll continue to garner low support; there will be increased focus on other topics



What Did We See in 2017?

Overall, compensation-related shareholder proposals DOWN from 2016 and 2015; *none have passed*

Compensation Proposal	# Submitted/# Voted On	Average Support	Comparison to 2016	
Gender Pay Equity	29/13	12.90%	Increase in proposals; decrease in support	↑
CEO/worker pay disparity	12/6	4.40%	Increase proposals; decrease in support	↑
Link pay to social issues	11/8	11.50%	Increase in proposals; increase in support	↑
Miscellaneous compensation	11/1	8.10%	Increase in proposals; increase in support	↑
Severance pay	2/1	36.00%	Decrease in proposals; decrease in support	↓
Clawbacks	7/6	13.90%	Increase in proposals; decrease in support	↑
Accelerated vesting of equity awards	6/5	29.60%	Decrease in proposals; decrease in support	↓

Shareholder Proposals & Hot Topics – Advice for 2018

- Take shareholder letters seriously, review with counsel and the compensation committee
- Know the rules/deadlines and SEC guidance
- Reach out to the proponent early in the process
- Continue to engage after the meeting

Shareholder Proposals & Hot Topics – Advice for 2018

- Stay informed and be prepared to address governance hot topics:
 - Board diversity (particularly gender)
 - Board tenure/refreshment
 - Succession planning
 - Risk Management
 - Proxy Access
 - Traditional governance topics (if not yet adopted) such as majority voting and board declassification

Questions????

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