Cooley

Preparing for Proxy Season: 15 Tips and Reminders for In-House Teams

November 21, 2024

Cooley will be hosting two webinars in December 2024 and January 2025 to help companies prepare for the upcoming proxy season:

- **Hot Governance and Engagement Proxy Tips You Need to Know**, at 11:30 am PST/2:30 pm EST on December 12, 2024, featuring Cooley partner **Beth Sasfai**, special counsel **Michael Mencher**, corporate governance senior strategic advisor **Broc Romanek**, and co-founder and CEO of Proxy Analytics **Steve Pantina**.
- **Proxy Season Preview (Including ISS and Glass Lewis Policy Updates)**, at 10:00 am PST/2:00 pm EST on January 15, 2025, featuring Cooley partners **Ali Murata** and **Brad Goldberg**, along with Compensia principal **Mark Borges**.

In advance of these webinars, our compensation and benefits, governance, and ESG teams put together a list of 15 key reminders for general counsel and in-house teams to consider as they ramp up for proxy season.

1. Brush up on proxy advisor and investor policies with an eye toward proactive disclosure opportunities.

Pay attention to proxy advisor and investor policies, including **upcoming updates**, but distinguish between general recommendations and policies with voting implications. These policies highlight which practices may impact voting recommendations and decisions but also indicate areas where proxy disclosure can be impactful, especially around executive compensation. In many cases, discovering that a company practice is misaligned with a voting policy is not a death sentence and, even at this stage, companies can craft disclosure and engagement strategies to compensate.

2. Remember to overlay proxy advisor independence standards.

Don't forget that ISS and Glass Lewis have their own independence definitions, which include numerous and more detailed trip wires than listing exchange standards.

3. Start now on compensation disclosure.

If you have not already started working on your compensation disclosure, initiate that process now – and establish a timeline that affords sufficient time for reflection, drafting and revisions.

4. Considering adding new workstreams.

Make sure to consider the need for additional workstreams, either because of recent compensation disclosure developments – for instance, option grant timing and application of clawback policies – or because of a change in reporting status, such as loss of emerging growth or smaller reporting company status or adoption of new types of plans.

5. Pay attention to investor feedback.

Review results of engagement discussions when planning proxy disclosures. This often gives you much more useful information than formal policies.

6. Begin from your weak points.

Anticipate your weaknesses so that they can be addressed in a positive manner. Among other things, review your prior year's proxy advisor reports to identify areas of historical concern – and consider whether additional shareholder engagement is warranted or would be helpful at this point. (And it's never too late to start if there has not yet been any engagement.)

7. Respond to prior-year issues.

Consider adding shareholder engagement and responsiveness disclosure to your proxy, especially if you received low support for management proposals last year or a shareholder proposal received significant support.

8. Engage with your compensation committee.

Consult the compensation committee chair to see if there are any points they will want to see emphasized in the compensation disclosure.

9. Reflect bylaw and governance guidelines amendments.

If you amended your bylaws or governance guidelines since the last proxy – either to address the universal proxy rules or in response to recent Delaware litigation or plaintiffs' demands – confirm that the description of your advance notice requirements and other bylaw provisions and governance guidelines are up to date in the proxy statement.

10. Confirm if additional proposals or a preliminary proxy are needed.

Consider if additional management proposals will be needed for this year's meeting – such as equity plan amendments or changes to governance documents in response to a successful prior-year shareholder proposal – and determine if any will require the filing of a preliminary proxy under Rule 14a-6.

11. Talk about board composition and address any concerns.

If you have board composition vulnerabilities related to diversity, independence, overboarding, or tenure, or you have received investor pressure on refreshment, consider adding proxy disclosure regarding director skills and recruitment, as well as evaluation of time commitments and tenure.

12. Review proxy maturation strategies.

Trying to keep up with the Dow Joneses? Consider how your pacing peers have evolved their proxy governance disclosure as they've matured, particularly the addition of polished overviews of governance practices, engagement, leadership structures and board composition.

13. Find the right place for environmental, social and governance (ESG) disclosures.

Review any proxy ESG disclosures included in the past and consider whether these disclosures are appropriate for your proxy, or if some material should be moved to a website or ESG report.

14. Focus on risk oversight.

Do you have disclosure of board and management oversight of key risk and strategic areas? Remember that proxy advisors and investors have policies emphasizing the importance of oversight of matters such as cyber, climate, and emerging technologies.

15. Have a post-meeting game plan.

Plan for after the meeting, including a board session to review the results of the meeting and proxy season more broadly. If you expect negative outcomes, prepare your senior management and the board, and develop a response strategy.

Key Contacts

Michael Bergmann Washington, DC	mbergmann@cooley.com +1 202 728 7008
Brad Goldberg New York	bgoldberg@cooley.com +1 212 479 6780
Alessandra Murata Palo Alto	amurata@cooley.com + 1 650 843 5696
Beth Sasfai New York	bsasfai@cooley.com +1 212 479 6081

Michael Mencher San Francisco	mmencher@cooley.com +1 415 693 2266