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10 Tips for Upcoming Annual Shareholder Meetings

Posted by Laura D. Richman and Michael L. Hermsen, Mayer Brown LLP, on Wednesday, April 11, 2018

Editor's note: Laura D. Richman is counsel and Michael L. Hermsen is a partner at Mayer Brown LLP. This post is based on a Mayer Brown publication by Ms. Richman, Mr. Hermsen, David S. Bakst, Robert F. Gray, Jr., and Anna T. Pinedo.

With spring beginning, many public companies are getting ready for their annual shareholder meetings. Here are some tips to consider as part of the planning process.

Meeting Logistics. Check and double-check meeting logistics. While this may sound basic, it is important to confirm and reconfirm the venue, in addition to all meeting participants and service providers, as the meeting date approaches. Be sure the meeting room will be set up in the manner the company prefers with the equipment the company needs. If the company will be incorporating electronics into its meeting (i.e., conducting a fully virtual meeting, holding a hybrid meeting to allow shareholders to attend in person or via computer, webcasting the proceedings or otherwise), test the technology in advance and have a workaround ready in case of an outage. Advance planning for various contingencies contributes to the smooth running of the annual shareholder meeting.

Preparation for the Q&A Session. In addition to scripted presentations, officers should prepare to answer questions from shareholders. Questions relating to the company's results and strategies will, by their nature, vary from company to company, but officers should also be ready to answer questions relating to topics that are of general current interest. With this being the first proxy season with mandatory pay ratio disclosure, officers should be prepared to answer questions about the pay ratio at their company and how it compares to the pay ratios of the company's peers. Questions also might come from shareholder employees who are surprised that they make less than the median. Shareholders might also ask questions about board diversity and gender pay equity, as well as cybersecurity. Similarly, officers could receive questions regarding how the company is addressing climate change and sustainability. Depending on the nature of a company's business, officers may be asked whether the company is taking any steps with respect to gun safety or the opioid crisis or, more broadly, about enhancements or changes to the company's corporate social responsibility policy. It is worthwhile for companies to brief the presiding officers on suggested responses to a broad range of topics that could arise during the question-and-answer session.

Social Media. Companies should anticipate that shareholders in attendance may be reporting on events at the annual meeting in real time, using various social media. Therefore, companies with a savvy social media presence may find it useful to present their own messages on social media during the meeting. To prepare for this, the company's social media team should be given access to scripts and slides well in advance so they can have well-drafted postings ready to issue at the appropriate times during the meeting. Companies should also decide whether the social media team is authorized to issue impromptu postings to respond to events at the meeting. It would be a good idea for the legal team to coordinate with the social media team regarding the parameters of social media postings during the meeting, particularly with a view toward Regulation FD disclosures.

Rules of Proceeding. The individuals presiding over the annual meeting should be reminded of the company's rules for the conduct of shareholder meetings, including applicable bylaw or governing law provisions. Among other things, it is important to brief the presiding officers on the rules for presenting a proposal at the meeting that does not appear in the proxy statement, especially if the company's bylaws contain advance notice provisions. In addition, if the company limits the time for shareholders to make statements, announce that near the beginning of the meeting.

Presentation of Rule 14a-8 Shareholder Proposals. If any shareholder proposals are included in the proxy statement pursuant to Rule 14a-8, companies should determine whether an appropriate person will be at the meeting to present the proposal for voting. Companies should decide in advance how they will proceed if neither the proponent nor the proponent's representative attends the meeting. Some companies may choose to present the proposal as a courtesy, especially if the proxies in hand indicate that the proposal will fail (since Rule 14a-8(i)(12) allows shareholder proposals dealing with substantially the same matter to be excluded from proxy statements within three calendar years from the last time such a proposal was included if the proposal failed to achieve certain thresholds when voted on). If, without good cause, the proponent or the proponent's representative fails to appear at the meeting and present the proposal, Rule 14a 8(h)(3) permits the company to exclude from its proxy materials for the following two calendar years any proposals submitted by that proponent. While there is precedent permitting a company to exclude shareholder proposals on this basis even if the company submits an absentee proponent's proposal to a vote for the convenience of its shareholders,[1] companies should be careful not to take actions that may waive the right to exclude any proposal from that proponent for the next two years, for example, by asking another shareholder in attendance at the meeting to present the proposal.[2] If a company anticipates that no appropriate person will be in attendance to present a shareholder proposal that appears in the proxy statement but the company intends to submit the shareholder proposal for a vote anyway, it would be helpful to draft specific language to be read at the meeting that is expressly designed to preserve the right to exclude future proposals from the proponent for failing to appear at the meeting to present the proposal.

Security. Companies should decide on the level of security for the meeting. Should all attendees have their identification checked? Should bags be inspected manually or by machine? Companies should determine whether they are comfortable with using company employees or security provided by the venue for this purpose or whether they want to hire an outside security firm for the annual meeting. Companies should consider whether they want security personnel to be uniformed, in plain clothes or a combination.

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[1] See, for example, https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2015/marcoconsultinggroup030315-14a8.pdf.

[2] See, for example, https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2013/newyorkcityemploymentretire031813-14a8.pdf.

Journalists and Other Guests. The annual meeting is held for shareholders but sometimes journalists or other interested persons may wish to attend. Companies should consider whether to allow non-shareholders to attend and what is needed to confirm shareholder status. Companies that allow journalists to attend may want to consider providing a separate area for them to sit and having public relations personnel sit with them. If journalists or other guests are in attendance, companies may want to make clear from the outset that they will not be allowed to ask questions or otherwise participate in the meeting unless they are also shareholders.

Voting Results. Companies should coordinate with the inspector of elections and the tabulators of proxies submitted by record and beneficial holders to obtain a prompt record of the voting results. A current report on Form 8-K must be filed within four business days of the annual meeting to report the results for each matter voted upon at the meeting. In addition, some companies issue press releases or post their voting results on their websites to promptly publicize the outcomes.

NYSE Annual Affirmations. Companies that are listed on the New York Stock Exchange must submit annual affirmations on corporate governance matters to the NYSE within 30 days of the shareholders' meeting. Because the NYSE requires an interim affirmation with five business days of certain events such as a change in directors or a change in certain committee assignments, NYSE-listed companies may find it more convenient to submit the annual affirmation within five business days of the meeting if an interim affirmation requirement is triggered around the time of the annual meeting.

Post-Meeting Shareholder Engagement. Engagement with shareholders should not end when the meeting concludes. Many institutional shareholders do not have time to engage with their portfolio companies during the busy proxy season. Therefore, after proxy season is over, it has become common to reach out to the company's largest shareholders to discuss any concerns they may have. Ongoing shareholder engagement is frequently viewed as a sign of good corporate governance. Engaging with shareholders in the weeks and months after the annual meeting also provides a basis for enhanced corporate governance disclosure in the next year's proxy statement.