

2022 PROXY SEASON – QUICK HITS

Nov 02, 2021

Considerations for companies planning for next proxy season should include the following:

Risk Factors

- As discussed in our [July 13 post](#), consider current hot topics, including COVID risks, labor market challenges, inflation, supply chain issues, cybersecurity, social justice issues, heightened antitrust enforcement, and international conflicts, among others.
- Do not present risks as “hypothetical” when they have actually occurred, such as a cybersecurity breach, as discussed in our [August 24 post](#).

Climate Change and ESG

- Pay attention to climate change in light of the SEC’s increased focus, as reflected in its September 2021 [sample comment letter](#) as well as statements released by several Commissioners ([here](#) and [here](#)).
- Monitor further SEC rulemaking on climate change and human capital management disclosure. While it is unlikely that any new rules would be effective for the upcoming proxy season, rule proposals expected this winter may provide insight on the current thinking of the SEC.

MD&A

- Update your approach to MD&A and related financial disclosures to comply with the 2020 amendments to S-K Item 303 and related items that became effective for 10-Ks for FYs ending in September 2021 or later, as detailed in our [October 1 post](#).

Disclosure Controls & Procedures

- Review your disclosure controls and procedures to ensure adequate information-reporting systems are in place so that senior executives become aware of material issues. For example,

our [June 16](#) post describes a failure to report a cybersecurity vulnerability that exposed customer personal data.

10-K Items

- Revisit human capital management disclosure in view of trends and key investor policies.
- Transactions with certain Russian parties added to the sanctions list last Spring could trigger disclosures under Section 13(r)(1)(D) of the Exchange Act, even if unrelated to the Government of Iran, as discussed in our [April 29](#) post.
- New Item 9C of Part II requires disclosures by reporting companies that have branches or offices in a foreign jurisdiction where the PCAOB is unable to properly inspect or investigate, as described in our [March 31](#) post.
- Confirm that the company complies with the SEC's requirements when collecting electronic signatures for filings, as explained in our [February 10](#) post.

Proxy Items

- Nasdaq companies will be required to publish a board diversity matrix, as explained in our [August 6](#) post, either in their proxy statements or, concurrently with their proxy filings, on their websites with timely notice to Nasdaq. The “comply or explain” requirement will apply in future years (i.e., it will not apply to 2022 filings).
- For CEO pay ratio calculations: consider the three-year limit on using the same median employee for comparison purposes, in the absence of changes to the employee population or compensation arrangements that you reasonably believe would result in a significant change in the disclosure.
- The say-on-frequency vote is required at least once every six years.
- Carefully diligence executive perquisites and personal benefits in light of SEC focus, as illustrated by recent enforcement actions for improper disclosures in [June 2020](#), [September 2020](#) and [February 2021](#).
- Consider updating D&O Questionnaires to elicit diversity data and consents to disclosure of that data.

NYSE Rule Changes

- Related party transaction approval requirements were clarified to conform with S-K Item 404, as described in our [August 26](#) post.

- In [April](#), shareholder approval requirements were amended for related-party equity issuances and private placements exceeding 20% of a company's outstanding stock or voting power.
- A pending [NYSE rule proposal](#) would ease the requirement to count abstentions as votes "against" a proposal subject to NYSE rules and instead follow charter documents and state law.

Shareholder Voting

- Beginning in January 2022, [Blackrock](#) will allow institutional clients invested in index strategies (40% of \$4.8 trillion index equity assets) to vote directly or direct voting on their behalf.
- In June, the SEC [announced](#) it would not enforce its recently amended proxy advisor rules and interpretations pending reconsideration, as discussed in our [June 2](#) post. The National Association of Manufacturers recently filed a [complaint](#) against the SEC for such nonenforcement.
- In September, the SEC [proposed amendments](#) to require increased disclosure about proxy voting by registered investment companies (including mutual funds) and executive compensation votes by institutional investment managers.
- Consider best practices for virtual or hybrid shareholder meetings, such as those discussed in our [November 3, 2020](#) post.

Related Considerations

- Incentive compensation clawback rules are under active consideration by the SEC, as it has [reopened the comment period](#).
- SEC filing fee disclosure and payment methods were updated [last month](#) (effective Jan. 31, 2022), including the addition of ACH and debit/credit card payment options.

RELATED CAPABILITIES

- Securities & Corporate Governance

MEET THE TEAM



R. Randall Wang

St. Louis

randy.wang@bclplaw.com

[+1 314 259 2149](tel:+13142592149)



Eliot W. Robinson

Atlanta

eliot.robinson@bclplaw.com

[+1 404 572 6785](tel:+14045726785)

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