NIRI NY January Program
Thriving and Surviving the 2012 Proxy Season

Investor relations and governance officers are now knee deep in preparation for proxy season. 2011 saw many changes affecting proxy matters and we can expect more of the same in 2012 including, private ordering for proxy access, increased shareholder activism, and as we approach “year two” of mandatory say- on-pay, companies aligning their pay for performance policy with the expectations of shareholders.

The NIRI New York chapter assembled a diverse group of thought leaders to share their strategic and tactical approach to this year’s proxy season. In addition, we learned best practice tips for keeping your shareholder communications lines open year-round. Our moderator, Ron Schneider, senior vice president at Phoenix Advisory Partners, led this interactive panel with Valerie Haertel, vice president, investor relations, at Medco Health Solutions; Dane Holmes, head of investor relations at Goldman Sachs; Kenneth Bertsch, CEO of the Society of Corporate Secretaries and Governance Professionals, and Stephen Brown, director of corporate governance and associate general counsel at TIAA-CREF.

Proxy Access

We are early in the season and as Ron Schneider noted, there are already 17 companies with proxy access proposals on the table. At least two of these companies have said they will put their own proxy access proposals on their ballots that will include higher ownership thresholds and longer ownership holding periods than the shareholder versions, and a third committed to putting a company-endorsed version to a vote at their 2013 shareholder meeting. These companies will also ask the SEC to allow them to exclude the shareholder proposals because they are substantially implementing it themselves.

In July 2011, the U.S. Court of Appeals vacated the SEC Proxy Access rule for failure to consider the rule's effect upon efficiency, competition and capital formation. However, the Rule 14a-8 amendment, which is ushering in a new private ordering proxy access era, did go into effect in September 2011. This rule allows companies and their shareholders to adopt proxy access procedures through the shareholder proposal process.

By way of background, the 14a-8 rule contrasts to the stricter eligibility standards of the mandatory proxy access rules, which would have required shareholder(s) seeking to make a director nomination to have held at least three percent of the company’s stock for at least three years. Rule 14a-8 only requires that a proposing shareholder have held at least $2,000 of a company’s stock for at least one year.

There was a great deal of discussion among the panelists and attendees about how shareholders could, on a company-by-company basis, campaign for a process change for elections this coming season. Stephen Brown, director of corporate governance at TIAA-CREF, noted that his firm would have preferred to have one federal rule. In fact, TIAA-CREF, one of the more conservative shareowner activists, called on the SEC to raise the threshold to 5% for shareowners at all companies, regardless of size.

Know Your Shareholders

This is a theme that we have heard repeatedly during the last year. Valerie Haertel shared a recent experience where her strong relationships with investors proved to be critical when she was faced with a no vote for several board members.

Valerie had two board members who were being contested by shareholders because they served on the board of two financial services firms prior to their collapse, and another board member because he was the former CEO of a Medco subsidiary and considered an affiliated rather than independent director. In each case, the relevant experience and contributions to the company from these board members were not recognized by the proxy advisory services due to their strict rules that leave little room for the recognition of important facts and circumstances.

To ensure the Medco shareholders understood the value of having these individuals on the board and to secure a "yes" vote, Valerie partnered with her legal team to develop talking points. She then reached out to the analysts and portfolio managers representing the institutions that were objecting or could potentially object to the directors based on the advisory services' recommendations.

Frequently, analysts and portfolio managers have a say regarding proxy matters. In a situation where the analyst or portfolio manager was not part of the voting process, Valerie was given an introduction to the relevant parties within the institution to present her case. Valerie's strategy incorporated her contacts into the process versus abdicating the decision to the governance department within the firm, which is often done during the proxy solicitation process. Valerie found that while investors tend to use ISS and Glass-Lewis as a guide, they often have their own internal voting policies or guidelines. Therefore, the proxy services' recommendations are truly a guide and not always "the rule."

Valerie's efforts were rewarded both by securing the re-election of the directors in question, and by the internal recognition she received from her management and board, for her effectiveness in leveraging her IR relationships to positively impact the proxy voting result.

Ken Bertsch echoed Valerie's sentiment. Over a number of years, some institutions (large asset managers in particular) have moved away from a "check the box' approach to governance, said Bertsch, who indicated that some fundamental investors are doing more to involve portfolio managers in proxy voting decisions, with fewer relying solely on compliance personnel. While not all investors are improving their game in this regard, said Bertsch, issuers should recognize that many institutions are receptive to outreach on proxy voting, and open to learning about governance and the real life of boards of directors.

As institutions of all types become more active in the proxy process, Dane Holmes has revitalized Goldman's approach to institutional targeting. Understanding an institution's proxy voting predilection is equally as important as knowing its investment profile, Dane recently added a governance filter to complement Goldman's "economic" metrics. Dane noted that Goldman Sachs is not only very proactive, but his team is also "surgical" about understanding its current shareholders and target investors. Dane believes having a 360 degree view of the investor's objectives better prepares the Goldman Sachs IR team to have a well-informed discussion with institutions and understand their buy or sell signals.

Disclosure Best Practice Trends

Proxy season is no longer a six week event. The savviest investor relations officers are not only proactive partners in the process, they view the role as a strategic component of their outreach twelve months a year. Dane believes playing offense is the best defense. To address say-on-pay questions, Goldman Sachs created a standalone document that outlined the firm's compensation policies and practices. The compensation presentation was included as an appendix to their proxy solicitation materials and posted on their website.

With so much disclosure material for an investor to consume, how much is truly digestible? For illustration of the magnitude, Stephen Brown noted that TIAA-CREF votes on eight thousand companies! Ron gave examples of companies including GE, Prudential Financial, United Healthcare that are including two or three page summaries with their proxy statements that distill the key aspects of their corporate governance, executive compensation and other proposals to be voted on at the annual meeting[1]. This enables the reader to quickly identify the issues that are most important to him/her and spend more time focusing on the substance of the proxy that are most relevant to them.

[1] http://www.ge.com/ar2010/pdf/122802ACL.pdf
http://www.unitedhealthgroup.com/invest/2011/UNH-2011-Proxy-Statement.pdf
http://www.sec.gov/Archives/edgar/data/1137774/000119312511073236/ddef14a.htm#toc

The 2012 proxy season is likely to be an active one for shareholder proposals. To stay ahead of the curve, continue to engage important shareholders as part of an ongoing investor relations program—identify and address issues early and know your corporate governance guidelines and how the company handled the proposals and voting dynamics of significant shareholders in the past.

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