TK: TK Kerstetter
FB: Francis Byrd

This Week in the Boardroom brought to you by Corporate Board Member and host NYSE Euronext, along with governance knowledge partner Paul Weiss and contributing partners National Investor Relations Institute and the Society of Corporate Secretaries and Governance Professionals.

Welcome to this edition of This Week in the Boardroom. I'm TK Kerstetter with Corporate Board Member and it's my pleasure to welcome you into this show where we're going to take a look at something that we've talked about for many shows and we've dubbed this sort of the year of shareholder communications. And since this is, we're on the season, we're in the proxy season, we're on the verge of annual meetings, I thought it would be good to get something that was right in the fray, as they say, at this point. So it's my pleasure to welcome my guest Francis Byrd, who is the senior vice president of Corporate Governance and Risk Practice Leader for Laurel Hill Advisory Group. Francis welcome.

Thank you TK.

Laurel Hill is a shareholder communication and a corporate governance advisory firm involved in proxy solicitation. So again you guys are in full motion at this point.

We are in full motion.

So my first topic is what issue or topic is going to garner the most attention as we look at coming up to our proxy voting and our annual meetings?

Well I think this year two of the top issues that are of interest to both companies and to shareholders are going to be the binding bylaws proposals at Norges Bank on proxy access. I think that's probably going to be one of the top focuses of interest. And then the next will be the proliferation of all of these political spending proposals that have come out this year in the wake of Citizens United and in the wake of the 2010 Congressional elections. So I think there's a huge build up around all of those proposals and I think that's where everyone's interest is going to be focused. Naturally say-on-pay will be important, but I think everyone is going to be carving out a little bit of time to see what the results from all of those will be.

Well in an election year with political contributions, the activists have really taken this sort of on as their mission haven't they?

They have. The governance advocates, as I call them, the public pension funds, the Taft Hartley funds, and a number of social issue investors have looked at this and have been pressing very strongly on these proposals.

Well when I talked about in the opening that we have labeled this the year of shareholder communications, I'm sure you would agree with that in principle, but I think it would be helpful, give me three things that all boards should be doing to make sure that their shareholders and their investors are aware of all the efforts around enhancing shareholder value.

Well I think the first thing companies need to do is they need to assess the quality of their corporate governance, make some determinations about what governance vulnerabilities or concerns that other shareholders might have, ISS, Glass Lewis, and some of their larger shareholders as well as what the governance advocates might think. So I think that's certainly the first part. I think the second is to always be prepared to have sort of a break of the glass, emergency plan in place to be able to reach out to ISS, Glass Lewis and the large shareholders in the event you get a negative recommendation from ISS or from Glass Lewis. And then the last one is to make sure that your directors are prepared from potential meetings with investors. We found that in many cases a director might need to be brought on if there's a question about whether or not the compensation committee and the board really were involved in setting the compensation for the CEO. When you have a problem like that you really need to bring in a director to sort of break the log jam, convince the investor that yes the board was paying attention to what was being done, and that the board knows that this is the type of compensation that was needed and to ignore the ISS or Glass Lewis recommendation against.

A lot of corporate law firms get nervous when people suggest the idea of putting the directors in front of investors, but there certainly has been a clamoring for it.

There has been a clamoring for it and I think people need not be overly concerned about that. This is like any sort of ministerial level meeting. First you have lower level contacts with investors and you have lower level contacts and even arranging the call with ISS and Glass Lewis prior to the introduction of a director. The same thing that you'd do if you were preparing the CEO for a discussion with investors or discussions with an outside party. You take the same level of care with the directors and everything should flow smoothly. That allows for an opportunity to be able to pull the director back should the topic change or should some question on materiality pop up.

Since you're working with all different companies in this proxy solicitation, what do you find is the most common mistake that's either made in the proxy or made in communications with respect to a company garnering the shareholder's vote?

I think the most common mistake nowadays in the say-on-pay era is the fact that companies still see their proxy as a compliance document, they still write their proxy statements as thought they're writing for an audience of folks in the division of corporation finance down at the SEC, and they need to understand that it's much more of a marketing document now that not only needs to withstand a compliance check by the SEC, but needs to be able to instruct, educate, and motivate investors to vote in favor of management's proposals.

Well certainly say on pay has restructured the CD&A for sure, but putting that into terms that everybody can understand is what you call a real challenge.

That's a huge challenge and as much planning which is possible in that will be very, very helpful. Investors are looking at perhaps thousands of proxies depending on who the investor happens to be an we really want to be able to get to the point, educate them, and get them to vote for you.

So you being your firm's governance guru, when you look past our current say on pay situation and say okay what is the next issue that's going to bubble up here, that's going to challenge boards like say on pay did, what does your crystal ball say?

Well there are a couple of things. Certainly even within the context of say on pay there's the fact that the grounds seems to shift from year to year; 69% victory and 74% victory aren't considered victories by ISS and Glass Lewis respectively on Say on Pay. The governance advocates have an entirely set of standards that they use and that makes it difficult for companies to know exactly what it is that they need to do. There's also some talk certainly overseas, because say on pay was an import, about mandatory say on pay where if you don't win you lose and then you will have to permanently sort of retract and change pay simply by having lost a shareholder vote. So that's being talked about in the UK and Australia presently.

Well some might argue that non-binding isn't so non-binding the way it exists today so it may not be a huge leap to mandatory. I always got a kick out of calling it non-binding because again the ISS have found a way to make it fairly binding the next voting period at least. So let me ask you a question that I like to ask a lot when we get experts in and that sort of when you look at all that's happened what encourages you about boards with all the recent changes in the boardroom that has translated into more effective boards? What would you put your finger on that you say this was a pretty significant event?

I would say executive sessions. The use of executive sessions for independent directors to be able to talk and discuss issues that have arisen during a board meeting, or even previous board meetings, and discuss them among themselves without management present has I think been a huge boom to the effectiveness of directors and the effectiveness of boards. It really helps them coalesce probably around the two primary issues would be strategy and then CEO and CEO teams evaluation because those are critically important to the ongoing concern of the business.

Well it would be hard to disagree that that has been significant. There is some challenge that some boards have on how they interact with the CEO following executive sessions, which I think is important. But certainly the idea that they have the freedom to talk among themselves in a structured environment has to be considered one of the major improvements to an effective board.

Absolutely.

I really appreciate you joining us Francis. We'll have to maybe get an update after we have a change to see what happens in all the voting and the annual meetings once June or the end of June comes and we've seen most of them completed. But I want to thank you for joining us.

Thank you very much.

And that will conclude this edition of This Week in the Boardroom. We hope that you will join us again next week and we'll take another look at a critical topic that will help you be a better board member or committee member. We'll see you then.

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