

"12 Tricks to Help You During Proxy Season"

Tuesday, January 22, 2019

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The proxy season continues to present new - and recurring - issues that can drain time & resources. Join these experts to get practical advice on how to enhance your proxy season efforts without sacrificing your sanity:

- **Karla Bos**, Director of Corporate Governance Consulting, Aon
- **Irving Gomez**, Assistant Secretary, Director & Chief Governance Counsel, Intel
- **Beth Ising**, Partner, Gibson Dunn
- **Peter Kraus**, Assistant General Counsel & Assistant Secretary, Microsoft

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Liz Dunshee, *Editor, TheCorporateCounsel.net*: Hi, this is Liz Dunshee, Editor of TheCorporateCounsel.net. Welcome to today's program, "12 Tricks to Help You During Proxy Season." Spoiler alert, we actually have 14 tips today as a bonus.

I want to welcome our panel of experts and thank them for participating. We have Karla Bos, Director of Corporate Governance Consulting at Aon; Irving Gomez, Assistant Secretary Director and Chief Governance Counsel at Intel; Beth Ising, Partner at Gibson Dunn; and Peter Kraus, Assistant General Counsel and Assistant Secretary at Microsoft.

Peter is going to start us off today with the first tip.

[Organize & Draft Your Proxy In the Way That Makes Sense This Year](#)

Peter Kraus, *Assistant General Counsel and Assistant Secretary, Microsoft*: Thanks, Liz. The first tip I have today is to organize and draft your proxy statement in a way that makes sense this year. There's temptation to take last year's document and update the dates and proxy tables and just call it good.

Instead of getting locked in that pattern, we try to take a breath and take stock at the beginning and say, "What are the issues that are important to us this year?" They change from year to year.

It could be compensation issues, composition of your board, governance practice that has gotten good or bad attention, or it could be business performance or a combination of those.

When we take stock, we think about what shareholders have been asking about in our shareholder engagement and let that guide us about what's top of mind for them. Then, we try to give ourselves freedom to step back from the proxy and say: "Do we need to reorganize it? Do we need to put something different in our proxy summary or near the front of the document, or do some special callouts?"

I'll give a couple of quick examples from the 2018 proxy we filed a couple of months ago. We had three "spotlights," as we called them. We had one on human capital management. That seems to be a topic that more and more investors are asking about. We had one on cyber risk oversight, a governance-related issue, but also a business issue that's super important to Microsoft. We had a spotlight on strategic acquisitions oversight, and how the board looks at acquisitions. Over the last couple of years, we had a couple of large acquisitions - LinkedIn and GitHub.

We also put some enhanced CSR content into the proxy summary and rearranged our general governance content to answer questions that we were getting from shareholders. Those are some examples of what we did.

I have two quick points. If you go down this path, make sure you do a very robust rules check because if you're moving things around and deleting some old text, you want to be sure you haven't gotten rid of some disclosure that was required by Schedule 14A or Regulation S-K.

If you move things around and change names, use section headers. Also, if you're forward-incorporating anything by reference from your 10-K, make sure you don't inadvertently change a section header that you called it one thing in your 10-K and another thing in your proxy. We caught ourselves a couple of times doing that.

Those are my comments. I'll hand over the next one to Beth.

When Developing Your Engagement Strategy, Consider the SEC's "Rules of Engagement"

Elizabeth Ising, Partner, Gibson Dunn: Great. Thanks, Peter. My first tip is about when you're developing your engagement strategy, don't forget that the SEC has various rules of engagement that you need to keep in mind.

Just by way of background, the SEC's definition of proxy solicitation is very broad. It's in Rule 14a-1 - and there are various other rules that modify and explain it further. Essentially, it's broad enough to say that it's not just the furnishing of the form or the proxy, but it's other communications to shareholders under circumstances that are reasonably calculated to result in you receiving, withholding or revoking a proxy.

It's a broad definition. That means, particularly when we're using written materials or a script - both before we file the proxy statement and afterwards - then it may need to be filed as additional soliciting material.

If it's before your proxy statement is filed, then Rule 14a-12 comes in and there's a specific box that you need to check. If you ever wondered what the other boxes are on the front of Schedule 14A, this is one of them. There's a box to check for soliciting materials under Rule 14a-12 and then there are certain legends you need to include, among the other requirements.

It's also important to keep in mind that most practitioners think there is a lower bar for what you would file before you file the proxy statement versus what you would file as additional soliciting material afterwards.

For example, if I have the proxy statement on file and I'm essentially saying the same thing again, the common practice is not to go out and refile every single time I use that same statement or explanation. Before the proxy statement is filed, you don't have that information out there. That is where the lower bar may come into play.

As the engagement strategy is being developed and as you implement it, stay in touch with IR and the proxy solicitor. Are they making phone calls, and is there a script they are using a script? What's the overlap?

Is anyone now using slide decks to go and meet with investors? Are we handing these things out, and is somebody adding great new data we have, and are there some additional details that go beyond what you've been talking about in the proxy statement? You will need to think about what needs to be filed.

There are some companies that as a matter of course will create a general engagement deck, and then file it as additional soliciting material. That's then used going forward and gives them cover after they file the proxy statement. They don't have to file additional things as long as they stick to their PowerPoint presentation and deck.

One other point I would make is that there's been a debate over the years of what to do if ISS or Glass Lewis comes out with their voting recommendations and they're not the same as what the company has recommended. There are varying views on whether to write a letter responding to ISS or Glass Lewis and file it as additional soliciting material.

I'm not going to get into the narrative of whether that helps or doesn't help with your investors. I will say that I increasingly see instances where investors will come back to us. Let's say we had a conversation with investors to explain why we think the board's recommendation makes sense and we disagree with ISS. An investor may come back and say, "You know what, we are going to vote the way that you're recommending, but I need something for my files. Can you send me an e-mail memorializing all the various things that we talked about?"

It's not exactly in the four corners of the proxy statement. Sometimes filing some additional soliciting material will help give you cover if, in fact, the investor comes back and wants to have that written documentation for their files.

The last thing I'll say about additional soliciting material is that if you are using notice & access and you subsequently file additional soliciting material, the notice & access rule in 14a-16 requires that you post the additional soliciting material on the notice & access website no later than the day in which the materials are first sent to shareholders or made public.

It's really a matter of making sure that you are coordinating to get those additional soliciting materials uploaded to the site, which will require some advanced coordination. That is my tip and I'll turn it over to Irving.

Keep a Hard Copy of Your Proxy on Your Desk for Note-Taking

Irving Gomez, *Assistant Secretary, Director, and Chief Governance Counsel, Intel*: Hi, it's Irving. Thank you, Beth. My tip is keeping a hard copy of your proxy statement on your desk for notetaking and using it when you engage with shareholders.

Everyone, after they file their proxy, is very proud of it. Then, all of the sudden, you find things you could improve or something you could have made a little clearer. That's always evident when you start talking to your shareholders and they start asking you questions. You say "it's in the proxy," and when you have to point it out to them, you realize that maybe it's a little buried.

I like to take notes on the hard copy because it makes it easier to keep track of these improvements over the course of the year. I keep a physical copy, take notes, and make edits on the hard copy of high-level remarks.

For example, when I was drafting the 2018 proxy statement, I had a lot of information about the board's role in risk oversight. I thought I had a pretty robust section. But after engaging with shareholders and hearing their questions, I thought, "okay maybe it's time to revise it."

I take notes, point to and circle things so it makes it a lot easier when I start drafting the 2019 proxy. I keep my master 2018 proxy statement handy and flip through it and say, "Yes, I forgot earlier in the year I wrote this note, and now I have to figure this out." I find it useful to have an actual physical copy versus e-mails or taking notes that way. This way you always have it on hand.

Kraus: If I can jump in, this is Peter. It's a little-known fact about Irving that he does marathons and triathlons and many endurance events. He actually keeps a copy of the proxy with him at all times, including when he's doing a triathlon.

Karla Bos, *Director and Corporate Governance Consulting, Aon*: You never know when you may run into a shareholder, so that's great.

Gomez: Exactly. Especially on that swim from Alcatraz to San Francisco. It might be a little soggy, but it's there.

"Tell It Like It Is" - And Don't Save "Board Responsiveness" for Low Vote Results

Bos: This is Karla. That leads nicely into the fourth tip, which is tell it like it is, and don't save board responsiveness for low vote results. It certainly resonates with shareholders when they're looking at the proxy if they see something that they've discussed with you make its way into the proxy - like the scenario Irving described about revising the board risk oversight section in response to shareholder questions, that would be really helpful.

My point here is shareholders want you to be straightforward and explain not just the what, but also the why and how. Even if you start with just one section or one important paragraph of your proxy this year, to the extent that you feel you can and the lawyers will let you, write it as candidly and as authentically as you possibly can in a way that would really resonate with you if you were the investor, particularly for company proposals that received low support.

You need to remember that investors see so many proxies! They can find it frustrating or even offensive when you dance around some of these items or use language that even hints at obfuscating.

One of the classic examples I still see is a say-on-pay discussion that starts out with, "We are pleased with our vote results," yet the results were barely passing - and the proxy then goes on to review a massive shareholder outreach that was conducted for the very first time.

Framing it this way just doesn't ring true with your investors, and these are the ones whose trust you're trying to inspire. The related point that I want to make here is on not saving your "board responsiveness" for the time that you've gotten a low vote.

You have so much to gain from conveying this responsiveness in the good times too. This doesn't mean that you have to do the deep shareholder outreach every year that the proxy advisors do expect under their board responsiveness policies when a proposal gets significant opposition.

It means reflecting in your disclosure in a genuine way and on an ongoing basis that you understand what your shareholders care about, that your decisions at least consider their points of view and you are providing context for your decisions.

The goal should be consistently authentic disclosure that respects and acknowledges the role of shareholders and provides them with some level of insight into your company decisions.

If you do have to address a low vote, you may be less surprised by it in the first place and your process for it may be met with more support and less skepticism. That's my pitch for telling it like it is. Peter?

Kraus: Yes. Thanks, Karla. The one small thing I'd like to add to that, and I thought was a great tip, is if you're having, from a business performance perspective, a rough year, and you got some challenges or places where you didn't quite meet your goals, it's perfectly appropriate to talk about and be honest about that. Explain how you're going to address it in the next year or how that flowed through on executive comp. We've done that in prior years and I think that helps build credibility.

Bos: Absolutely.

Negotiating PR Aspects of Shareholder Proposal Withdrawals

Kraus: The next tip I have has to do with negotiating shareholder proposals. If you are fortunate enough to be able to successfully negotiate away a proposal with some mutually agreeable solution, you should also talk to the shareholder proponent and negotiate with them about the PR aspects of that withdrawal.

In other words, what public statement does the shareholder proponent expect to make? How are they going to characterize the settlement that you've reached? We've had situations in the recent past where the shareholder has come out afterwards and characterized the resolution in a way that, let's just say to be diplomatic, is a little different from the way we would have characterized it.

I know it is part of their business model to maybe get some PR and take a little victory lap about their successful negotiation and the concession they got. I think that's fine. You're never going to be able to stop them from doing that.

If you can negotiate an option at least to do a joint press release, at least get an advanced review and an opportunity to comment on their press release. Get that bug in their ear and maybe that gives you an opportunity to stop that genie from getting out of the bottle. You then have to do some responsive PR if you don't quite agree with what they're saying.

Again, it is a good conversation to have on the front end while you still have some leverage with the shareholder proponent. I think Beth had the next step.

Three "Forget-Me-Nots" When Presenting Shareholder Proposals (And Your Response) in the Proxy

Ising: Great. I have three "forget me nots" when presenting shareholder proposals and your response in the proxy statement. The first I want to touch on is that your presentation matters.

For example, a lot of shareholder proposals will include their own titles. It's important to keep in mind that you typically need to include their title in the proxy statement, but it doesn't have to be your title. Especially if you think it's incomplete or misleading, you may want to use your own. Again, don't rewrite or revise their language, but it doesn't mean you have to adopt it.

There also are, in my experience, increasing instances where shareholders are submitting proposals that include bold or italicized fonts or other special formatting. If you don't match their formatting that's in the shareholder proposal, they may come back later and complain.

The other aspect of the presentation is that the shareholder does not, just like with the title, does not get to dictate what's on your proxy card. The company has its own obligations under the SEC rules, as

well as a CDI that the staff issued several years ago that emphasized you must fairly present the matter that's being voted on. You can't say "vote on a shareholder proposal" on the proxy card.

For example, the proponent's title may be very much geared towards what they are trying to advance. It may not explain it in a way that's consistent with the SEC's rules. It's important that you fairly present it on the proxy card, albeit that you have to work within the space limitations for the text you use.

The second tip is, don't forget that you need to have some introduction in the proxy statement to the shareholder proposal, and that the introduction needs to comply with the SEC's rule. But you have the option as the company of whether or not to include the shareholder proponent's name and address and their shares.

There are some instances where there may be 25 co-filers. Companies may decide not to put the names in there. The rule says that if you don't put it in there, you can offer to provide this information promptly and you need to indicate how.

Some companies will slice and dice. They will put the name of the lead proponent and say, "contact us if you want the co-filers." They may want to put the share ownership information there because they view that being a shareholder of only 15 shares may be limit the proponent's ability to persuade other shareholders. But either way, you have to put one of the different types of information, the proponent's information or information on how shareholders can get that information from you.

My third "forget me not" is, don't forget that statement in opposition. It has to go to the proponents at least 30 days in advance. That's the first step, so don't forget.

When you send it, you are not required to send the introductions of the shareholder proposal, or how the shareholder proposal will be presented on the proxy card. The rule is about the statement and response - and often it is an opposition - but not always.

The key here is that while you're not required to do it, there are some proponents who are very vocal about the overall presentation when you file and distribute the proxy statement. When they see their shareholder proposal, they may not particularly like how you presented it. For example, if you didn't include the bold font, or whatever other issues may come up.

Think about whether to send the entire presentation along with the statement in opposition so you can head off or at least know of any objections that are going to be raised. If you do that, make sure that what you're sending them is the formatted version that includes all the graphics so that you get the benefit of hearing about that in advance.

Dunshee: Beth, this is Liz. Do you ever try to send that in advance of the 30-day deadline in case they do have objections to what's in there?

Ising: It's worth trying. Often, I find the board or board committees are involved with reviewing and having input on the company's or board's response to the shareholder proposal, and we don't have time for that.

That is why there's a 30-day period, as well. It's supposed to be a time period in which if a proponent does object, they must follow the rule. They must believe that there are materially false and misleading statements in there.

There is a little time built in there. Obviously, if you are worried, or heaven forbid you missed the 30 days and you're sending it with a slightly abbreviated time period, you're going to be more cautious about your language to make sure there's no objection. Earlier is always better, but not always possible.

Dunshee: Good point. Peter, were you going to add something as well?

Kraus: I was going to say we're typically close to the 30 days on that. I had a quick question for Beth. There was some SEC guidance the last few years about pictures and photographs. The proponents were empowered to put photographs in. Are we seeing any of that? I haven't seen it yet, but I don't know if anyone else has.

Ising: I have not. There are a handful of proponents who are very dedicated towards trying to get the pictures in. I would say it's by no means a widespread practice. Even with the Staff guidance coming out, I haven't seen an uptick in it at all.

Not all of them go in, and you can challenge the proposal, of course. Nobody's home right now due to the shutdown, but you can challenge the proposal.

Gomez: This is Irving. One comment regarding Beth's point is I have found it useful to call up the proponent when they have the typical typos, etc., and formatting changes that don't go with the rest of my proxy statement.

I try to do that in advance - way before the 30 days - to see if they want to change it or give me permission to do that. I have found some shareholders say no. They want to just leave it exactly the way it is. So, it's always good to reach out way in advance of the 30 days.

Dunshee: Good tip.

Capitalize on Your 10-K

Gomez: All right. I'm up next with my other tip, and it is to capitalize on your Form 10-K. Over the years we are starting to see more of the larger institutional investors separate the PMs and the governance people. I'm starting to notice that the governance people, since they are just voting a lot of proxies, don't really know the business as well as the PMs.

I have heard from investors that they appreciate the fact that proxies now are talking about the business. And so I think it's a great idea to capitalize on all the work that's put into your 10-K.

Your 10-K has now become a marketing tool - you have the business, overview of the year, and the MD&A. Using parts of that in the beginning of your proxy to tell your year-long story is a great way of not having to recreate the wheel.

For us, I have used graphics from the 10-K. I shrunk things down and condensed it, but I used the sections, especially since we did a big revamp of our 10-K. We have the introduction to the business, we have a year in review with a lot of great graphics, and a good section on CSR issues.

I use all that information and put it into the proxy to tell the story of how the year went, which then translates into why our execs were compensated the way they were that year. Karla?

Get Outside Help, But Don't Outsource to Excess

Bos: That's very helpful. This is a good segue into my tip, which is to suggest that you get outside help - but don't outsource to excess.

We're giving a lot of great tips and advice about things you should do, which you might want to incorporate. But few companies have the resources to cover the universe of "all things governance" internally, and some don't even have the resources to be aware of all the things that they might want to be thinking about.

Institutional investors totally understand this. But they don't want to see the advisors doing more than advising. Similar to how companies worry about investors that appear to blindly follow a proxy advisor, investors want companies to demonstrate in their engagement and disclosure that they're thoughtful about how they use advice from the consultants that they hire.

Shareholder engagement is a great place where outside advisors can help you get started and then run with the process. Companies ask, "Who do I contact at my investors? How, when and what will they want to talk about? Do they cover governance and ESG separately?" There are a myriad of questions.

Some investors clearly publish this information, but many don't. The right advisor can help pull it together for you, interpret policies you may not be familiar with and help guide you so you can be more efficient and effective in your outreach. But make sure that they are helping only in the background. Most investors really want engagement to be between them and the company.

Another area where using outsider advisors can be beneficial is in benchmarking your governance practices against what your peers are doing and how they're evolving against what your shareholders or broader stakeholder groups want and why. Also, to know where market practices seem to be headed.

Using an advisor that sees a broad slice of the market can help you be proactive instead of reactive in evolving your practices over time. Again, the decisions on what actions to take or not, when and why, have to rest with the company. You can't outsource those.

Certainly, getting expert advice on shareholder proposals falls into this bucket too. Irving is going to provide a tip on that later. So, with that, I will turn it over to Peter for another tip.

Kraus: Karla, I have a follow-up question on that. When you're thinking about outside advisors, where do you go?

There are law firms, of course, who can provide good advice in many of these areas. There are firms out there who specialize in the shareholder engagement space. Then, there are multi-purpose firms like soliciting firms or even your transfer agent firms. They frequently have branches that give you both or the whole range of services. Where else do you go when you're thinking about where to find an advisor?

Bos: I think the ones you laid out are absolutely the right place to start because you want to start with the advisors who already know your company best. Your law firms, and in a self-serving way, I'll say your compensation consultants. Any of your professional advisory firms, so many of them are adding governance capabilities.

It also makes a lot of sense to talk to your colleagues and get their viewpoint. Granted, this can add up quickly from a dollar perspective. There's a huge disparity in the range and quality of services and what people charge for them.

You need to do some due diligence. You can get some targeted help once you figure out what you need help on, and it doesn't have to break the bank. You want to ask around like you would for any other service.

Kraus: Some of the advisors charge on a fixed fee. If you're paying a fixed fee, make sure you keep picking up the phone and get your money's worth.

Bos: Yes. Help them help you.

 **Proxy Review: Use Fresh Eyes, Particularly for Quality Assurance**

Kraus: Exactly. I'm going to flip my next two tips because one of mine has to do with getting outside help, to get a set of fresh eyes to help you with the proxy review.

Looking at the proxy over and over you can easily overlook something. It happens to me every year - you get "edit blind." You look at this document, what you've written, and you no longer can see what's missing, inconsistent language, a missing a paragraph or inconsistent formatting. It is very helpful to get someone who is not steeped in the document to look at it from the outside.

This last year we hired an outside vendor, a technical writer. We fortunately had a budget to do that. You don't need a big budget, though. You can hire someone, whether it's a technical writer or maybe someone from your law firm if you can get a decent rate. They need to have good editorial skills, be very meticulous and detail-oriented, so they can tell you where your inconsistencies are or where a sentence just doesn't make sense.

We all play this inside baseball, and we all know what we're trying to communicate. It's very helpful to get a non-subject matter expert looking at your document and pointing out where you're not making sense or using jargon or poorly-drafted sentences.

You may also be able to find someone inside your company, or a temporary assignment from your marketing or finance group. We found finding a fresh set of eyes had tremendous value.

Bos: Peter, this is Karla. I absolutely want to underscore that. A lot of organizations don't realize they may have someone who's practically a savant from a proofreading and review perspective.

Kraus: Yes.

Bos: Someone with an outside perspective in their organization could be very helpful. It's a great way to engage your employees, as well. I can't underscore that enough. Great tip.

Use Graphics & Formatting in a Productive Way

Kraus: The next tip I have has to do with using graphics and formatting. There are a lot of people out there, whether they are printers or others, who have great advice about how to use graphics and formatting.

My point here is that it's possible to overdo it. You want to find that "Goldilocks point" where you're using graphics to clarify complex information - whether it's your compensation structure, governance structure, or board composition. Those are great places to use graphics.

I've also seen examples, and I think we all have, where maybe it's a complex compensation structure where you see a diagram and it's like a Rube Goldberg device. It's so complex that you're not immediately getting the context out of it. We need to ask ourselves, are we going too far in our graphics?

The other danger or concern of being too graphically-intensive, is we've tried the last few years to make our document more and more accessible, particularly for vision-impaired, and particularly blind readers, who are going to have to use an online document reader or PDF reader function.

When you have too many graphics, you have to put something called alt-text into your graphics. It is text that doesn't appear in the document but will appear on the reader to describe what the graphic is. The more complex your graphics are, the harder it is for this alt-text to describe what you have.

If you are trying to make your document more accessible to different types of readers, it is possible to go too far on the graphics. You want to keep that in mind.

Bos: Hey, Peter. This is Karla, can I ask you a question on that?

Kraus: Yes.

Bos: I heard recently, an investor said it was their belief that some of the services that were using automation to scrape documents and pull information in, specifically for ESG scoring in this case, were not capturing all the information because some of it was in graphic form.

I don't know if that's an urban legend, but it is certainly something to think about and perhaps make sure that your all text has the adequate amount of detail in it.

Kraus: That's an interesting point. I hadn't heard that before. Alt-text may be a good way for a bot or scraper to get that information in. It's worth looking at.

Dunshee: Yes Karla. This is Liz. I have read that too. I can't remember where, but that's definitely out there.

Bos: I think it was T. Rowe Price that said they discovered that in their ESG analysis.

Dunshee: Interesting.

Gomez: This is Irving. I want to add that sometimes I get too committed to graphs that I create. I think, "this graph is going to look amazing." To your other point, it is good to have fresh eyes to review it.

I have other employees review it and I say, "what do you think this graphic means?" When I need to explain it to them, then I know I've gone way too far for the reader.

Bos: Yes.

Gomez: Right. That's when I scrap it and start fresh again.

Bos: We have all written a narrative that we got married to and love. It's even perhaps more dangerous when you get this graphic that you think is super cool, but then it looks like some Rorschach test to people. If it doesn't mean anything right away, then someone has to take the ax.

Kraus: I think Beth is up next.

Watch Those Shareholder Proposal & Nomination Deadlines

Ising: Great. Thanks. I'm going to go into the nitty-gritty within the proxy statement. The next tip has to do with the various deadlines you are putting in the proxy statement.

Companies need to include the 14a-8 deadline for shareholder proposals. There are advanced notice bylaw deadlines typically, if your company has an advance notice deadline for both nominations and proposals. And if you have adopted proxy access, you have deadlines for those, as well.

My first tip is to pay close attention to what the deadlines are keyed off of. Some of them will be keyed off of the meeting dates and some will be keyed off the proxy date. For example, for Rule 14a-8 proposals, it's based off of the date on which you first released the proxy statement to shareholders in connection with the previous year's meeting.

The advanced notice bylaws often, not always, but often and increasingly because of some developments in Delaware over the last couple of years, those will be keyed off of the meeting date. Proxy access deadlines are typically keyed off of the proxy release date. So, make sure you're measuring it from the right date.

The other thing to keep in mind that's a little sneaky is that the SEC said in Staff Legal Bulletin No. 14, that it's the first release date. Some people assume that it's always going to be the date that we file

the proxy statement.

Within the SLB, the Staff says to look at when you first send or give the proxy statement to shareholders. I always heard the story, we're going to file and then we're going to start mailing a couple of them out, even if the printer is still gearing up to get all of them out the door, and that was because they were trying to get the same date for the two.

You're required to put the first release date at the beginning of the proxy statement. Then, a lot of times companies will have the graphics and all the other important disclosures. Then, all the way at the end are the deadlines.

And inevitably what ends up happening is, "Well, we're at the proxy printer. We're getting it finalized. Everything has slipped by a day, so we changed the first release date on the first page," and nobody went and figured out, "Wait a minute, how does that change the date at the end of the document, for those that are keyed off of the first release date?" So make sure if you change one date, to figure out what you need to change elsewhere as well.

Finally, there's the issue of what happens when you move your meeting by more than 30 days, or if you move it significantly. Thirty days is the deadline for Rule 14a-8 - and then you need to check and see whether moving the meeting date restarts any deadlines under your advanced notice bylaw - for nomination proposals under state law - or under your proxy access bylaw, if you've adopted proxy access.

It's important to look and understand whether and how the clock restarts if you move your meeting date. You have a disclosure requirement as well that's addressed in Rule 14a-5.

It's hard sometimes. It's really helpful under Rule 14a-8 that if you move your meeting by more than 30 days, the new deadline is a reasonable time before you start to distribute your proxy material. That basically means you must analyze what is a reasonable time. There is some guidance out there in the no-action letters.

Also, remember that if you have adopted proxy access and you move your meeting, you need to announce that under Item 5.08 of Form 8-K.

Call the Experts to Assist with Shareholder Proposals

Gomez: Thank you, Beth. My last tip of the day is to call the experts to assist with shareholder proposals. At Intel, we receive between four and eight shareholder proposals every year. Of course, I'm not the expert in some of the issues that come up.

It's a good idea to have your list of internal people who can assist you. If it's political contributions, I call my government affairs people. If it's a human capital proposal, I'm on the phone with HR since they have those issues and they have handled it before.

I am a big proponent of always making sure that you know the people in your organization who can assist you with these proposals, and other things as well.

I was on a call last week with Peter about a possible proposal. So I look to other companies, as well, who have negotiated with the proponent, have had the proposal, and had it withdrawn. It's always good to keep track of those things and call your colleagues. Work with them to see how they do it and get their words of wisdom.

Your outside counsel can also help, and the Society is a good resource, as well. I'm a big proponent of always making sure you have a network of people both internally at the company and externally that can help with shareholder proposals.

Bos: That's a great point, Irving. This is Karla. When I was talking about outside help, I was thinking about outside advisors. It's a great point that you have a wealth of resources internally and they know the company better than your external resources.

▲ Engage, But Don't Count on It to "Carry the Day"

With that, I'll jump to my last tip which is to engage, but don't count on it to carry the day. My tip, in a nutshell, is really to put the meat of your message into your proxy whenever you can. Yes, there will be times when you specifically decide to cover something in an engagement instead, that you just don't want in the proxy. I do think that should be the exception, especially since you just can't always count on getting calls with investors.

Don't get me wrong. Real engagement, which means quality dialogue, not quantity of phone calls, is incredibly important. I want to be a little contrarian for a minute to be sure that we are adequately capturing the reality of where "engagement" stands today.

The fact is, investors are inundated with requests for engagement these days. Say-on-pay failures doubled last year, and everyone is concerned about activism, so there's been a huge uptick in companies asking for engagement.

I hear from some investors that are saying the volume of the vague "check-the-box, not-clear-purpose" type of engagement request has really shot way up. They are more inclined to decline requests more frequently if they perceive them as perfunctory or potentially unproductive in some way.

You add that governance teams have more issues to dig into than ever before. You add that investment firms, many of them are facing layoffs or budget crunches from market pressures and industry consolidation. Frankly, top governance talent at your investors is also being heavily recruited by companies and consulting firms.

This really means the governance teams may need to be doing more with less and they may simply have less capacity to engage. My tip in closing here is that, yes, successful companies will absolutely be proactive in pursuing direct actual engagement, but they will simultaneously be realistic about everyone's capacity for it.

They'll make their best use of other channels to maximize, as an input to the company's decision-making process, the way they use what their investors have already put out there publicly about their views. Then, they'll leverage the company's disclosure as an opportunity to tell their story in an authentic way that really informs their investors and looks to build their trust. Peter, I know you wanted to talk about shareholder engagement, as well.

Kraus: Yes.

Gomez: This is Irving, I have a quick question. Karla, you said to put your message out in the proxy and then engage. What do you think about proxy supplements? I'm seeing them used more and more often. What do you think of those?

Bos: It's ideal, where it makes sense, to get the message into your proxy initially. But if you have disclosures that you think are potentially useful for shareholders and that you can point them to with some level of clarity, that can make a lot of sense.

We are really coming to an inflection point here of how we're going to avoid having the thousand-page proxy. You've got CSR reports and website disclosure and proxy supplements.

I think investors are interested in the most integrated reporting that they can get. But their preference above that is quality disclosure that helps them understand what they need to understand.

Gomez: Okay, thank you. Sorry to interrupt you, Peter. Go ahead.

Shareholder Engagement: Develop Relationships Before You Need Them

Kraus: No worries. I was going to say I really agree with everything Karla said, particularly about the increasing demands on your institutional shareholders. They are overwhelmed. It's getting harder and harder to get those face-to-face meetings. Sometimes you used to do two a year. Now, it's hard to get even one a year.

At the same time, there may be point when you really need to go to one, two or three key significant investors and say, "Hey, I really need this. I really need your vote on say-on-pay. I need your vote against this shareholder proposal. I need your support against this activist," whatever the issue is.

Even though it's harder, my tip is just do your best to develop relationships before you need them. It's so much better to have name recognition, face recognition, credibility recognition before you're asking that big favor. Our point of view is it is worth, to the extent you can put in the work, trying to get as many face-to-face meetings, telephonic meetings, interactions that develop those relationships.

There are ways outside of the traditional shareholder engagement cycle. If that's not getting enough contact, I'll join Irving in plugging the Society. Society events often have investors attending them. Sometimes they have so-called speed dating sessions with institutional investors, which can be fun and helpful.

CII, the Council of Institutional Investors, is another organization where, as an issuer, you can join CII. We and several other issuers who have 401(k) plans, and are money managers in that respect, are members of CII. It can give you a lot of good opportunities for face-to-face interactions on an informal relationship-building basis. So be creative, find those alternative ways of developing those relationships.

I'll give one very quick example in closing of how that helped us. A few years ago, we were sued a couple of days after we filed our proxy statement. It was a rash of proxy lawsuits that were popular for a few years.

We felt the suit had very little merit and we went to a significant shareholder that we had developed a relationship with. They were an institutional, very well-known significant institutional shareholder. We asked them for an affidavit to file along with our brief, basically stating that our proxy statement was clear, complete and accurate.

Due to that relationship we had built up, they were willing to do it. That was a bit of a rabbit-out-of-hat moment for us and I'm not sure we'd ever be able to replicate that particular thing. It's just one example of how that can be really a concrete help when you need it. I'll just close it there.

Bos: I would absolutely underscore what Peter said. If shareholders aren't happy with you, seeing you at all the conferences isn't going to help. But having that relationship and seeing you there is going to reinforce the fact that you're in this for the long haul, your shareholders are important to you. The opportunity to send that message is incredibly important.

And the fact that you attend these various events, some of the governance views may rub off on you as a company and you may get a better understanding of what your shareholders are looking for. So great tips.

Dunshee: I want to thank all our panelists again today for their perspectives and practical tips. Thanks to everyone else who joined us today, as well. The audio archive for this program will be available shortly and we'll post the transcript of the program in a few weeks. Have a great day.

