

AGM 2019 Checklist



As annual meeting season approaches and the deadline for submitting shareholder proposals and activist director nominations draws closer, many public companies are looking for advice on how to prepare.

AGMs were once simple and routine. However, more and more public companies are recognizing that AGMs now require a year-round approach of preparation, consultation, and planning. Why? Too many companies have been surprised by their voting results. An unexpected against recommendation from one or both proxy advisors can result in a failed vote. Or, vote results can be embarrassingly close, resulting in a narrow win that causes consternation with shareholders and proxy advisors.

Keep your company on track with this 2019 AGM TOP 10 Checklist:

01

Do you know your shareholders? Are you aware of how sensitive your shareholder base is to the proxy advisors' recommendations? Too often companies are taken aback by how many of their shareholders follow the voting recommendations of proxy advisors Institutional Shareholder Services (ISS) and/or Glass Lewis. This is especially true if your company is newly listed, recently added to a stock index, has graduated to a senior exchange, or if there has been a recent turnover in your stock. Conversely, some shareholders have developed their own internal voting policies that may be stricter than ISS and Glass Lewis. Understanding the composition of their governance teams and their policies, as well as how they previously voted on the same or similar proposals across the sector, is critical to determine whether a proposal will pass the vote. If listed in the U.S., be aware of your Foreign Private Issuer status—losing it could mean proxy advisory firms' U.S. policies will apply. This can make a significant difference to their recommendations. If support is less than certain, do you know where discretion can be applied?

02

Do your shareholders know you? Like any good relationship, the relationship with shareholders is equal parts sharing your message and listening. Directly engaging shareholders, including utilizing independent directors, is crucial in courting shareholders' support. Engagement not only allows you to share your strategy and ensure it is understood, but it can also provide valuable feedback that will allow you to discern if shareholders see your board and committee chairs as stewarding their priorities. The first time shareholders learn what your board has been up to and how it thinks about key challenges shouldn't be the management information circular. Does your board plan on embarking on a 'listening tour' before this year's vote?

03

Is gender diversity a problem for your board? If you are a part of a TSX-listed company with no female directors on its board and you do not have a robust gender diversity policy, your Chair of the Nominating Committee may be in trouble. Other diversity measures regarding ethnicity have also come into play and may generate withhold recommendations from ISS' Social Advisory Services. Is your board 30% diverse on an racial and gender basis?

04

Can your board members, especially new members, withstand scrutiny? On the surface, board refreshment via the appointment of new board members may look great, but some shareholders will take a deeper dive on board candidacy. A strong CV and record of performance are no longer enough. What relationships do nominees have with other directors? What do your nominees bring to your board? How many other boards do nominees sit on? ISS' new policies demonstrate a renewed focus on overboarding. ISS has removed the secondary attendance trigger by your 2019 AGM and increased the number of boards directors can sit on. These factors can have ramifications for how shareholders perceive your nominees.

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05

Have you considered reviewing your by-laws, articles, and shareholder rights plan to make sure they keep up with best practices? It is critical to balance the rights of shareholders and proper defense mechanisms. Are you aware of the benchmarks against which your full by-laws will be assessed by ISS and Glass Lewis if you are changing any one part of your by-laws?

06

Are you aware of the rising importance of E&S issues for corporate issuers? If the E&S wave has not hit your company yet, it has likely hit your peers. Do you know which of your peers have received E&S shareholder proposals in the last few years? Are you aware of how you will be evaluated from an E&S perspective and the consequences? Are you aware some funds simply won't invest in you absent an E&S policy?

07

Is your meeting turnout where it should be? This is a subjective question, dependent on factors like shareholder base composition between retail and institutions and contentious proxy resolutions. However, what cannot be denied is that a strong voter turnout is a sign of a healthy, well-governed company. Have you noticed the participation rate at your meeting on the decline? How does it stack up against peers? Do you know what is causing the apathy and what you can do? Your ability to mobilize a full spectrum of voters is a key differentiator in the market and a strategic advantage.

08

How has your company performed and is your executive compensation aligned with performance?

Shareholders traditionally look at total shareholder return performance, but ISS and Glass Lewis look at a variety of financial metrics in addition to total shareholder return. Do you measure and have targets for other financial performance metrics and do you know how you have stacked up against your peers?

09

Are you planning to renew your rolling reserve equity plan or do you intend to seek shareholder approval for additional treasury reserves? Be aware of the ISS Equity Plan Scorecard approach to evaluating equity plans. The scorecard looks at three main categories, including plan cost, plan features, and granting practices.

10

When was the last time your board met with an activist-defense team, and is your defense playbook up-to-date? There have been 40 proxy fights in 2018, already more than the 32 in 2017, and new battles continue to surface daily. An activist-defense team will help you take stock of your vulnerabilities beyond a simple SWOT analysis, and will prepare your board to effectively respond to an activist's challenge.

If this checklist has prompted a question, we are here to help. As trusted advisors to boards and management, we regularly help our clients work through these challenging issues.

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