PROXY FIGHTS IN THE AGE OF ENGAGEMENT

Proxy contests bring inevitable and unexpected costs that fall disproportionately on the issuers. Regular touchpoints build trust, provide important feedback, and are critical to securing support in a proxy fight, writes Mike Verrechia, managing director of Morrow Sodali's M&A and Activism Advisory Group.

The ways in which we engage with shareholders, and the tools we have to do so, are dramatically different from my early days in proxy solicitation over 20 years ago. Back then, most engagement and "vote capturing" was reserved for the time between mailing and the meeting, when proxies were in hand and there was an action for shareholders to take.

Now, offseason engagement with institutional investors has become an annual event as synonymous with October as pumpkin-spiced lattes. This provides voting decision-makers and corporate engagement teams with a more meaningful dialogue, and hopefully a better understanding of what is important to each party.

Under the lens of proxy contest preparedness, these regular touchpoints can build trust, provide important feedback and transparency, and prove to be critical in securing an institution's support when it is most important. Even when institutional investors are too busy to engage, you get points for trying.

WAR GAME YOUR GAME PLAN

Where "the age of shareholder engagement" has some pitfalls lies in the theory that talking to the top 10-20 institutional holders represents a thorough and complete outreach program. If a company has genuine vulnerabilities and concern about a potential activism event, then a more robust engagement strategy across ALL shareholder constituencies is required. Taking a proactive and periodic look at how a contest can be won, from the perspective of the company's specific shareholder profile, is fundamental.

Issuers with a large retail component should not be reaching out to that population for the first time when they are confronted with a proxy contest and there are competing ballots in the mail. Many proxy contests that go all the way to a vote are close and individual retail holders can become major factors in securing a victory. This is especially true when you consider that most proxy contests occur at small- to mid-cap companies, where there can be a larger individual holder footprint.

WHAT SHOULD ISSUERS AND ACTIVISTS KNOW ABOUT THE COSTS OF PROXY CONTESTS?

Aside from a team of strategic advisors across legal, public and investor relations, investment bankers and proxy solicitation, there are also a number of logistical costs that may be unavoidable in a defense campaign. When working with issuers, I have found that they expect the costs of the solicitation to increase, but often don't fully understand by how much or why.

Here, the playing field is truly different for each party. The initial distribution of proxy soliciting materials is almost always more expensive for the issuer, which is not only required to deliver proxy materials to every holder as of the record date but also the annual report/10-K. Combined with the common practice of conducting four or five mailings to shareholders throughout the course of the campaign, costs can easily snowball. Issuers that have grown accustomed to the use of Notice and Access, and the savings that come with it for a standard annual meeting, should expect very different rules for proxy fights.

Activists, by contrast, can look strategically at the issuer's shareholder base and target an impactful and efficient distribution level that reaches the greatest number of shares with the least number of holders. Subsequent mailings for both issuers and activists do not need to be distributed to all holders, which can help curb overall campaign costs.

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