

The Latest Director Concerns

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More than half of the directors in [PwC's 2015 Annual Corporate Director's Survey](#) believe proxy access is appropriate for shareholders owning at least 5% of a company's shares for at least five years or more. 27% believe proxy access never makes sense. However, proxy access is the most widely discussed governance initiative in boardrooms over the past year. The PwC report explains the responses of 783 public company directors. 74% of those directors serve on the boards of companies with more than \$1 billion in annual revenue.

The top three director concerns are increasing demands on the audit committee, potential new cybersecurity regulations and activism. 89% of directors view having board expertise in IT strategy to be somewhat important, but the focus is more about IT strategy rather than cyber risk backgrounds. Directors also want to spend additional board time both on IT issues that are tied to business strategy as well as IT risks. Interest in board oversight of business strategy remains high, as two-thirds of directors want more of those types of discussions.

Directors are just as interested in activism, with 17% noting that they have had extensive discussions on the topic even though they have had no sign of activist interest in their company. Other directors have had to be responsive, as one-third of directors have interacted with activists in the last year, compared to 29% in 2014. In preparation for, or in response to, activism, 56% use a stock-monitoring service and nearly as many said that their boards are reviewing vulnerabilities that can be targeted by activists. 20% have changed their board composition and 33% revised executive compensation structures in the last year due to actual or potential activism.

Another consequence of activism is the significance of approaching major institutional investors. Direct engagement between directors and investors is gaining increased credibility, as 77% of directors now believe it is somewhat appropriate to discuss executive compensation with investors, and two-thirds indicate direct communications with investors about business strategy would be useful. Both responses have changed notably in the last few years. As a result, a whopping 69% stated that their board regularly communicated with their largest investors over the past year. To help facilitate these discussions, 60% of directors indicated that their company has established or discussed protocols and practices regarding the permissible topics for directors to talk to shareholders about. More than a majority of directors also responded that their companies have established protocols and practices around director-shareholder interactions as well as identifying which directors should participate in those exchanges.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

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