

NYSE Webcast Panel Reflects on the 2012 Proxy Season

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On Tuesday, I was fortunate to co-moderate a NYSE-sponsored webcast with Judy McLevey at the NYSE, as we discussed the leading proxy and governance issues for 2012 with a group of recognized experts that included Doug Chia from Johnson & Johnson, Michelle Edkins and Robert Zivnuska from BlackRock, Gordon McCoun from FTI Consulting and Pat McGurn from ISS. An archive of the webcast is available [here](#). Judy first informed us that while 285 companies have held annual meetings, 430 more are slated for April with another 970 currently scheduled for May. The panelists then provided interesting perspectives and useful advice on several issues relevant to public companies today, including the following:

Proxy Statements. Doug discussed J&J's efforts to start from scratch for this year's proxy statement with an eye toward redesigning it for the individual investor, noting that a number of companies have attempted to make their documents attention getting, almost like glossy annual reports. Due to its large volume of holdings, Bob stated that BlackRock's starting point for proxy review are the summaries generated by proxy advisor firms, before they dive into the proxy statements themselves. CD&A summaries with the board's perspective, clarified through tabular and graphical disclosure, has been a helpful innovation, but they are not as enthusiastic about proxy summaries that may be trying to get ahead of proxy advisors and fail to include data that BlackRock would find important, such as conflicts of interests.

Say-on-Pay. Pat reiterated that ISS has changed its methodology to place more emphasis on the three-year and five-year timeframe in its initial quantitative pay-for-performance analysis, as well as review overall pay magnitude. More companies are providing proxy disclosure that already anticipates investor (and ISS) concerns, as a preemptive strike, which has proved to be helpful in allowing ISS to get information out to their clients faster and possibly avoid the need for so many of the ancillary filings made last year. As a result of these and other improvements, Pat predicts that there will not be a substantial increase in opposition in 2012. There has only been one instance so far of ISS making negative recommendations against the compensation committee as a result of unresponsiveness to the prior year's low votes. Overall, average support levels are at 91% with 9% against, and the number of ISS' negative recommendations are currently running in the low teens.

Shareholder Engagement. According to Bob, BlackRock has seen a significant increase in shareholder engagement during the post-season period, from July through February, as companies reach out to investors to interpret their vote result in order to build in those perspectives into their compensation committees' processes. Board members have even met directly with investors when there have been real concerns. While triggered by compensation, BlackRock has used these engagement opportunities to also speak to companies about other governance or performance questions. Since BlackRock and likely other investors are not looking at the proxy statements until a week or two before the vote is due, Michelle emphasized that building an existing relationship with investors is the best way to facilitate those last-minute panicked calls to try to obtain support in the face of negative proxy advisory firm recommendations. Doug recounted J&J's broad outreach efforts in light of the company's 61% support for say-on-pay in 2011, as they devoted more time and resources to gain an understanding of the vote results and explain their story. On his part, Gordon believes that the 2012 proxy vote will be as much about the engagement process companies have undertaken in response to the 2011 say-on-pay vote as on the compensation paid.

Shareholder Proposals. Shareholder engagement is also the reason that there are fewer proposals this year, as companies and proponents agree on compromises after negotiations. After speaking with hundreds of investors, Pat stated that it continues to be difficult to predict the level of support that proxy access shareholder proposals will receive. About a dozen proposals are likely to come to vote. Investors have indicated that rights to access should only be available at a reasonable ownership level, but have not quite agreed upon what level is reasonable. Interestingly, the

length of the holding period seem to be less of a concern to investors. In giving their views on several different proposals, Bob and Michelle indicated that BlackRock believes a strong lead independent director can provide sufficient independent oversight without the need for an independent chair in all instances, but that a declassified board coupled with majority voting really enhances the accountability of directors. With respect to the popular political contributions proposals, BlackRock conducts a case-by-case analysis on the nature of the proposal and the kinds of disclosure the company is already making. Their advice for company opposition statements in proxy statements is to avoid starting with the conclusion that the proposal is not in the best interest of the company and instead focus on how the company has already addressed the concerns raised in the proposal.

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.

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