

Recap of Panel Discussion on Shareholder Engagement: Governance Experts Share Perspectives

On April 7, 2016, the firm hosted a roundtable discussion, "Strategies and Best Practices for Shareholder Engagement," during our 2016 Roundtable for General Counsel in the Chemical and Performance Materials Industries, a two-day executive briefing held in Washington DC. The discussion was well timed, taking place in the midst of proxy season when shareholder engagement activities are in the spotlight. The panel addressed various perspectives of shareholder engagement through the eyes of industry experts including Glenn Booraem, Principal and Fund Treasurer for Vanguard (Vanguard); John Roe, Managing Director and Head of Advisory and Client Services, ISS Corporate Solutions (ISS); Amy Borrus, Deputy Director, Council of Institutional Investors (CII); and Matthew Juneau, Senior Vice President, Corporate Strategy and Investor Relations, Albemarle Corporation (Albemarle). The panel discussion was moderated by Abby Brown, partner in the Global Corporate Practice of the Washington DC office.

"What" is Engagement?

Companies engage with investors all the time through their proxy statement disclosure, Forms 10-K and 10-Q, press releases, earnings calls and other investor presentations and discussions. ISS' John Roe encourages companies to think of shareholder engagement as more than the limited dialogue regarding say-on-pay or proxy access that might occur during the proxy statement and annual meeting process. Rather, his view is that investors typically want to engage on a broader range of topics, including corporate strategy, management performance, Board structure, executive compensation and corporate governance. Thinking of shareholder engagement as a more broad-sweeping and long-term relationship will assist companies in keeping a finger on the pulse of their investors and their concerns on an ongoing basis.

Practical Tips for Shareholder Engagement

- **Make inbound engagement easier.** Investors who use shareholder proposals often do so because they feel that they have no other way to get the attention of company management and/or the Board. Prevent this by supplying an easy communication channel for them.
- **Set internal expectations.** Expect that only 25% to 30% of your engagement invitations sent out will actually result in a meeting (and assume an even lower return rate during proxy season). Take a low response as a sign that these shareholders either lack the resources to engage at that moment, and/or that they do not have an issue with your company. Also, presume that any outreach is well received and noticed by the shareholder, even if they do not take you up on an offer for a meeting or discussion at that time.
- **Ask questions; do not just give a roadshow.** Use the opportunity for engagement to solicit shareholder feedback on certain issues. Avoid the temptation to walk an investor or the ISS staff through your company's proxy statement – it should stand on its own. Make sure that you understand each shareholder's perspective on key issues; do not fall into the trap of justifying your actions and policies against proxy advisors' views/recommendations when shareholders have their own guidelines.
- **Follow-up.** After a shareholder engagement meeting, the company should carefully evaluate the shareholder's position, consider how peers have approached similar issues and consider whether any changes are warranted. If the company does make a change as a result of the engagement meeting, the company should communicate that change to the shareholder even if follow-up is simply revised proxy disclosure. In addition, some companies are now including in their proxy statements a summary of engagement themes, including any actions taken in response to what they heard from investors as a result of their engagement efforts.

"How" to Engage?

"A company should always tell its best story up front to investors," said Vanguard's Glenn Booraem. Vanguard has seen instances of a standard proxy statement with a great engagement story getting lost and only later fully or better disclosed in a proxy supplement. His advice is to spend the time and energy at the outset to include this great information in the initial proxy statement, which will ultimately save time and money, and potentially alleviate investor concerns in the initial filing.

Albemarle's Matthew Juneau indicated that it is important to be *consistent* in how you tell your story. In his view, it is a good idea to tightly manage the disclosure process to ensure that inconsistent messages are not delivered, particularly in light of Regulation FD. For example, before earnings calls, Albemarle takes the time to prepare expected investor questions with proposed answers. While there are occasional surprises, such a process contributes to consistent messages, which in turn builds confidence in company management.

Further, Matthew stated that as part of ongoing shareholder engagement efforts, Albemarle routinely gives its top 35 shareholders extra attention. For example, after a new message is released, Albemarle will issue personalized emails or make individual phone calls to top investors to make sure they understand why the company is taking a certain action. Another Albemarle initiative is to invite investors to attend a call with executive management to discuss topics of interest. Any such calls, however, should be short (e.g., no longer than 30 minutes in length) and have a clear agenda set in advance.

Practical Tips on How to Engage

- **Be prepared.** Before engaging with an investor, company management or directors should have a clear idea of that investor's concerns and priorities, and an agreed upon agenda in place (with no more than three to four items for discussion), along with a list of participants.
- **Set the tone of the discussion.** Both companies and investors should approach any meeting with a list of questions (and not demands) and each side should be cordial and give the other side equal time to speak.
- **Avoid boilerplate disclosures about investor engagement.** Good engagement disclosure should describe in detail how your company engages with investors, discuss outreach over the past year, highlight any changes that occurred as a result, and provide email addresses or other contact information.
- **Small cap companies in particular should spend time at the outset to craft careful proxy statement disclosure.** Small cap companies may not be at the top of an investors' list for communication and, as such, the proxy statement may serve as the main form of communication. With more limited resources, small cap companies may desire to leverage the engagement disclosures of large cap companies and borrow from their approaches and engagement ideas.

"Who" Should Engage?

Companies should ensure that they have the right people from the company in attendance at investor engagement meetings. Often, that includes members of the company's management team or investor relations. Someone from the compensation committee should always be present at any meeting discussing compensation issues (not necessarily the committee chair) so long as that person is informed about the matters to be discussed. Along the same lines, a director should be present if the discussion is to be focused on Board related topics (e.g., Board compensation). Glenn shared an ideal shareholder meeting example whereby director(s) excused management at the end of an engagement meeting to give Vanguard an opportunity to ask questions and provide feedback without management present, which was highly effective in reinforcing Vanguard's link to the company's Board.

Practical Tips for Those Who Engage

- **Make sure directors are communication ready.** Engaging with shareholders is part of a Board member's job description now. If you do not have directors on your Board that possess effective communication skills, now is a good time to recruit them.
- **Identify the right investors.** When looking for shareholders to engage with, do not stop at the top 10, 15 or 25 investors; review your shareholder base as a whole to determine who might be important to engage with, including small but strategically important shareholders.
- **If a director is present at an investor engagement meeting, make sure he/she is prepared.** Whether you should have a particular director present at a shareholder engagement meeting depends on how well-informed that director is and how comfortable he/she is talking about certain potential issues (arrogance or unwillingness to hear suggestions should be avoided).
- **CII's Amy Borrus advised to circumvent unexpected drop-ins.** Unexpected drop-ins by a CEO or Board chair during an engagement meeting can be off-putting to an investor. So make sure the investor knows ahead of time exactly who is going to be present at the meeting.
- **Ensure you know who you are meeting with.** Company management and directors in attendance at any shareholder engagement meeting should be familiar with the particular shareholder's equity position, their public views on key governance issues, as well as the history of any engagement and/or voting results. This enables company responsiveness to specific investor concerns, as well as continuity over time in the engagement dialogue.

"When" Should Engagement Occur?

Amy noted that recent years have shown companies are increasingly willing to reach out to shareholders to start a dialogue. She noted however that such engagement should not be a "last minute blitz" before the annual meeting; rather, engagement is an on-going, year-round process. As a matter of fact, the rush of the proxy season can make it hard for companies to get the attention of investors or ISS in order to engage during the first months of the year. Rather, Amy indicated that "off-season" engagement outside of the heat of proxy season offers a good opportunity for long-term investor engagement and is critically important to building shareholder relationships that may make it easier to resolve conflicts in the future.

In Glenn's opinion, the ideal time for shareholder engagement is when the ink is not yet dry on the proxy statement – essentially, right after the prior year's annual meeting and once a company has had the opportunity to digest the meeting vote and think about the broader trends that developed during the proxy season. Similarly, Matthew offered that Albemarle has found that it tends to be easier to have a dialogue and engage with investors during the late summer and early fall.

Practical Tips on Engagement Timing

- **Do not underestimate the value of "off-season" investor engagement.** Investor engagement during the "off-season" in the annual meeting cycle allows for companies to carefully contemplate investor concerns, make necessary adjustments to the proxy statement months ahead of time and adequate time for Board review.
- **Engage with ISS at the appropriate time.** John indicated that companies should ideally engage with ISS only after they have actively engaged with their investor base.

Conclusion

From these discussions we learned that it is important for companies to have a good understanding of the "who," "what," "when" and "how" aspects of the shareholder engagement process. Good engagement goes a long way to building positive relationships with an investor base, facilitating solid communications and helping potentially avoid a future crisis.

If you have questions or would like more information about shareholder engagement, please contact one of our lawyers listed below.

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