Director Notes

Global Trends in Board-Shareholder Engagement

by James Kim and Jason D. Schloetzer

There has been a rapid increase in shareholder requests for special meetings with the board. This report discusses the potential benefits and complexities of the board-shareholder engagement process, reviews global trends in engagement practices, provides insights into engagement activities at U.S. companies, and highlights developments in the use of technology to facilitate engagement. It also provides perspectives from institutional investors on the design of an effective engagement process.

The annual general meeting is the main channel of communication between a company's board and its shareholders. Among other important meeting activities, shareholders have the opportunity to hear executives and directors discuss recent performance and outline the company's long-term strategy.

Since 2007, there has been an increase in shareholder requests for special meetings with the board.[1] A recent study of board-shareholder engagement activities shows that 87 percent of security issuers, 70 percent of asset managers, and 62 percent of asset owners reported at least one engagement in the previous year. Moreover, the level of engagement is increasing rapidly, with 50 percent of issuers, 64 percent of asset managers, and 53 percent of asset owners reporting that they were engaging more. Only 6 percent of issuers and almost no investors reported a decrease in engagement.[2] Shareholders, particularly institutional investors, believe that annual meetings are too infrequent and do not provide sufficient content to address their concerns.

The increase in engagement parallels a wave of shareholder activism that emerged in the mid-2000s.[3] Proxy advisory firms, such as Institutional Shareholder Services (ISS), have helped to foster a new environment for board-shareholder engagement. U.S. Securities and Exchange Commission (SEC) Rule 14a-21(a), adopted in 2011 to implement provisions of the Dodd-Frank Wall Street Reform and

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Consumer Protection Act (Dodd-Frank Act), requires public companies to include a "say-on-pay" vote in their proxy statements at least once every three years.[4] The advisory vote has provided shareholders more voice in executive compensation. Annual meetings are now preceded by an increased level of engagement activity as more shareholders express their desire to influence corporate policies.

More generally, there is a common view in the current governance environment that directors should respond to shareholder questions regarding executive compensation, corporate strategy, financial performance, campaign financing, environmental and social issues, and corporate governance matters. Not surprisingly, say on pay and the appointment of an independent board chairman remain the primary focus of board-shareholder engagement activity in 2013.[5]

Potential Benefits of Engagement

In general, shareholders' motivation for engagement is clear—to gain insight into how companies allocate shareholder resources to generate an expected return. In particular, shareholders want to understand how long-term corporate strategy will lead to superior financial performance. Moreover, shareholders want more explanation around recent total shareholder returns.

It is often stated that companies could realize significant benefits from meeting with major shareholders on a regular basis. In general, this perspective argues that the value of a company is not only derived from financial performance and executive expertise, but also from how well the company understands and cooperates with its stakeholders.[6]

We highlight several commonly cited benefits of board-shareholder engagement:

Avoid the unexpected Early engagement with shareholders on key issues could lead to a reduced likelihood of unexpected consequences. For example, understanding clearly the expectations of investors with regard to the design of named executive officer (NEO) pay could reduce the likelihood of a negative say-on-pay vote.[7]

Balance time horizons Engagement enables the company to provide additional information about its long-term operating strategy. This type of engagement could be especially useful when the board believes that the company's recent short-term financial performance does not reflect strong longer-term opportunities. In turn, shareholders can listen to the board's perspective and ask clarifying questions.[8]

Obtain unique outside advice Shareholders can serve as a source of advice. Managers rely on internally generated information to make business decisions without realizing that, over time, their view of the world may become skewed in one direction. Shareholders can provide a unique outside perspective on the company's performance; executives may find value in communicating regularly with informed investors who have a different viewpoint, while directors may obtain a unique source of information that could help evaluate executive performance.

Develop trust through enhanced transparency Regular engagement can help companies increase investor trust. A board that is willing to hold shareholder meetings outside of the annual general meeting is likely to build a long-term relationship with shareholders, which is thought to be strategically advantageous for many companies.

Potential Complexities of Engagement

Notwithstanding these potential benefits, directors often hesitate to embrace the spotlight and actively engage with the company's shareholder base. Institutional investors participating in a panel discussion at a June 13, 2013, executive compensation conference sponsored by The Conference Board highlighted several complexities of board-shareholder engagement:

Inconsistent messages, uncertain success With multiple meetings involving different constituents, there is a possibility that the information shared may be inconsistent. In addition, how to determine whether an engagement has been a "success" is unclear.

Since investor meetings outside of the annual meeting are two-way conversations not based on a scripted agenda, it is highly likely that different questions and responses will be shared. Similarly, it would be difficult to relay the same message every time a (different) board member sits down with a (different) group of shareholders. It is up to the board to determine how to provide consistent responses while not overly restricting two-way dialogue.

Executives and directors are also more likely than shareholders to believe that simply having a dialogue indicates successful engagement. Directors believe that a successful engagement is completed within one week, while investors care more about whether the engagement provided the opportunity for board and shareholder representatives to reach consensus. The importance of consensus building to shareholders is likely a reason shareholders believe that a successful engagement could take more than a month of two-way dialogue.[9] This suggests that shareholders are prepared for a greater level of interaction while directors are ready for a short meeting.

Management disconnect If directors fail to provide executives with sufficient detail regarding the engagement discussion and the concerns shared with the board, it could weaken the potential benefits of engagement.

Time Effective, mutually beneficial engagement with multiple shareholder groups will take time away from other activities. This concern is particularly acute when a company is considering the development of an engagement process for the first time. Without prior engagement experience, executives and directors may debate whether the company will receive a return on the investment of time, leading many companies to postpone engagement until there is sufficient shareholder or legal pressure.

Similarly, if the company has an engagement procedure, some shareholders might believe that their particular issue is highly time sensitive or extremely important. In this case, an assertive and persistent shareholder request could disrupt the company's pre-scheduled engagement plan. Too many ad hoc shareholder engagement requests can create additional, perhaps excessive, demands from shareholders for executive and director time.

Violation of Regulation Fair Disclosure A significant risk to frequent shareholder engagement is the potential violation of Regulation Fair Disclosure (Regulation FD).[10] The concern is that private meetings with institutional investors or other shareholders could reveal information to select parties that remains undisclosed to market participants. If directors share previously undisclosed information in a private meeting with shareholders, the information must be repeated in a public disclosure in a timely manner. Directors do not want to bear this risk, and the cost of breaching Regulation FD would likely outweigh the benefit of meaningful shareholder engagement.[11]

However, several institutional investors publicly stated their belief that Regulation FD is not a valid reason for companies to avoid engagement. They argued that directors are well-informed, seasoned executives who are aware of what can and cannot be said to outside parties. Rather, it is more likely the CEO who is genuinely nervous about directors speaking to anyone outside the company without the CEO present. Moreover, to allay concerns that some companies might be using the rule to avoid engagement, the staff of the SEC clarified in a 2010 compliance and disclosure interpretation that Regulation FD does not prohibit directors from speaking privately with a shareholder or groups of shareholders.[12]

Misunderstood shareholder concerns Directors may assume too much about what their investors want to hear. Shareholders prefer to discuss corporate strategy and financial performance.[13] Directors should redirect the dialogue toward matters on which they are experts—corporate governance. Prior to a meeting, board members should remind shareholders that governance matters are a more suitable topic of discussion; the objective of board-shareholder engagement is different from that of a quarterly analyst call.

Engaging the "wrong" shareholder Shareholders appear to fall into two extremes on engagement—for some it's a top priority, while others do not initiate any board-engagement activities.[14] In addition, shareholders may delegate their vote to a broker, proxy advisory firm, or a designated member within the same institution.[15] Hence, it may be difficult for executives and directors to identify which shareholders will be the most willing to engage. In addition, there is a bifurcation among institutional shareholders between those who decide whether to invest and those who decide how to vote the proxy. For example, the investor relations contact at a large institutional investor is likely not the person who decides how the institution should cast its proxy votes. The company must determine where to focus its engagement efforts.

Lack of knowledgeable directors and/or "camera ready" internal staff Institutional investors participating in the panel discussion recounted stories of particularly poor instances of board-shareholder engagement. Several stories involved meetings set up with shareholders who had contacted companies with concerns about NEO pay. However, in the words of one institutional investor on the panel, the meetings turned out to be "embarrassing." Institutional investors provided several examples of these embarrassing situations, including:

- compensation committee chairmen who were unable to correctly explain the elements of the CEO's compensation plan;
- CEOs who were unable to explain the different elements of their long-term incentive (LTI) plans and, instead, relied on their compensation consultants to answer shareholder questions;

- engagements where the company's general counsel politely declined to answer most shareholder questions; and
- companies that declined shareholder requests to speak with the senior human resource executives involved in compensation plan design because those individuals were not "camera ready," and were deemed unable to communicate effectively with persons outside of the company.

These examples demonstrate the potentially significant downside if directors and executives are not adequately prepared for shareholder engagement initiatives.

Recent Engagement Practices

The upsides and complexities of engagement will vary by shareholder base and trends in shareholder activism, among other factors. Although executives and directors remain cautious toward visible, public engagement activities, there is clearly a rising trend in shareholder engagement. This trend is by no means a "Shareholder Spring," but engagement is here to stay and will become more formal and more global.

The following is a summary of engagement practices occurring around the world and at large U.S. companies to offer companies perspective on how to develop an engagement program.

Engagement Practices around the World

Canada The Canadian Institute of Chartered Accountants asserts that shareholders want to better understand and influence the decision-making processes of the companies in which they invest. Similar to the U.S. context, shareholders are seeking private meetings with the board to express their concerns and request change. Several companies have chosen to take action early to avoid potential issues down the road. For instance, Canadian companies have shown a willingness to ask directors to resign if they had been elected with more votes that were withheld than votes to resign.[16]

United Kingdom The U.K. Corporate Governance Code has traditionally emphasized the value of dialogue between institutional shareholders and companies. In practice, however, shareholders rarely engaged company executives on a regular basis outside of the annual meeting. Since 2010, U.K. authorities have responded by promoting an effort to energize board-shareholder dialogue for the purpose of improving long-term returns.[17] Now, shareholder engagement can be seen as a crucial element for outperformance and building competitiveness.

In particular, the Financial Reporting Council (FRC) issued the Stewardship Code, which seeks "to enhance the quality of engagement between institutional investors and companies to help improve long-term returns to shareholders and the efficient exercise of governance responsibilities."[18] The code is an extension of the Institutional Shareholders' Committee's (ISC) Code on the Responsibilities of Institutional Investors.

Following its publication in July 2010, the Stewardship Code was revised in September 2012 and took effect in October of that year. The original code resembles a code of conduct and consists of seven principles:[19]

1. Institutional investors should publicly disclose their policy on how they will discharge their stewardship responsibilities.
2. Institutional investors should have a robust policy on managing conflicts of interest in relation to stewardship, and this policy should be publicly disclosed.
3. Institutional investors should monitor their investee companies.
4. Institutional investors should establish clear guidelines on when and how they will escalate their activities as a method of protecting and enhancing shareholder value.
5. Institutional investors should be willing to act collectively with other investors where appropriate.
6. Institutional investors should have a clear policy on voting and disclosure of voting activity.
7. Institutional investors should report periodically on their stewardship and voting activities.

Furthermore, the code emphasizes the importance of including a letter from the board chairman in companies' annual report. The letters were well received in 2012; it is likely that more companies will provide such letters in the coming years.[20]

Beyond the code, the Association of British Insurers (ABI) has been working to enhance engagement. In its 2013 report, the ABI encouraged companies to engage shareholders in an ongoing, specific, proactive, and systematic manner.[21]

European Union The European Union equivalent to the U.K. Stewardship Code is the Shareholder Rights Directive. The provisions in the directive from 2007 introduce a framework for shareholder meetings. For example, notice of a shareholder meeting must be released more than 21 days prior to the meeting, shareholders have the right to include items on the meeting agenda and to ask questions, and EU companies must recognize electronic forms of voting and communication as valid.[22] In 2012, shareholders attempted to amend the directive to place limits on executive bonuses and to scrutinize more closely the activities of proxy advisers.[23]

Germany provides an interesting example of the upward trend in board-shareholder engagement that is occurring worldwide. In a 2011 article, one leading shareholder described two worlds of corporate governance in Germany: one "of investors who thought there was a company and its supervisory board members who were their representatives" and the other an "old culture of a supervisory board not talking with investors."[24]

For instance, ahead of the first shareholder votes on executive pay in Germany, Gerhard Cromme, chairman of both Siemens and ThyssenKrupp, scheduled meetings with investors to discuss executive compensation practices at both companies. The move, reportedly "considered extraordinary by investors," followed the passage of a law that brought executive compensation policy in Germany closer to that of the United Kingdom and the Netherlands.[25] The action may signal a global shift in the perception of shareholder engagement.

A study on stakeholder dialogue identifies different types of engagement in Germany and the United States. German companies do not frequently engage shareholders, and when they do, their engagement efforts are concentrated among relatively few stakeholders. By contrast, U.S. companies report taking a high number of initiatives, with engagement leading to fairly minimal results.[26]

Australia Shareholder engagement has largely been a periodic and event-driven activity, and institutional investors have traditionally expressed their opinions through negative proxy votes rather than engagement.

To boost the board-shareholder engagement process, the ASX Corporate Governance Council's *Principles and Recommendations* (2010) and the Australian Council of Superannuation Investors' *A Guide for Superannuation Trustees* (2011) have established suggested practices for shareholder engagement. The publications identify major engagement practices used in many countries around the world. For instance, the publications suggest directors and executives hold information briefings with major shareholders and disseminate the content of these briefings via electronic communication and road shows.[27]

Additional regulation via the Corporations Act (2011) clearly states shareholders' rights regarding formal engagement. For instance, when either 100 shareholders or more than 5 percent of a company's shareholders request a special meeting outside the general meeting, the company must respond within 21 days and hold the special meeting within two months. Shareholders can request a statement regarding the resolution that will be proposed at the special meeting and all shareholders must receive a copy of the resolution at the same time, or as soon as possible afterwards. Furthermore, shareholders can pass a resolution or remove a board member at any time.[28] Under certain circumstances, shareholders can participate directly in decision making, such as proposed amendments to the company's constitution or proposed reductions in share capital.[29]

Japan Shareholders usually do not intervene in decision making in Japan. Activist efforts by foreign institutional investors have generally provided little result. In the words of one director familiar with corporate governance in Japan, "That kind of top-down approach does not work in Japan."[30] It is rare to find board-shareholder engagement in the Japanese context. Two examples of recent engagement attempts highlight the difficulties in board-shareholder engagement in Japan.

In 2013, a set of proposals put forth by the U.K.-based hedge fund The Children's Investment Fund (TCI) were easily voted down by shareholders of Japan Tobacco (JT). The fund had requested a significant increase in JT's dividend and the initiation of a large share buyback program. TCI lobbied Japan's Finance Ministry, which holds approximately 50 percent of JT's shares, to vote in favor of the proposals, as the fund held only 1 percent of the tobacco company. Other shareholders and analysts agreed this lobbying strategy was no different from past failed attempts at generating change.[31]

In 2011, Tokyo Marine Asset Management and U.K.-based Governance for Owners jointly launched the Japan Engagement Fund with the goal of using long-term relationships with directors and executives to improve share value via changes in corporate governance. In contrast to TCI's approach of challenging management to make changes, the Japan Engagement Fund seeks to collaborate with directors and executives to make long-term changes.[32]

China Shareholder engagement remains unseen among companies in China. This is largely due to the country's state-owned system, which reduces the interaction between directors and shareholders. Directors and executives of state-owned enterprises typically report to a government ministry rather than to shareholders, which often influence companies' financing and investment decisions.[33] Such distinctions reduce the viability of traditional board-shareholder engagement practices.

India While steps are being taken that may increase it, board-shareholder engagement in India currently remains relatively limited compared with many of the countries discussed. Regulatory authorities, rather than shareholders, have taken the lead in looking for ways to strengthen the boards of Indian central public sector enterprises (CPSEs) and increase corporate transparency. Moreover, there is increasing interest in corporate governance matters. For example, the Department of Public Enterprises and the Corporate Governance Guidelines (2007) require boards to maintain a certain number of independent directors from the private sector. The number can vary from one-third to one-half of the board size.[34]

South Africa In 2009, the third King Report (King III) was introduced in an effort to keep South Africa at the forefront of international trends in corporate governance.[35] King III views board-shareholder engagement as "corporate citizenship," encompassing interactions between companies and their economic, environmental, and social surroundings.

The Public Investment Corporation (PIC), which manages over $100 billion on behalf of South African civil servants, has been particularly active in engagement both within South Africa and beyond. For instance, in July 2013, PIC went public with its request that the board of Nigeria-based Ecobank Transnational, one of the largest banks in Africa, resolve an ongoing dispute between Ecobank's board chairman and several of his own businesses. PIC requested in writing and publicly to Ecobank's board that it "quickly find time and space to discuss this matter so we can resolve it properly."[36]

Nigeria There is visible and increasing shareholder engagement in Nigeria. This engagement has been promoted by the Nigerian government and is gaining momentum from minority shareholders. The Nigerian government has clarified the rights and responsibilities of shareholders through the Company and Allied Matters Act (1990) and the SEC Code (2003), which warn companies against discouraging shareholder engagement. The code includes a provision that requires companies to have at least one director that represents minority shareholders. In addition, minority shareholders are forming block votes, which will enable them to better engage management and place pressure on the board to implement change, if necessary.[37]

Detailed Examples of Recent Engagement Activities of Large U.S. Companies

It is difficult to determine the specific content of board-shareholder engagement meetings through public sources (hence, the Regulation FD concerns). The following are representative examples of the type of engagement that occurs most frequently. The examples indicate that much engagement activity involves executive compensation practices, corporate governance structure, and environmental and social issues.

Pfizer, Inc. was one of the first U.S. companies to take a proactive measure to communicate with investors on matters related to the company's corporate governance processes and the rationale behind the design of executive compensation plans. In hindsight, Pfizer's initiative in 2007 may have started the trend for companies to engage shareholders on a regular basis outside the annual general meeting.[38] At the time, it was rare for shareholders to communicate directly with directors about the company's performance outside of the annual meeting.[39]

Prudential Financial, Inc. has demonstrated board-led shareholder engagement around executive compensation issues every year since 2010. The company's board has sent letters to shareholders and held occasional meetings to enhance the company's relationship with its investors. The board credits engagement on executive compensation for yielding 96 percent support for its say-on-pay vote in 2012 and 87 percent support in 2011.[40]

Allstate Corp. believed that the lack of a formal engagement process resulted in the 57 percent support for its say-on-pay vote in 2011. The company responded by engaging shareholders via a letter in its annual report and making changes to the design of its executive compensation plan. Support for the company's say-on-pay proposal was 92 percent the following year.[41] In 2012, the company's CEO held meetings with several shareholders after receiving only 68 percent of the votes for his reelection.[42] Allstate's board-shareholder engagement process is one of many examples of processes that react to rather than anticipate shareholder concerns. Similarly, **Johnson & Johnson** received only 57 percent support for its say-on-pay proposal in 2012. The company's compensation and benefits committee chair and presiding director, along with several executives, met with many of the company's institutional investors, including representatives of mutual funds, investment managers, non-U.S. investors, socially responsible investment funds, public pension funds, and labor union pension funds.

Directors also reviewed written correspondence submitted by shareholders and met with leading proxy advisory services to better understand the reasons for the say-on-pay results.[43] Following a disappointing annual general meeting in 2012, former **Citigroup, Inc.** chairman Richard Parsons commented in an interview with Reuters that the bank needed to improve dialogue with its shareholders about executive compensation practices.[44]

Occidental Petroleum Corp. has engaged shareholders on corporate governance matters several times, with perhaps surprising implications. In 2010, the board agreed to a shareholder request to allow a nonbinding vote on director compensation.[45] In 2012, the board held a 90-minute conference call, during which two directors, the head of investor relations, an assistant general counsel, and a few other internal staff answered shareholders' questions. The general response to the experience was positive.[46] In 2013, the company spent the proxy season trying to oust its CEO but changed its plans after receiving a heated response from its shareholders. After this engagement, the board decided to retain the chief executive, modify its executive compensation plans, and oust its chairman.[47]

Hewlett-Packard Company held a private meeting with its largest investors to address shareholders' frustration with the significant write-off of the 2011 Autonomy acquisition. As a result of the meeting, the company formed a special committee and hired outside lawyers to investigate the board and management's handling of the deal.[48] Chairman Ray Lane resigned after receiving votes against him from more than 40 percent of the shareholders.[49] Although this action came about only after shareholder pressure, it is an example of a unique shareholder concern. Similarly, the board of **JPMorgan Chase & Company** realized the need for engagement in the days leading up to the company's 2013 annual general meeting, when some shareholders pushed to strip CEO Jamie Dimon of his chairmanship. Directors and executives sent letters and held phone meetings and one-on-one discussions with the company's largest shareholders to discuss the issue.[50] In the days before the annual meeting, Dimon flew to multiple cities to make his case to shareholders for keeping the leadership structure.[51] The company's engagement effort is credited with helping Dimon retain his chairmanship despite opposition from ISS and Glass Lewis.[52] However, the JPMorgan Chase engagement process may be viewed as more akin to lobbying than to true engagement and two-way dialogue.

EMC Corp. is one of many companies that facilitate shareholder engagement on environmental and social issues through a voluntary sustainability report. Since 2007, the board has included a sustainability report with its Form 10-K filing to provide additional disclosure to shareholders. The chief sustainability officer updates the company's corporate governance and nominating committee at least twice a year on sustainability issues.[53] **Jean Coutu Group, Inc**. provides its shareholders with key performance indicators on its social and environmental activities.[54]

Engagement Methods

Companies often describe the methods used to engage shareholders without detailing the content of engagement activities. Companies often view "shareholder engagement" as a broad practice, encompassing routine press releases, the company's website, investor relations contacts, and industry conference presentations. Below are some examples of more specific engagement methods used today.

Coca-Cola Company delegates engagement to its director of corporate governance, who serves as the mediator between shareholders and the board.[55] This approach is designed to filter out shareholder concerns that are viewed to be less important, while concentrating director time on more important concerns. Similarly, **BlackRock, Inc.** has established a 20-member governance team responsible for, among other duties, enhancing shareholder engagement.[56] A team dedicated to corporate governance can be costly, but it signals that the shareholder engagement is not superficial. BlackRock's initiative echoes the idea of creating an investor relations committee of the board to manage the shareholder engagement process.[57] **Kinross Gold Corp.** holds regular one-on-one and group meetings with institutional shareholders, who are encouraged to provide feedback. The independent chairman is the point of contact between shareholders and the board, while executives are ultimately responsible for engaging shareholders on specific issues.[58]

Rather than engaging shareholders individually via one-on-one meetings, some companies are experimenting with online communication tools such as webcasts, podcasts, video, virtual meetings, and board blogs.[59] Such engagement methods have the ability to communicate with a large group of institutional and retail investors and enable companies to record engagement activities for subsequent replay via companies' websites.[60]

Approximately 40 companies, including **Microsoft Corp., Applied Materials, Inc., Rambus, Inc., JetBlue Airways, Intel Corp.,** and **Dynegy, Inc.**, held virtual annual meetings in 2011 using tools that enable online voting and participation.[61] For example, Intel collects shareholder questions throughout the year via a message board. In 2010, the company received 160 questions from shareholders through this communication tool.[62] **Coca-Cola** and **Best Buy Company, Inc.** provide shareholders with an opportunity to ask questions via the internet.[63] **Berkshire Hathaway, Inc.** allows shareholders to email questions to the company prior to the annual meeting. CEO Warren Buffett then responds to the most relevant questions during the meeting.[64] **Best Buy** took the virtual meeting idea to a new level in 2010 when a director participated in the annual meeting via webcast.[65] Companies outside of the United States are also using online tools to engage more shareholders. For example, **Pansoft Company Ltd.**, a China-based software developer, supplemented its 2012 annual shareholder meeting, held in China, with a virtual meeting accessible to shareholders around the world.[66]

One idea for increasing engagement that has been discussed but has gained little traction is the Fifth Analyst Call, a call hosted by the board and open to all institutional investors.[67] The call would focus on corporate governance matters rather than a review of past quarterly financial performance. Conceptually, the call enables institutions to ask governance-related questions prior to the annual general meeting. Advocates believe it should take relatively little effort to prepare an annual conference call with institutional investors. Moreover, the call can be recorded and made available for the benefit of all shareholders, thereby avoiding the risk of breaching Regulation FD.[68]

An Effective Board-Shareholder Engagement Process

Several representatives of prominent institutional investors at the June conference shared their perspectives regarding an effective board-shareholder engagement process. The following is a summary of those views:

- Proactively reach out to your largest 15 to 20 institutional investors. Large institutional investors, particularly value investors with a longer-term investment horizon, are more likely to confront companies on specific issues than index/fund investors.
- Offer to schedule a 30-minute phone call with each institutional investor to discuss the company's executive compensation plan as well as any corporate governance concerns.
- Be certain that at least the lead independent director and a knowledgeable person from the investor relations, human resources, and legal departments are on the call and have authority to answer shareholder questions. If your company has experienced poor say-on-pay votes in recent years, the compensation committee chairman should also participate. It is generally preferable that the CEO and the company's compensation consultant do not participate, particularly when the main topic of discussion will be executive compensation.
- An effective agenda for a 30-minute call is as follows: devote the first five minutes to summarizing the overall business activities of the company (investor relations), five minutes to explaining how the performance measures included in executive compensation plans are linked to corporate strategy (human resources, compensation committee chairman, lead independent director), and five minutes summarizing outstanding shareholder proposals (general counsel). The remaining 15 minutes should be devoted to two-way discussion between the company and the shareholder.
- If the company has faced specific concerns about its compensation design in prior years, the compensation committee should make an effort to improve its Compensation Discussion and Analysis (CD&A) disclosure. A clearly written CD&A—particularly the Executive Summary—can reduce the need for separate meetings and one-on-one conversations about compensation. Directors should write the CD&A with its major shareholders in mind. The CFA Institute's CD&A Template offers ideas for boards on how to organize the CD&A disclosure. The template is currently used by a number of companies, including Pfizer, American Express Company, General Electric, and Morningstar.[69]

Endnotes

1 Janet L. Fisher and Lillian Raben, "Shareholder Special Meeting Proposals: Responding by Design," *Insights: the Corporate and Securities Law Advisor*, 24, no. 6, June 2010, pp. 2-9.

2 Marc Goldstein, "The State of Engagement between U.S. Corporations and Shareholders," conducted by Institutional Shareholder Services for The Investor Responsibility Research Center Institute, 2011.

3 Brian R. Cheffins, "The Past, Present, and Future of Shareholder Activism by Hedge Funds," *Journal of Corporation Law*, 37, no. 1, Fall 2011, pp. 51-103.

4 Philip J. Kardis, James E. Earle, Robert K. Smith, "Being Responsive to Stockholders and Avoiding Say-on-Pay Lawsuits – Shareholder Outreach and Executive Compensation Disclosure," *Benefits Law Journal*, 25, no. 2, Summer 2012, pp. 65-72, and Michael Albano et. al., "The SEC's Final 'Say': SEC Adopts Final Say-on-Pay and Shareholder Advisory Vote Regulations," *Corporate Governance Advisor*, 19, no.2, March/April 2011, pp. 20-33.

5 "Proxy Season 2013 Preview: Insights on Topics of Investor Focus and Expectations of Engagement," EY, 2013 (http://www.ey.com/Publication/vwLUAssets/2013_Proxy_season_preview/$FILE/Proxy_Season_Preview_2013.pdf).

6 Virginia Harper Ho, "Enlightened Shareholder Value: Corporate Governance Beyond the Shareholder-Stakeholder Value," *Journal of Corporation Law*, 36, no. 1, Fall 2010, pp. 59-112.

7 For a related discussion of the benefits and costs of board-shareholder engagement, see, "A Dialogue with Institutional Investors," Lead Director Network, August 9, 2012.

8 Lisa M. Fairfax, "Mandating Board-Shareholder Engagement," *University of Illinois Law Review*, no. 3, 2013, p.833.

9 Goldstein, "The State of Engagement."

10 SEC Final Rule, "Selective Disclosure and Insider Trading," effective October 23, 2000 (www.sec.gov/rules/final/33-7881.htm).

11 "ViewPoints: Advancing Board-Shareholder Engagement," Tapestry Networks, Inc., 2012.

12 See "Regulation FD Compliance and Disclosure Interpretations," issued June 4, 2010 (www.sec.gov/divisions/corpfin/guidance/regfd-interp.htm) and "Proposed Resolution on Regulation FD," SEC Investor Advisory Committee, February 22, 2010 (www.sec.gov/spotlight/invadvcomm/iacproposedresregfd.pdf).

13 See "A Dialogue with Institutional Investors," Lead Director Network.

14 Goldstein, "The State of Engagement."

15 See Andrew J. MacDougall and Robert Adamson, "Directors Briefing–Shareholder Engagement," The Canadian Institute of Chartered Accountants, 2011.

16 MacDougall and Adamson, "Directors Briefing."

17 Frances Le Grys, "New Code Puts Shareholders in the Driving Seat," *Legal Week*, July 8, 2010.

18 "UK Stewardship Code," Financial Reporting Council, n.d., (http://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Stewardship-Code.aspx).

19 "UK Stewardship Code," Financial Reporting Council, n.d., (http://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Stewardship-Code.aspx).

20 "Improving Corporate Governance and Shareholder Engagement," The Association of British Insurers, 2013.

21 See "Improving Corporate Governance and Shareholder Engagement," The Association of British Insurers.

22 "Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the Exercise of Certain Rights of Shareholders in Listed Companies," The European Parliament and the Council of the European Union, July 11, 2007 (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:01:EN:HTML).

23 Alex Barker, "EU Shareholders' Rights Face Shake-up," *Financial Times*, December 11, 2012.

24 David Walker, "German Investors Step Up Engagement with Firms," *Investment Europe*, May 25, 2011, pp. 18-20.

25 Daniel Schäfer and Richard Milne, "Siemen Chairman to Meet Investors," *Financial Times*, January 14, 2010.

26 Andre Habisch, Lorenzo Patelli, Matteo Pedrini, and Christoph Schwartz, "Different Talks with Different Folks: A Comparative Survey of Stakeholder Dialogue in Germany, Italy, and the U.S.," *Journal of Business Ethics*, 2011, pp. 381-404.

27 "Better Shareholders – Better Company: Shareholder Engagement and Participation in Australia," Parliamentary Joint Committee on Corporations and Financial Services, June 2008.

28 See "The AGM and Shareholder Engagement," Corporations and Markets Advisory Committee, September 2012.

29 "The AGM and Shareholder Engagement," Corporations and Markets Advisory Committee.

30 Michiyo Nakamoto, "TCI Ready to Relight Investor Activism in Japan," *Financial Times*, June 9, 2011.

31 See Nakamoto, "TCI Ready to Relight Investor Activism in Japan."

32 Michiyo Nakamoto, "Fund to Boost Shareholder Activism in Japan," *Financial Times*, February 7, 2011.

33 Richard Daniel Ewing, "Chinese Corporate Governance and Prospects for Reform," *Journal of Contemporary China*, 14 no. 43, May 2005, pp. 317-338.

34 "Republic of India: Corporate Governance of Central Public Sector Enterprises," The World Bank, June 2010.

35 *King Report on Governance for South Africa 2009*, Institute of Directors in South Africa, September 2009 (http://www.iodsa.co.za/?page=kingIII).

36 Jaco Visser, "South Africa's PIC Urges Ecobank Board to Deal With Debt Dispute," *Bloomberg News*, July 17, 2013. (http://www.businessweek.com/news/2013-07-17/south-africa-s-pic-urges-ecobank-board-to-deal-with-debt-dispute).

37 Emmanuel Adegbite, Kenneth Amaeshi, and Olufemi Amao, "The Politics of Shareholder Activism in Nigeria," *Journal of Business Ethics*, 105, no. 3, February 2012, pp. 389-402.

38 Shannon Pettypiece and Angela Zimm, "Pfizer Will Start Meetings with Largest Investors," *Bloomberg*, June 28, 2007 (http://www.bloomberg.com/apps/news?pid=newsarchive&sid=ajToCiEu_dzU&refer=news).

39 Ransdell Pierson, "Pfizer Board to Meet with Institutional Holders," *Reuters*, June 28, 2007 (http://www.reuters.com/article/2007/06/28/idUSN2836736620070628?sp=true).

40 Vipal Monga, "CFO Journal: Boards Cozy Up to Investors–Once-Resistant Directors Spend Time with Shareholders to Defend Policies," *Wall Street Journal*, January 8, 2013.

41 Monga, "CFO Journal: Boards Cozy Up to Investors."

42 Joann S. Lublin, "Say-on-Pay Votes Show Results," *Wall Street Journal*, March 1, 2012.

43 Johnson & Johnson DEF 14A filed March 13, 2013. (http://www.sec.gov/Archives/edgar/data/200406/000119312513104341/d414027ddef14a.htm#tx282627_16).

44 Dave Clarke and David Henry, "Parsons Blames Citi Vote on Failure to Communicate," *Reuters*, April 19, 2012.

45 Erin White, "Investors Balk at Occidental Petroleum Pay Practices," *Wall Street Journal*, May 7, 2010 (http://www.shareholderforum.com/sop/Library/20100507_WSJ.htm).

46 John R. Engen, "Communicating with Shareholders," *Corporate Board Member*, February 28, 2012 (https://www.boardmember.com/Print.aspx?id=7454).

47 Tom Fowler, Joann S. Lublin, and Aaron Lucchetti, "Occidental CEO to Stay Through 2014," *Wall Street Journal*, April 29, 2013, and "Steve Chazen Will Remain as CEO of Occidental Petroleum Through 2014," Occidental Petroleum Corporation press release, April 29, 2013 (http://newsroom.oxy.com/news/oxy/20130429005813/en).

48 Joann S. Lublin, "H-P's Board Signals Closer Oversight of CEO," *Wall Street Journal*, February 25, 2013.

49 Doug Henschen, "Time to End the Distractions at HP," *Information Week*, April 22, 2013, pp. 14.

50 Dan Fitzpatrick, Kirsten Grind, and Joann S. Lublin, "J.P. Morgan Will Lobby for Dimon," *Wall Street Journal*, April 6, 2013.

51 Dan Fitzpatrick, Robin Sidel, and Kirsten Grind, "Dimon Makes His Case," *Wall Street Journal*, May 18, 2013.

52 Joann S. Lublin and Kirsten Grind, "For Proxy Advisers, Influence Wanes," *Wall Street Journal*, May 22, 2013.

53 Kathrin Winkler and Rachel Lee, "Sustainability and the Board: The EMC Story," *Directorship*, 38 no. 2, March/April 2012, pp. 36-39.

54 "Shareholder Engagement Activity Report Q1/13," Shareholder Association for Research and Education, 2013.

55 See Monga, "CFO Journal: Boards Cozy Up to Investors."

56 Ruth Sullivan, "Shareholders' Guardian Takes a Low-Key Route to Engagement," *Financial Times* (London), May 16, 2011.

57 Anthony Goodman, "Positive Contact," ICGN, 2012.

58 "Shareholder Engagement Policy," Kinross Gold Corporation, n.d. (http://www.kinross.com/about-kinross/corporate-governance/shareholder-engagement-policy.aspx).

59 See MacDougall and Adamson, "Directors Briefing–Shareholder Engagement."

60 Neil Stewart, "The Debate About Virtual Shareholder Meetings," *Inside Investor Relations*, October 22, 2010.

61 Judy Warner, "Adopting a Virtual Approach to the Annual Meeting," *Directorship*, January/February 2012 (http://media.broadridge.com/documents/Broadridge_Directorship_Adopting_Virtual_+Approach_Industry_Topic.pdf).

62 See Stewart, "The Debate About Virtual Shareholder Meetings."

63 David F. Carr, "Coca-Cola, Best Buy Shareholder Votes Get Social Twist," *InformationWeek*, November 23, 2011.

64 See Stewart, "The Debate About Virtual Shareholder Meetings."

65 See Stewart, "The Debate About Virtual Shareholder Meetings."

66 "Pansoft Schedules Annual Meeting of Stockholders," Close-Up Media, July 10, 2009 (http://www.tmcnet.com/usubmit/2009/07/10/4267922.htm) and "Pansoft to Hold Annual General Meeting of Stockholders," Marketwire, June 2, 2010 (http://finance.paidcontent.org/about/news/read?Symbol=537%3A4248001&GUID=13293937).

67 Scott Hirst, "The Fifth Analyst Call: Investors Seek Greater Communication with Directors," Harvard Law School Forum on Corporate Governance and Financial Regulation, March 20, 2011 (http://blogs.law.harvard.edu/corpgov/2011/03/20/the-fifth-analyst-call-investors-seek-greater-communication-with-directors/).

68 Karen Kane, "Enlightened Companies: Step Up and Co-opt the Fifth Analyst Call," March 21, 2011 (http://www.shareholderforum.com/e-mtg/Program/20110322_report.htm).

69 "Compensation Discussion and Analysis (CD&A) Template Now Available for Public Companies and Investors," CFA Institute, January 31, 2011 (http://www.cfainstitute.org/about/press/release/Pages/01312011_50804.aspx).

About the Authors

James Kim is a research assistant for the Center for Financial Markets and Policy at Georgetown University's McDonough School of Business. The center fosters discussion on critical policy and regulatory issues related to global financial markets. The center works to host dialogues, conferences, and events involving industry, academia, and policymakers; provide a nonpartisan forum for informed discussion; sponsor relevant and impactful research on key global market issues; and engage students interested in finance.

Jason D. Schloetzer is an assistant professor of accounting at the McDonough School of Business, Georgetown University. His research focuses on the monitoring and control mechanisms used to manage the modern organization. This includes examining issues related to the design, implementation, and performance consequences of performance measurement/management systems and corporate governance practices. He has published in leading academic accounting journals, including *Journal of Accounting Research* and *The Accounting Review*, serves on the editorial board of *The Accounting Review*, and has been named a "Person to Watch" by the National Association of Corporate Directors. For The Conference Board, he has authored "Preparing for a Succession Emergency: Learning from Unexpected CEO Departures," "Corporate Misconduct and the Market for Directorships," and "Retaining Former CEOs on the Board," and is coauthor of the annual *CEO Succession Practices* research report. Schloetzer received his doctorate from the Joseph M. Katz Graduate School of Business, University of Pittsburgh.

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About the Series Director

Matteo Tonello is managing director of corporate leadership at The Conference Board in New York. In his role, Tonello advises members of The Conference Board on issues of corporate governance, regulatory compliance, and risk management. He regularly participates as a speaker and moderator in educational programs on governance best practices and conducts analyses and research in collaboration with leading corporations, institutional investors and professional firms. He is the author of several publications, including *Corporate Governance Handbook: Legal Standards and Board Practices,* the annual *U.S. Directors' Compensation and Board Practices* and *Institutional Investment reports, and Sustainability in the Boardrooom*. Recently, he served as the co-chair of The Conference Board Expert Committee on Shareholder Activism and on the Technical Advisory Board to The Conference Board Task Force on Executive Compensation. He is a member of the Network for Sustainable Financial Markets. Prior to joining The Conference Board, he practiced corporate law at Davis Polk & Wardwell. Tonello is a graduate of Harvard Law School and the University of Bologna.

About the Executive Editor

Melissa Aguilar is a researcher in the corporate leadership department at The Conference Board in New York. Her research focuses on corporate governance and risk issues, including succession planning, enterprise risk management, and shareholder activism. Aguilar serves as executive editor of *Director Notes*, a bimonthly online publication published by The Conference Board for corporate board members and business executives that covers issues such as governance, risk, and sustainability. She is also the author of The Conference Board *Proxy Voting Fact Sheet* and coauthor of *CEO Succession Practices*. Prior to joining The Conference Board, she reported on compliance and corporate governance issues as a contributor to *Compliance Week* and *Bloomberg Brief Financial Regulation*. Aguilar previously held a number of editorial positions at SourceMedia Inc.

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For more information on this report, please contact:
Melissa Aguilar, researcher, corporate leadership at 212 339 0303 or melissa.aguilar@conferenceboard.org

THE CONFERENCE BOARD, INC. www.conferenceboard.org
AMERICAS +1 212 759 0900 / customer.service@conferenceboard.org
ASIA-PACIFIC +65 6325 3121 / service.ap@conferenceboard.org
EUROPE/AFRICA/MIDDLE EAST +32 2 675 54 05 / brussels@conferenceboard.org
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