

In-House Corner: Shareholder Proposals – Part 2

Recently, we started a new feature of this blog – where our in-house readers share tips, anecdotes and thoughts about things that come up in their daily practice. We received so much feedback on [our first blog about shareholder proposals](#) that we now have this Part 2 [we will even have a Part 3 soon enough; feel free to ping me and share your thoughts – they will be posted anonymously or with attribution, whichever you desire; we also recently ran blogs on [virtual annual meetings](#) and [onboarding new audit committee members](#)]: 1.

"Becoming a believer that, although more costly in the short term, negotiating with the proponent with a no-action request on file is most effective. Prior to that time, there is little incentive for demands to be moderated, and once the deadline passes you are without leverage if you have no such request." – Megan Doe

2. "Pre-plan by identifying shareholder proposals your company is likely to get and develop a strategy for engaging/responding." – Ajay Doe

3. "When I think of shareholder proposals, dried puke comes to mind. And not the good kind." – Dr. Roberta Doe

4. "These are time sensitive, so first: make sure they don't sit on an executive admin's desk for several days while they try to figure out who it should go to. Second, make sure your 'go to' counsel does this type of work regularly. Otherwise, you spend more money and maybe don't have the best arguments. Last, keep up-to-date on the arguments that may have worked in the past but now are non-starters because of changes in the guidance. I would also suggest you conduct some of your own research." – Leslie Doe

5. "Search for other proposals that are similar to - or identical to - the received proposal. In many cases, fund proponents will solicit an identical proposal to dozens of issuers. In those instances, you can review how the proposal was described in the proxy by other issuers and you may be able to gain insight on how the proponent responded to the proxy/presented at the meeting." – Cody Doe

6. "Do your homework, understand your position and then try to engage meaningfully. Some of the energy spent trying to outmaneuver proponents could be put to a higher use." – Sir Allen Doe

7. "Don't underestimate the power of negotiating with proponents. It doesn't have to be a zero-sum game, where you either win (exclude the proposal) or lose (include the proposal). Often, the proponent's goal is better disclosure. So if you're regularly looking for ways to provide better disclosure to your investors, and that improved disclosure leads the proponent to withdraw the proposal, it's a win-win." – Wilbur Doe

8. "A lot can be said on this topic. I'll just mention two things to remember from a processing perspective: - Remember to assess a proposal submission's procedural compliance with Rule 14a-8 shortly after receiving the proposal as submission defects can be waived if you do not timely - and properly - notify proponents of those defects. - Remember to send a copy of your opposition statement to the proponent(s) at least 30 days prior to the time you intend to file your definitive proxy statement even if you have a pending no-action request with the SEC Staff. In other words, the 30-day clock isn't tolled simply because you're waiting for what might be a successful no-action decision from the Staff." – Hagen Ganem

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