

In-House Corner: Shareholder Proposals – Part 3

This feature of our blog is 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 the [first blog](#) and [second blog](#) about the practice of dealing with shareholder proposals that we now have this Part 3 [feel free to ping me and share your thoughts – they will be posted anonymously or with attribution, whichever you desire]: 1. "Are shareholder proposals still a thing? Back when I worked at a law firm, I recall many late evenings dealing with responses to shareholder proposals – technical deficiencies, substantive defenses, etc. But since going in-house – where I have been for almost a decade across three different companies – I can't recall a single conversation about them, let alone receiving one. Perhaps I am just lucky?" – Lucky Lou Diamond Doe

2. "In addition to working with/reminding colleagues to check the mail – make sure that if someone opens the mail for you, that they know to retain the envelope/packaging – which could be helpful in the event of technical challenges through the SEC's no-action letter process." – Mercedes Doe

3. "I've been meeting with proponents for many years now. Some are absolute joys to work with and they've brought some needed excitement to what otherwise is a pretty drab event. Others are a bit more of a challenge." – Velma Doe

4. "Pay attention throughout the prior proxy season to what proposals your peers are receiving. Even if it was not your year to receive a certain type of proposal, you may get one the following year. It is great if you can work internally to have a POV on certain types of proposals in case you do indeed receive one." – Richie Doe

5. "- The corporate secretary should be prepared to coordinate with legal, investor relations and the board in responding to a proposal. - If an investor has made known its concern about a particular issue (e.g., an ESG issue, a diversity issue etc.), engagement with the investor may preempt the need for a formal proposal - Ongoing engagement with an investor after the vote on a proposal that does not pass is critical to heading off a further proposal the following year. - If the decision is made to seek an SEC no-action letter on a proposal, early and frequent engagement with the board is critical. - Robust disclosure regarding ESG matters in publicly filed documents (e.g. the proxy statement, 10-K) can help stave off the desire for an investor to make a proposal." – Eric Grimshaw

6. "Shareholder proposals? Is this a trick question?" - "Grumpy" Gregory O'Malley Doe

7. "I've been saying this for years and years - it is critical for both parties to establish expectations upfront. Shareholders should have a preconceived notion of what it would take for them to withdraw — or not submit a proposal to the company in the first place. Companies should analyze what it will take for them to implement the proposal - or not fight its inclusion - in the early days. Even for the dialogue over the proposal itself, set reasonable expectations. And within a company, communicate what those reasonable expectations are so that management and/or directors aren't expecting something that isn't likely to happen." - Broc Romanek

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