

The background of the slide is a blurred image of a financial market data screen. It features green numbers and green upward-pointing arrows on a dark background, suggesting stock price increases. Some visible numbers include 19,194.00, +127.11, +133.00, +165.78, and 206.12. The text is overlaid on this background.

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PUBLIC COMPANY ACADEMY

**Corporate Governance: Best Practices and Current
Developments Relating to Annual Meetings**

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POINTERS ON HOLDING YOUR ANNUAL SHAREHOLDERS' MEETING

IN-PERSON MEETINGS

- Still the majority approach – but virtual meetings up from 27 in 2012 to >150 in 2016
- Many investors prefer
 - Institutional, shareholder advocates
 - Tradition
 - Ease of Q&A
- ISS, Glass Lewis neutral
- Confirm location requirements in bylaws, state law
- Consider location pros/cons
- Consider attendees and potential disruptions
- Social media issues – will your meeting be live Tweeted?

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PREPARATION FOR ALL SHAREHOLDER MEETINGS

- Historical attendance, conduct
- New management, Board members?
- Monitor messaging – journalists, news outlets, message boards, social media
- Current events – could they affect the meeting? US political scene?
- If shareholder proposal on agenda, coordinate with shareholder representative
- Prepare model Q&A, with responses
 - Focus on current governance trends, recent company developments
- Broadcast permissible

CONDUCT OF MEETING – DOs and DON'Ts

- **Do** – Consider preparing alternate scripts, depending on attendees
- **Do** – Take questions from shareholders
- **Don't** – Take questions during the meeting itself
- **Do** – Work with Inspector of Elections to confirm that all votes are accurately counted
- **Do** – Expect the unexpected
- **Don't** – Get off topic
- **Do** – Prepare all materials in advance
- **Don't** – Serve food (unless you want high attendance!)

SHAREHOLDER PROPOSALS 2017 – EARLY RETURNS

OBSERVATIONS ON EARLY RETURNS ⁽¹⁾

- 367 Proposals at Meetings with Dates from 1/6/17 through 6/13/17
- Hot Governance Topics Include Proxy Access, Separate Chair/CEO Split
- Other Governance Items (UWC, Special Meeting Rights) Not
- Shareholder Proposals Not Primary Path for Compensation Issues
- Scarcity of Declassification/Majority Vote Proposals Demonstrates Effectiveness of Shareholder Proposals, Advocacy

⁽¹⁾ Information on this slide from Shark Repellent.

PROXY ACCESS

- Allows shareholder to nominate directors **in company's proxy**
 - Shareholders have always had ability to nominate directors if willing to solicit proxies themselves (i.e., proxy contest)
- SEC has made numerous proposals over decades
 - 2010 SEC-approved proxy access rule would have provided broad access
 - Lawsuit challenged the rule and SEC vacated its proxy access rule before it took effect
- **Private ordering** – SEC revised other rules regarding shareholder proposals to allow shareholders to make proposals that, if adopted, lead to proxy access

PROXY ACCESS

- In 2016, more than 200 companies received proposals (114 in 2015)
 - But fewer go to vote – 76 in 2016 from 87 in 2015
- Fewer proposals in 2017 (approx. 38 going to vote) as voluntary adoption increases
- Large cap focus – as of fall 2016, approx. 40% of S&P 500 had adopted, and 48% of Fortune 100
- Companies adopting proxy access, usually in response to shareholder proposals, are including disclosures regarding shareholder engagement
- Many companies adopted proxy access bylaw provisions that were different from shareholder proposals
 - In many cases, this disclosure has led to ISS and Glass Lewis not recommending a vote against directors for provisions in the bylaws that were discussed (and not objected to) with institutional shareholders
 - At least one activist is using proxy access for its nominee
 - It appears to relate to a strategic matter regarding the spin-off of the company's utility business
 - This procedure could also be used for perceived corporate governance failures, including relating to executive compensation
 - In June 2016, compensation standards reported that of 20 activist campaigns that were tracked, nine had a criticism of company executive compensation-related matters

PROXY ACCESS

- Typical voluntarily adopted proxy access bylaws include:
 - Ownership Threshold – 3%
 - Holding Period – three years
 - Maximum Number of Nominees – 20%/25% of Board (or two directors if greater)
 - Formation of Groups – Up to 20 eligible shareholders
 - Incumbent Directors – Most policies count them against maximum number for two years
 - Repeat Nominator – Minority of policies prohibit nominators from repeating
 - Repeat Nominee – Many policies prohibit repeat nomination of failed nominee
 - Loaned Shares – Generally considered continuously owned if recalled under specified criteria
 - Compensation Arrangements with Third Parties – Largely, though not uniformly, permitted

PROXY ACCESS

- Preemptively adopt
 - Consider ability to seek no-action relief if shareholder proposal later received
- Await shareholder proposal, then adopt
- Await shareholder proposal, then submit proxy with competing proposal or no company proposal

PROS AND CONS TO CONSIDER WITH VIRTUAL-ONLY ANNUAL MEETING

Virtual Annual Meeting – Pros

- Increases potential access to shareholders to attend annual meeting.
- Reduces the environmental impact of an annual meeting.
- Enhances retail participation because of ability to vote directly online during the meeting.
- Affords opportunity for broad group of shareholders to view/hear management and the board.
- Provides opportunity for management and board to present to a broad group of shareholders.

Virtual Annual Meeting – Pros

- If properly structured, affords Regulation FD “protection.”
- Allows management preparation time for shareholder questions submitted for the annual meeting.
- Permits the company to “screen out”/avoid frivolous or offensive shareholder questions.

Virtual Annual Meeting – Cons

- Potential higher costs and time commitments.
- Potential shareholder complaints for lack of physical access to the board and management.
- Risks of negative media and shareholder reaction.
- Criticisms from shareholders that management is using the virtual-only annual meeting format to filter their thoughts, questions, and ideas.
- With potential greater “attendance” comes the greater possibility of shareholder questions.
- Potential technical issues (i.e., website crashing, audio difficulties, etc.).

Virtual Annual Meeting Checklist and Considerations

Review Applicable State Law

- Section 211 of the DGCL permits Delaware corporations to hold annual meetings “solely by means of remote communications.”
- Board has sole discretion to determine whether to hold a virtual annual meeting (VAM).
- Shareholders able to participate if the following three conditions are met:
 - reasonable measures are implemented for shareholder verification,
 - reasonable measures to provide shareholders and proxy holders an opportunity to participate in the meeting, and
 - record of vote and other actions taken at the meeting are maintained.

Virtual Annual Meeting Checklist and Considerations

Review Corporate Governance Documents

- Confirm no conflict with holding a VAM.
- If needed, bylaws should be amended to explicitly permit VAMs.

Amendment to Bylaws

- Although Delaware law permits the holding of a virtual-only annual meeting, companies should adopt a bylaw that explicitly allows for this.
- “The Board of Directors may, in its sole discretion, determine that a meeting shall not be held at any place, but may instead be held solely by means of remote communication.”
- File Item 5.03 Form 8-K for bylaw amendments.

Virtual Annual Meeting Checklist and Considerations

Review Federal Law and Exchange Requirements

- SEC rules and regulations do not prescribe where annual meetings are held.
- NYSE requires annual shareholder meetings, but listing regulations do not specify where annual meetings should or must be held.

Shareholder Outreach

- Consider need to reach out to significant shareholders in advance of adopting amended bylaws to allow for a VAM.

Virtual Annual Meeting Checklist and Considerations

Broadridge or Similar Provider

- Discuss options/logistics/pricing.
- Consider whether expected benefits justify the costs.
- Consider how shareholder votes will be addressed.
- Consider accessibility of technology to accommodate all shareholders.
- Determine whether online participants may ask questions in realtime (or whether questions will be prescreened).
- Consider sign-on and password protections to ensure shareholder security and privacy.
- Consider procedure to give certain members of the press access to the meeting.

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Virtual Annual Meeting Checklist and Considerations

Other Outside Vendors

- Consider need for other vendors to do audio and/or camera and other technical work, or whether this can be handled internally.
- Ensure that inspector of elections has requisite experience and certification for votetallying.

Assign Working Group

- Determine which internal department has primary responsibility for coordinating VAM and related logistic concerns, preliminary outline of what meeting would look like.
- Form external working group that includes transfer agent, Legal, and IR.

Virtual Annual Meeting Checklist and Considerations

Corporate Governance

- Proposal to Nominating and Corporate Governance Committee for consideration and recommendation to full Board.
- Present the idea of a virtual annual meeting to full Board for their approval (and adoption of amended bylaws).

Virtual Annual Meeting Checklist and Considerations

Develop New Policies and Procedures

- Develop new policies and procedures for the conduct of the meeting, which should be made available to shareholders before the meeting:
 - adopting principles for online participation
 - procedures to validate participants as shareholders
 - guidelines for shareholder questions
- Consider how shareholder proposal proponents will present their proposals.
- Consider location of Inspector of Elections.

Virtual Annual Meeting Checklist and Considerations

Draft Related Changes to the Proxy Statement

- Disclosure will need to reflect VAM.

Virtual Annual Meeting Checklist and Considerations

Finalize Logistics and Complete a Practice Run

- Conduct a dry run to ensure that webcasting and sound equipment and lighting work.
- Ensure that all materials are properly posted on web portal.
- Ensure that back-up equipment is available on meeting premises just in case.
- Open internet access in advance of meeting to allow shareholders to test access and ensure participation.
- Provide technical support line/link for shareholders to resolve issues during meeting.
- Arrange for real-time tech support.

Virtual Annual Meeting Checklist and Considerations

Post-Meeting Logistics

- Make webcast and any presentations available for a period of time for access by interested parties.
- Archiving audio or video webcasts could alleviate the perceived need for a transcript of the annual meeting.
- Consider whether, and to what extent, questions that were asked but unanswered during the meeting will be addressed following the close of the meeting.

Virtual Annual Meeting Checklist and Considerations

- Companies with VAM on file for 2016 – Intel, HP Inc., Coty Inc., Sprint, Virgin America, and Sea World.

INDEPENDENCE STANDARDS FOR COMPENSATION COMMITTEES

Independence Standards – General Preclusions

- Compensation Committee independence is the subject of various rules and regulations, including provisions of the Internal Revenue Code, Dodd-Frank, SEC regulations, and listing rules for national securities exchanges
- Common themes in the preclusion of a director from being independent include:
 - Current or former employment with the public company
 - Remuneration to the director
 - Remuneration from the public company to the director's firm or employer
 - Remuneration from the public company to an entity in which the director has a significant ownership interest or other relationship
- These common themes apply to a director's family members also

Independence Standards for Compensation Committees Under IRC Section 162(m)

- Section 162(m) limits deductible compensation (regardless of the form of payment) paid to certain officers of publicly held companies to \$1 million
- Exception for “qualified performance-based compensation”
- Among other conditions, to be qualified performance-based compensation, the Compensation Committee of the corporation's Board of Directors (Board) must certify the attainment of the performance goals
- The Compensation Committee must be comprised solely of two or more “outside directors”
- The “outside director” requirement is the standard for independence under Section 162(m)

Independence Standards for Compensation Committees Under IRC Section 162(m)

- For purposes of Section 162(m), a director is considered an outside director if the director is NOT:
 - A current employee of the corporation
 - A former employee of the corporation who receives compensation for prior services (other than benefits under a tax-qualified retirement plan)
 - A current or former officer of the corporation
 - Receiving direct or indirect remuneration from the corporation in any capacity other than as a director

SEC Regulation of Independence Standards

- As required under the Dodd-Frank Act, the SEC adopted rules directing the national securities exchanges to establish listing standards that required the following:
 - Members of the Compensation Committee must be members of the Board
 - Members of the Compensation Committee must be “independent” (as defined by the listing standards for the exchange)
 - The Compensation Committee must have certain authorities, funding, and responsibilities with respect to retaining, or obtaining advice from, a compensation consultant, legal counsel, or other adviser

SEC Regulation of Independence Standards

- Assessing the independence of compensation consultants, legal counsel, or other advisers:
 - Service provided to the company by the employer of the compensation consultant, legal counsel, or other adviser
 - The amount of fees paid as a percentage of that person's total revenue
 - Policies and procedures regarding the prevention of conflicts of interest
 - Business or personal relationships
 - Ownership of company stock
 - Any other factors required under the exchange listing standards

NYSE Independence Standards for Compensation Committees

- An NYSE-listed company must have a Compensation Committee composed entirely of independent directors
- Director independence must be affirmatively determined by the Board
 - Director has no material relationship with the listed company
- Directors are not considered independent if the director:
 - Within the prior three years, has been an employee, or has an immediate family member who has been an executive officer, of the listed company
 - Has certain close relationships with the listed company's internal or external auditing firm (e.g., is or was a partner or employee or has immediate family who is or was a partner or employee)
 - Is an employee (or an immediate family member is an executive officer) of a company that has made payments to, or received payments from, the listed company for property or services exceeding the greater of \$1 million or 2% of the other company's consolidated gross revenues, in any of the three prior fiscal years

NYSE Independence Standards for Compensation Committees

- Additional independence requirements for Compensation Committee members:
 - Board must consider all factors specifically relevant to whether the director has a relationship material to the director's ability to be independent from management
 - Factors in making this determination include:
 - Does the director receive compensation from any person or entity that would impair the director's ability to make independent judgments?
 - Is there an affiliate relationship that places the director under the direct or indirect control of the listed company or its senior management?
- NYSE rules provide a cure period for noncompliance
- Retention of independent compensation adviser not required, but Compensation Committee must also consider independence of compensation consultants, legal counsel, and other advisers

NASDAQ Independence Standards for Compensation Committees

- In line with NYSE requirements
- A NASDAQ-listed company must have and certify that it will continue to have a Compensation Committee consisting of at least two independent directors
- A director is independent if the director is NOT:
 - An executive officer or employee of the company (including within the prior three years)
 - Any other individual having a relationship that the Board determines would interfere with the exercise of independent judgment

NASDAQ Independence Standards for Compensation Committees

- Directors are also NOT considered independent if:
 - The director (or a family member) has accepted compensation in excess of \$120,000 during any consecutive 12 month period within the prior three years (certain categories of compensation are excluded)
 - A family member is or was employed as an executive officer within the prior three years
 - The director (or a family member) is or was a partner, controlling shareholder, or executive officer of an organization that the company made payments to, or received payments from, for property or services in the current year or prior three years that exceeded 5% of the recipient's consolidated gross revenue or \$200,000 (certain categories of payments are excluded)
 - A director (or a family member) who is or was (within the three prior years) an executive officer of another entity where any of the executive officers of the company also served on the Compensation Committee of the other entity
 - A director (or a family member) who is a current partner of the company's outside auditor
 - A director (or a family member) who is or was a partner or employee of the company's outside auditor who worked on the company's audit at any time during any of the prior three years

NASDAQ Independence Standards for Compensation Committees

- Additional independence requirements for Compensation Committee members:
 - Similar to additional requirements under the NYSE rules
 - Does the director receive compensation from any person or entity that would impair the director's ability to make independent judgments?
 - Is there an affiliate relationship that places the director under the direct or indirect control of the listed company or its senior management?
- Compensation Committee charter must include the following:
 - Scope of responsibilities;
 - How the committee carries out its responsibilities;
 - Responsibility for determining or recommending to the Board for determination, the compensation of the CEO and other executive officers;
 - CEO may not be present during voting or deliberations on his or her compensation; and
 - Other specific responsibilities and authorities set forth in the listing rules.
- Similar to the NYSE's listing standards:
 - NASDAQ does not require the Compensation Committee to retain an independent compensation adviser
 - NASDAQ rules provide a cure period for noncompliance

Independence Standards – Tying It All Together

- Assessment of independence is based on the governing rule
- Important to analyze independence under each rule separately
 - Is the director independent under the applicable exchange listing rules?
 - Is the director an outside director who can sit on the Compensation Committee and certify the performance goals under Section 162(m)?
- The exchange listing rules include certain look back periods for employment with the company or serving as an officer and thresholds on remuneration under which independence is not affected, but Section 162(m) does not have similar look back periods or thresholds
- The differences in these rules mean that a director could be considered independent under the exchange listing rules, but not an outside director under the Section 162(m) rules
- Directors on the Compensation Committee must meet both standards for independence

Independence Standards – Tying It All Together

- The variations in these rules need to be considered when determining which directors will sit on the Compensation Committee
- Example: CEO leaves and Director steps in as interim CEO
 - Director may be determined by the Board to be independent under the listing rules, but Director will not be an outside director for purposes of certifying the performance goals under Section 162(m)

CORPORATE GOVERNANCE BEST PRACTICES FOR COMPENSATION COMMITTEES

Best Practices for Compensation Committees

- Process, Process, Process
 - Proper delegation from Board to Compensation Committee
 - Compensation Committee Charter
 - Proper approval of charter
 - Outlines delegations to Compensation Committee (delegations should not be overbroad—e.g., fiduciary responsibility over retirement plan assets)
 - Subcommittee issues
 - Complies with requirements of listing standards
 - Documentation of process for Board determination of independence
 - Questionnaires
 - Meetings
 - Minutes and written consents
 - Frequency of independence reviews – directors and advisers
 - Review of process – is process being followed? Are updates needed?

Best Practices for Compensation Committees

- Fiduciary responsibility
 - Business judgment rule
 - Duty of care; duty of loyalty
- Compensation philosophies, policies, and guidelines
- Compliance with SEC disclosure rules (10-K, proxy statements)
- Assessment of DO insurance

CORPORATE GOVERNANCE FOR BOARDS

Corporate Governance for Boards

- Process, process, process (see slides 41 and 42)
- Oversight and fiduciary duties

Corporate Governance Example – Cybersecurity

- Incorporate cybersecurity issues into risk oversight function.
 - Understand the Company's specific cyber risk profile
 - types of likely risks for your company
 - severity of consequences
 - Oversee that management has an appropriate cyber risk program and properly implements it.
 - Require reports to Board on cyber incidences.

Responsibilities of the Board – Cyber Security

- Examples of Board actions:
 - Determine whether oversight is with the full Board or a committee.
 - Financial companies required to have separate risk committee under Dodd Frank
 - Consider cyber security education of directors.
 - Receive regular reports with overview of:
 - key cyber risks
 - risk integration programs
 - training
 - trends and incidents

QUESTIONS?

Biography



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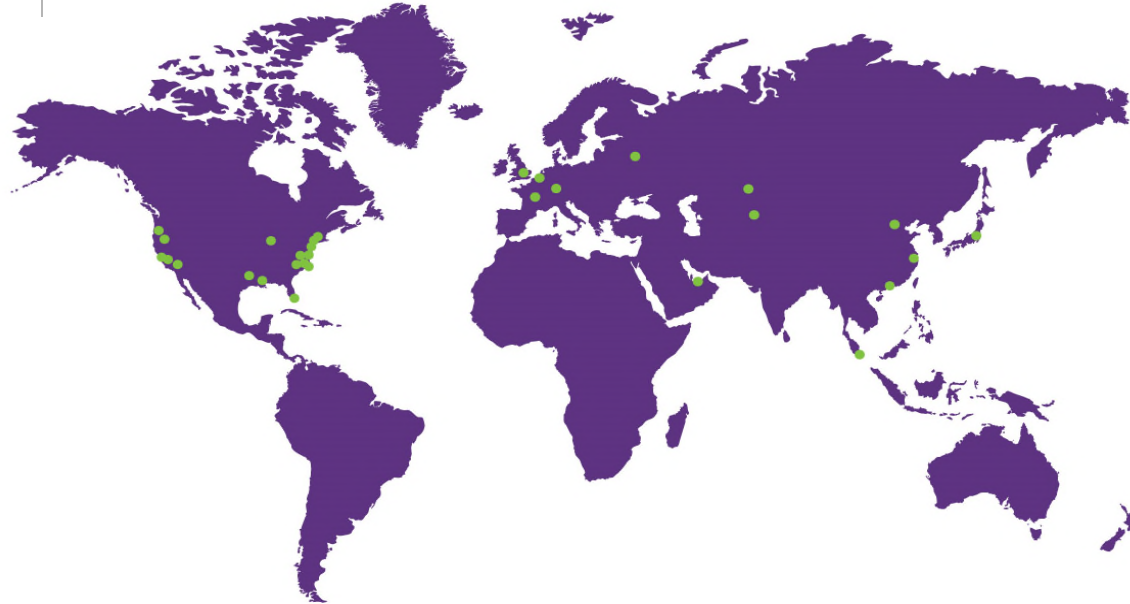
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Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

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