

# In-House Perspectives: The Proxy Season

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## **In-House Perspectives: The Proxy Season**

**Compiled by Broc Romanek, our in-house readers share tips, anecdotes, and thoughts about topics that arise in their daily practice.**

### **A. Shareholder Engagement**

1. “Think of your shareholder audience kind of like a hiring manager that reads resumes or a college admissions official that reads applications. Sometimes one company’s messages bleed into another’s and everything starts to look the same.

Think about how to make your key messages pop. Maybe it’s good graphics in your deck, or just a really succinct, direct, plain-English way of talking about an issue. Sometimes admitting a mistake and talking about how you’re fixing it can be a great way to demonstrate a growth mindset.”

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2. “If the particular shareholder you are talking with happens to itself be a public company, review their own ESG practices and initiatives. You’ll learn about their priorities and how to find common ground.”

3. “Let the shareholders do the talking. It is a listening tour. The opportunity to be heard is what most shareholders are looking for. ‘I really appreciate that input, I am going to be sure to share this with my fellow directors at our next board meeting.’”

4. “Be prepared for your conversation and anticipate what the shareholder’s questions may be. But when you meet with the shareholder, make sure to listen and try to understand what they are really interested in hearing about.

There may be specific points you want to get across during your conversation no matter what (i.e., correcting a misperception or providing new information on an important voting topic). However, you don’t need to cover every topic and you should try to avoid inadvertently steering the conversation in a direction that it didn’t need to take.

In one engagement I participated in, one of the company representatives raised a sticky compensation issue during a call that was trending towards a discussion on sustainability matters. The shareholder seemed confused by the change of topic for a moment but then recovered and said ‘I hadn’t focused on that, but, now that you mention it, I think I should get more information...’”

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5. “Embrace engagement. We have an on-going dialogue with a shareholder group that submitted a proposal to us many years ago. We meet with them at least twice per year and let them set the agenda. It’s a friendly and mutually beneficial relationship.”

6. “The four engagement cornerstones are:

– Share an agenda in advance of the call.

– Prepare for the call – read applicable voting guidelines, know prior voting history, anticipate questions (and have some answers ready).

– Try to make personal connections – remember shareholders are people too – even proxy advisors are.

– Be clear, concise and to the point when speaking – they are listening to what you say and how you say it.”

7. “These engagements should be like working groups. You both want to learn more about the other party – and then organize around actions that address any open issues and concerns. Frame the ‘ask’ and the agenda accordingly. If your tendency leans towards wanting to lecture shareholders, don’t waste their time.”

## **B. Proxy Drafting Tips**

1. “Put Frozen on repeat so your quarantining children will leave you alone for more than 15 minutes at a time while you draft.”

2. “Each Board has its own personality, if yours has a good vibe try to let that come through in the proxy.”

3. “For each section, think about what information you really want to convey. Sometimes a chart or graphic may be better than a block of text or even bullets. But staying focused on the purpose of the section will help prevent it getting lost in a sea of words.”

4. “Don’t feel tied to just updating the organization, style, or content from last year. Ask yourself, what are the most pressing issues this year? Say on pay? Shareholder proposals? ESG? Shake things up so as to highlight your key messages and make them land effectively.”

5. “Sometimes forward-looking information can be helpful. If you’ve made a governance or compensation decision that hasn’t been fully implemented yet – perhaps it goes into effect the next fiscal year – you can sometimes get some credit for having taken the step anyway.”

6. “Don’t take it personally if someone edits your fine masterpiece and wants to wordsmith what you do. Write your own novel instead for that deep-rooted satisfaction that you seek. At least, that’s what a fortune cookie once told me.”

7. “According to a past Compensation Committee chair we had: ‘Just write what we (the committee) did.’ You can put that in the bucket of ‘helpful, but not helpful’ proxy drafting advice. More practical – there’s some really good CD&A/proxy specialists at some of the virtual law firms. Hard to get during proxy season, but can be a steal in the off-season.

So don’t wait ‘til now to start, when 90% of what you need (salaries, targets, grants, goals, vestings, etc.) has already been baked since the previous February. At this point, most companies are just waiting for the final bonus payout numbers. But the compensation sections used to be the hard parts – now it’s the easy part, since the proxy has largely become a marketing document for ESG.”

8. “Start with deciding how best to ‘tell your company’s story’- identifying key points & focus areas. Identify clear lines of responsibility and timelines – who drafts what and by when. Build in time for checking it once, checking it twice, and checking it again.”

9. “Write to be easily understood. Readers of your proxy are probably reading many proxies. Make yours easy to understand. Your readers will appreciate your efforts. Consider these tips:

– Don’t write to merely comply. Write to tell your company’s story. Start with a “story board” of sorts – identifying main messages, key stats and data, etc.

– Use readability tools. They tell you the grade level of your writing. These tools flag – so you can eliminate – a passive voice, tortured syntax, long sentences, unnecessarily complex words.

- Use white space and other graphical cues to help your reader's eye and brain move through the proxy statement.
- Use Tables/charts/graphics. Organize the information for your reader. Don't leave it to them to have to organize it.
- Ask a few people who haven't worked on the proxy statement to read it. They will give you feedback. Take it."

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**10.** "I have found a detailed drafting calendar and due dates to hit are valuable in drafting the proxy statement. Deeply connected to this is understanding management's expectations for what is going to be presented to the full board and the compensation committee FIRST. You can then work backwards to create a timeline that fits with your own schedule since you're most likely also handling the 10-K, D&O questionnaires and diligence, and earnings at the same time!"

**11.** "Perhaps more important is having a strong HR partner/team through the entire process!"

**12.** "Do all of your vendor reviews and RFPs (printer, mailer, solicitor) and any brainstorming for interesting or revised designs in the summer/off season so these items are buttoned up by the time the drafting is in full swing."

**13.** "I like to treat the proxy statement as a year-long marathon and I circulate sections of the proxy to my HR partners and proxy team to review throughout the year so that by the time the end of the year comes, we're prepared to drop in only the information that we know is going to change. For example, pages 1-25 by x date, then pages 26 through 40 by y date, etc."

**14.** "Have a good plan so that the various writers, reviewers and editors will have ample time. And adjust as necessary. Starting too early can be as problematic as starting too late. Also, try to keep ahead of trends so that last minute suggestions from directors don't derail you. Instead, you can say, 'Yes, that's a great idea and we already considered it.'"

## **C. Keeping Sane (Or Not) During the Proxy Season**

**1.** "Sanity is hard to come by. Thank goodness Pandora works on my laptop as long as I have WiFi so I can take a music break here and there. I will provide my Pandora stations only upon personal request. However, the one bad habit I always run into is falling behind on the distribution schedule. This is going to happen – life (and work) intervenes against any plan, no matter how well intended. The best defense is a viable offense: the schedule itself should have flexibility built in and perhaps a distribution or two "extra" so if they are missed it does not throw off the entire timeline."

**2.** "Keep your expectations realistic and accept up front that your team will miss a deadline, make a mistake and run into a time-crunch-induced schedule disruption. Once you let those worries go before the season starts, then focus on the big stuff – the things that have to be completely right and the deadlines that don't have any flexibility."

**3.** "Make a realistic timeline and stick to it, but also make sure the timeline is flexible enough to deal with the surprises that will come up."

**4.** "Be clear about data ownership, and require data owners to certify the data provided."

**5.** "Although a lot of time and effort goes into the sections that are included for communication – and because they are important to your shareholders – remember to keep focused on the legal requirements and triple-

check every number. And if you have shareholder proposals, open a dialogue and keep it open so that you know what to expect when the annual meeting rolls around.”

6. “When you get towards the end, find some fresh eyes for a review – you’ll be amazed what they’ll see that you don’t.”

7. “Do not look at it after you file. It’s done. No good can come from finding the typo that your entire working group missed.”

8. “The rule is that if something can be done early, do it early! For example, a draft of the ‘Grants-of-Plan-Based Awards’ table for the proxy and the accompanying notes could have been completed as early as February. That was our usual practice for many years. However, because of personnel changes, it did not occur this past year – so it became one more thing that we needed to do during the heart of the proxy season that could have been done earlier.

9. Similarly, updates to director bios and a draft of the CD&A are items that can be completed early, and then just updated as needed.”

10. “I’m putting ‘getting things done early for next proxy season’ on my goals list for the year. Hopefully, the next proxy season will be more sane than this one!”

11. “Accept that proxy solicitation is a Byzantine process. Nobody at our company – outside of our department – got to where they are in their career by mastering its ‘ins and outs.’ And most of them don’t care about the details and challenges you face in getting out the proxy materials and bringing in the vote. That’s your job.

So, learn to distill the process, challenges, and results for your executives and directors. They will appreciate it – and you will get less grief even if you don’t get much glory.”

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12. “I try to make consistent progress on the proxy statement throughout the several months leading to filing it with the SEC by consistently keeping the data sources flowing and by being mindful of the deadlines for those involved in making contributions. Getting the data in my hands on time has gone a long way to prevent last minute fire drills at critical points in our process (i.e., when the draft needs to go to the CEO and then to our Board).

13. I also need to take a breather after each draft is circulated to our review team – stepping away for 48 hours helps us maintain sanity.”

14. “Work with all stakeholders – including outside advisors and vendors – to get a solid schedule that hits all points of the proxy workflow and look at it every day during proxy season. Otherwise, I promise you will get lost!”

15. “Why do I always seem to have the proxy draft open during the Super Bowl?

16. “I wear a band around my wrist to remind myself to take a deep breath at the top of every hour while I work during the proxy season”

## **D. Virtual Annual Meetings**

1. “Really demonstrate the importance of being prepared for every contingency when conducting an annual meeting. It seems commonplace to build in contingencies within the script for shareholder proponents who are unable to connect, but it’s also worth building in contingencies for other scenarios, such as an inspector of



elections or other key participants who lose audio. These contingencies can raise legal issues that should be analyzed in advance (such as need for designation of an alternate inspector).”

2. “Keep asking the service provider for your virtual annual meeting about the steps that they are taking to improve the platform.

For example, does the virtual annual meeting platform provide simultaneous “closed captioning” services – in some format – for your shareholders who are deaf or hard of hearing? That service is readily available from television providers. It may not be perfect for every word but provides an opportunity for all participants to more fully participate in the annual meeting.

Similarly, does the platform include a feature that allows a short video, highlighting events from the past year, to be embedded into the presentation? Many “in person” shareholder meetings included such short videos. However, many of the current vendor platforms do not support the transition from a “live” presentation in the virtual format, to a pre-recorded video, then back to the live presentation. That’s unfortunate. Those videos often do a great job of recapping the company’s story, particularly in terms of highlighting events from the past year. Shareholders really appreciate that recap.”

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3. “Demand that your platform service provider) provide resources to do trial runs of the meeting – the way it will be run the day of the meeting. The company should get as many of these as needed until everything works perfectly.”

4. “The only way to have a smooth meeting is if the service provider and the company are aligned on what will occur at the virtual meeting, such as: placement of the screen to view the content in the room; how questions will be monitored and answered on the virtual meeting tool; if the content is pre-recorded the timing of when the virtual meeting agent hits play, what happens if there are technology glitches during the meeting; what happens if the phone line goes down before the meeting; how the Board and other invited guests will join the virtual meeting, etc.

Have a plan and back-up plans ready and rehearsed. The virtual meeting platform provider needs to be a partner in this!”

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5. “Be aware of your optionality. Not all “virtual” meetings are the same. There are strategic and reasons for proceeding on a “virtual-only” or “hybrid” basis. If your state law doesn’t generally allow virtual meetings (or only allows hybrid or in-person – there is a good state law survey out there to check).”

6. “Once you have a good feel for the legal and regulatory landscape, be cognizant of over-communicating – or under-communicating – with your board, management participants and independent auditor regarding about what to expect. If they’ve been through the process a few times, you might not need to conduct the entire fire drill this year.

Communication is particularly important if this is the first virtual meeting and the participants have never utilized a virtual platform. Scheduling dress-rehearsals with the vendor is not a bad idea. Know that with any change of practice that impacts the board, the key to the preservation of your job is communication, communication and communication.”

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7. “Make sure to appropriately refresh the rules for the meeting and related documentation. These documents are typically pulled forward from year to year, but there will be substantive changes that are needed in connection with a virtual meeting.

Be very clear with the participants about how shareholder questions are going to be handled. This is important not only because it is an area of particular focus for proxy advisors and institutional shareholders, but also because there is a real need for being very clear as to the process of how questions are selected to be addressed during the meeting (particularly those that come in during the meeting) and who has the mic for various types of questions.

One way to handle questions is to “bucketize” the questions that come in prior to the meeting (rather than to try and answer each question) and prepare responses to the subjects covered by the bucketized questions. That way, you can filter out questions that come in during the meeting if they fall within one of the buckets for which you have already prepared responses and allocated the speakers for same.”

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**8.** “COVID has made virtual ASMs the norm. But best practices continue to evolve. It’s important to monitor that evolution and consider how to employ best practices at your ASM. Check your investors’ policies on virtual ASMs. Some have set forth their expectations as part of their governance/voting policies. Virtual ASMs also make the company dependent on a third-party vendor. Evaluate carefully. Book early. Work closely with your rep to ensure alignment as you move through the planning process and when executing the meeting.”

**9.** “I have been doing these since before COVID. First, make sure your charter docs (and state law) permit a virtual meeting. If you didn’t do it in the past, review and amend if needed (don’t assume).”

Make sure you have clear prompts in the scripts and prompts to wait for responses (especially if folks have to type in their questions). It may seem like a long time to wait from where you sit, but give folks some extra time to type.

Also, we always recommend that shareholders enter their questions at the start of the meeting—we say in our script that we will address questions at the appropriate point in the meeting.”

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**10.** “If you have a shareholder proposal, make sure the holder has an opportunity to present and answer any questions during the virtual meeting. We generally have a phone line for our most frequent proponents and informed them of the phone line in advance. Finally, look for other ways to engage your holders.”

**11.** “We always offer a pre-meeting Q&A portal, so folks can post questions in advance. I think it is important for companies to be open to ways to continue to engage with their shareholders even with virtual annual meetings. Providers are coming up with new bells and whistles as these become more mainstream.

Keep an open mind and see what is out there. If issuers don’t show that they are encouraging participation and being responsive, we could eventually end up with unfortunate regulations. I think I heard about companies doing entirely pre-recorded meetings. I don’t think that is the right way to go. A little effort folks!”

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**12.** “Make sure you are allowing time for questions and if choosing questions from a previously submitted pool, ensure you are not picking the favorable ones only.”

**13.** “Lean on the provider, such as Broadridge, as I have found they are very knowledgeable in how to use the technical interface. They also see a lot of meetings and have good tips based on what they have seen.

Hopefully you get no questions, but preparation is key in case you do receive any, particularly around how to view questions, mark which questions have been answered, prioritize questions, etc.

Someone will typically need to read out the questions and that person will need to be prepped on how to use the interface. Be prepared.”

**14.** “Platform technology seems clunky and slow to keep up with investor and proxy advisory demands – main provider is not a tech company – time for new players in the platform field?”

**15.** “Consider pre-recording portions of the meeting, e.g., shareholder proponent statements. Create a new way to handle shareholder questions, e.g., solicit questions in advance and post answers to your website.”

**16.** “Virtual annual meetings have been a godsend. What was typically an exercise of jumping through hoops and spending money on location, audio-visual, food, etc., has now become a simple pre-call with our virtual annual meeting provider and a short 10-minute annual meeting. We decided to take full advantage of the virtual annual meeting format.

We use an audio feed only – no video – therefore eliminating the necessity of having executives and directors gather for the meeting. Our agenda is limited to the requisite business matters. We do not engage in corporate presentations nor do we provide a Q&A opportunity. We decided that a short annual meeting could be supplemented later in the year with a more lively and engaging investor presentation – at the discretion of management.”

**17.** “There appears to be a trend toward the hybrid model (i.e. an in-person meeting combined with a virtual webcast where those attending virtually can watch, ask questions and vote). My problem with virtual meetings is the difficulty that the third-party providers – those who designed the voting platforms – create for holders in street name to attend, to be able to ask questions and to vote.”

**18.** “Making annual meetings virtual-only is still an annual meeting of shareholders. Not a lot of fun to produce. And not much value to our company for all the work and money that goes into it.”

**19.** “Make sure you have the procedure for live Q&A locked down in advance and described adequately in your proxy statement. How will the queue work? How will you address the questions that you don’t get to? You don’t want any surprises on the day of the meeting.”

**20.** “Make sure to check – and re-check – proxy advisory firm commentary and guidelines on virtual meetings before you file your proxy statement, so that you can incorporate any preferred disclosures regarding your annual meeting. Check the policies of your major institutional investors too on this.”

**21.** “Have your IT people verify that the process provided by your meeting provider for folks to join the meeting works from outside the company’s network – and also from within the company’s network. We had a last-minute fire drill because we realized that employees would not be able to join the meeting from the office due to some type of firewall. We fixed it, but those last two days just before the meeting were unnecessarily stressful.”

**22.** “We held a virtual annual meeting last year as a result of the pandemic. We had been wanting to incorporate at least some form of virtual element for awhile, but had received some resistance.

Our transfer agent was great and the collaboration and engagement contributed to a meeting that went off without a hitch. I will say that communication is the most important thing – think through potential issues and ensure that you’re responsive to any questions that come in. We received some nice feedback on the meeting, so it may end up serving as a model for future meetings.”

**23.** “I love the simplicity of virtual annual meetings now that we’ve figured out the technology and the vendors are becoming more sophisticated. It also helps that everyone has gotten comfortable with video calls.



Now, I cringe every time someone suggests a combined virtual/in-person meetings—nothing like having to coordinate a vendor and army of IT folks for the virtual aspect, and also worry about coordinating security, coffee, cookies and chairs for the in-person meeting.”

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**24.** “You can never be too prepared for a virtual meeting given the limitations of technology and the inevitable glitches. Make sure you have a backup plan and a way to get technical help from your transfer agent/virtual meeting provider in the case of a problem. I highly recommend a dry run. It’s worth the extra money.”

**25.** “Ah, the joys of the virtual annual meeting. Sitting in front of a computer, wondering if there is a ghost in the machine. The ghost of corporate secretaries from the past?”

**26.** “It is crucial to find a virtual meeting platform that can really walk you through the event and a platform that seamlessly holds meeting to ensure everyone feels prepared. Annual meetings already take a lot of work and you want a vendor who will make it as painless as possible.”

**27.** – “Communicate early on about the preferences of executives and directors for the meeting. Will there be video? Will any portions be pre-recorded? A lot of the logistics take lead time, so decisions need to be made in advance.

– Have well-defined roles and responsibilities that avoid ‘too many cooks.’ For example, assign one person to sort and assign questions on meeting day, and decide in advance who will speak and respond to questions.

– Make sure rehearsals are as close to the experience that will be had on the actual meeting day as possible, and leave plenty of time to solve access issues.

– Create a roadmap for meeting day for participants and directors so that they have a quick reference guide for how the day of the meeting will proceed.

– Script as much of the meeting as you can to keep everything on track.

– Have one person log-in as a shareholder on the day of the meeting so they can report on the meeting as shareholders are seeing it, and alert the team to any video/audio/technical issues.”

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**28.** “Internal communication during the meeting is potentially a challenge when company participants log-in virtually from different locations. To solve that, we dialed-in to the hosted meeting conference line, logged-in to Broadridge’s virtual platform (which is great, by the way), and had a separate Zoom line open among the company participants.

There are chat features that would work too, but our method prepared us in a way so that we can quickly talk about any questions in real-time and decide who will be answering.”

## **E. Shareholder Proposals**

**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?”

**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.”

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.”

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.”

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.”

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6. “Shareholder proposals? Is this a trick question?”

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.”

8. “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.”

9. “Pre-plan by identifying shareholder proposals your company is likely to get and develop a strategy for engaging/responding.”

10. “When I think of shareholder proposals, dried puke comes to mind. And not the good kind.”

11. “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.”

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12. “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.”

**13.** “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.”

**14.** “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.”

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**15.** “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.”

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**16.** “Ever since COVID-19/remote work, make sure that the mailroom / individuals who check the mail at the corporate headquarters are checking the mail and will let you know if/when a proposal comes in. Especially for companies with proposal deadlines around the holidays, this could help prevent something slipping through the cracks.”

**17.** “You may want to allow the proposal to be included, even though there may be a technical reason to exclude. Always consider the big picture.”

**18.** “When I first went in-house, I detested working on shareholder proposals. But over time, I have come to appreciate them. Perhaps like an attachment to an old, crusty pair of slippers.”

**19.** “An important step is making sure that you know that you have received a proposal. Especially with so many people working remotely, it’s helpful to alert the CEO’s office, the mail room (yes, they still exist), IR team, the GC’s office, and other places in your company where emails or hard copy letters from proponents might land. That increases the chances that they will recognize and promptly forward to you.”

**20.** “Do the technical stuff. If you do, you just might win a TKO: Check the holding period. Compare the name on the account with the name of the submitter. And so on.

If you find a technical flaw, it doesn’t mean you won’t engage with the shareholder. It just means that you have a bit more leverage – and possibly the basis for a no-action request.”

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**21.** “Contact the proponent. Let them know you are open to discussion. Do that even if the proponent won’t – or doesn’t – engage. If you end up having to include the proposal in your proxy statement, you can say that you reached out and the proponent would not engage.”

22. “If the proponent is open to it and most are, please do engage. Be an active listener. Listen to learn. Then, put the company’s best case forward. If the proponent’s goal aligns with your company’s, see if you can’t work something out and negotiate a withdrawal.”

23. “With some experience, I’ve come to realize that certain proponents are worth taking the time to negotiate with. They can be very reasonable. And then you’ll find some for which negotiations won’t work. You should be able to discern which proponents fall into that camp pretty quickly.”

## **F. Shareholder Proposals: Checklist of Items When You Receive a Proposal**

Here is a checklist of 14 items to consider when you receive a proposal:

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1. Acknowledge receipt to the shareholder proponent.
2. Check 14a-8 procedural requirements to see if it’s a valid submission and, if so, whether there is a reasonable basis to seek a no-action request. Outside counsel input is very valuable at this stage.
3. If the submission has a procedural deficiency, send the required letter to the shareholder proponent.
4. Be sure deadlines for handling the proposal are included in the annual meeting calendar.
5. Circulate the proposal within the company as needed and add the topic to the next Board and/or Governance Committee meeting, and also consider whether a copy should be shared with the Board immediately.
6. Gather information internally on whether any of the requested actions are underway or already substantially implemented.
7. Request a call with the shareholder to discuss the proposal, convey any information on mitigation actions already underway and see if there is a desire to negotiate a withdrawal. There’s no downside here, other than a little bit of your time.
8. Research the proposal and review other statements in opposition at other companies that received the same type of proposal.
9. Research whether peers have received the proposal and, if so, the outcome.
10. Reach out to your proxy solicitor to get their thoughts on the likely outcome. Consider whether you will need a vote projection to share with management and the board.
11. Start drafting the statement in opposition, even if you are planning to seek no-action relief. Sharing the draft statement in opposition with the board early in the process can be very helpful in the board’s deliberation.
12. If the proposal is going to be included in the proxy statement, share a copy of the statement in opposition with the proponent in accordance with the Rule 14a-8 deadline.
13. Communicate with the shareholder proponent prior to the meeting on logistics for presenting the proposal and getting into the annual meeting.
14. If the meeting is in person, reserve a seat near the microphone for the proponent or their representative and assign a person to sit next to them to serve as their guide throughout the meeting and answer any questions. If possible, introduce the proponent to key members of management. Kindness goes a long way.

## **G. Using Proxy Solicitors**

1. “We always use a proxy solicitor. There were a few prickly times when I thought it best to hire a ‘junk yard dog’ solicitor because the stakes were high. Think that has become a harder task – and over time, I figured out how to hire the right one. Remember, there might be scant loyalty and that vendor may be working for an activist next year against you.”

2. “I recommend engaging a proxy solicitor that is responsive and demonstrates knowledge of your shareholder base. I regularly ask for updates on how our largest institutional shareholders have voted following filing of the proxy statement.

Our proxy solicitor also provides some insight into how our largest holders typically vote (i.e., with ISS or Glass Lewis or neither). One thing I would note is that with BlackRock allowing many of their investors to vote their own holdings, it was harder to track that voting block this year in real time.”

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3. “Save the money unless you have a controversial item on the ballot (and even then maybe save the money). I rarely hear stories of people bragging about how much value a proxy solicitor has added. That said, it is good cover if a vote goes sideways.”

4. “There are some great people in this field – and they are often underappreciated or ignored until an activist knocks on your company’s door.

I’d urge you to appreciate them every year, not just the tough ones; make them part of your team from the start. They can help you with suggestions for proxy content based on their experience at other companies, with tips on timing and staging proxy distribution. They can help you be more strategic in your approach to shareholder engagement. They can give you information and insights that enable you to keep your CEO, Chair and Board up-to-date on how the vote is coming in.”

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5. “With the decline in retail vote turnout, a proxy solicitor can help you bring in those votes when you really need them. The work is tedious but they can do it well.”

6. “Jobs at proxy solicitation firms can be thankless – especially at the lower levels. Acknowledge that. Be appreciative.

Distinguish your company from the many others they deal with. Send the team at your proxy solicitation firm some company t-shirts or mugs. Send them some of your company’s (edible) product to nosh on when they are crunching numbers or making calls late at night. These are not entirely random acts of kindness, but they do pay off and you make friends who will be there for you when you really need them.”

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7. “Shopping for a proxy solicitor because you might be looking at a proxy fight? Your lawyer and banker will likely have a ‘preferred solicitor provider.’ Often people who are just like them. Don’t just accept those suggestions without testing your company’s chemistry with the individuals at those preferred providers.

Be especially alert to firms that have “one way” to work – and don’t like questions about why that one way is the only way. Or whether other approaches might be better in your particular circumstances. You want a proxy solicitor with whom you and your company can work, learn, and produce results together.”



8. “I have historically engaged a proxy solicitor to provide ‘on call’ help throughout the year, as well as to cover the annual meeting, for a nominal fee. This is the best money I spend: they are at the ready to address any questions and concerns as they come up.

I can have them handle all of those pesky ‘what-if’s’ that arise during the year and they provide ongoing surveillance of our top institutional holders, which is helpful in coming up with the list of firms to reach out to for off-season engagement. Obviously, it does not include any solicitation that may be needed, but if we need them, we have a firm at our side who knows us and can respond as needed quickly and efficiently.”

## **H. Working With Broadridge During Proxy Season**

1. “Broadridge used to be that company that mailed out millions and millions and millions of proxy statements. That is history. Now, it’s much more than a mailing house.”

2. “Take the time to really understand how they are handling both paper and electronic distribution of your information. Take the time to understand how they will staff your hybrid or virtual annual meeting – and the ‘ins and outs’ of their meeting technology. Both are maddeningly tedious processes. But you need to understand how these things work so you can work with Broadridge to get the best results for your company.”

3. “My suggestion here is going to be controversial, and understandably so. Since I joined my company, I have been thrilled to have Broadridge handle our annual meeting fulfillment completely end-to-end – they distribute materials to both record and beneficial holders, and do everything except printing. They also perform tabulation for the annual meeting and provide an inspector of election.

They also handle our virtual meeting platform. I do so much less work and worrying now that Broadridge is an end-to-end provider. I understand the concern about fees are high but most companies are going to pay them anyway. But they do a fantastic job and I have been happy with their service, responsiveness and work product.”

4. “Having Broadridge as our transfer agent helps us stay on schedule and keeps us in regular contact with them.”

5. “Communicate early and often. Broadridge is a great partner, but you often get out of the relationship what you put in.”

6. “I’ve been on a tour of Broadridge’s distribution hub out on Long Island and it was beyond impressive. They are a well-oiled machine.”

7. “We have had issues with Broadridge for our virtual annual meeting over the past two years. My advice would be to stay on top of them and insist on a strong team to assist you. Unfortunately, their sites had flaws that we only learned about at the last minute.”

## **I. How This Proxy Season Is Faring So Far**

1. “It’s interesting to reflect on the proxy season in the midst of it. I guess I would say it’s going okay because I am accustomed to the madness. I’m not sure my husband and kids would agree.”

2. “Proxy season remains busier than necessary as tasks that could have been completed a year ago were not wrapped up. Let’s make the following resolutions:

– Get a draft of your Grants of Plan Based Awards Table started NOW. You know who your executive officers are at present. Many (if not most) companies have already made annual equity grants, and established the target/maximum for annual incentive opportunities for the year. Rather than waiting until 2024, start populating the GPBA table with the data you know at present.

– Similarly, start marking up next year's CD&A with the changes made in January/February 2023 to the compensation program. Describe (1) any new metrics or weighting for metrics for the annual incentive, (2) the rationale behind the changes, and (if applicable) (3), the difference between the target/maximum payout for that metric if it was raised or lowered from 2022 and, if so, by how much. Similarly, describe any changes to the equity mix for 2023. Once you know your say-on-pay results, update that section of the CD&A. It should be a work in progress throughout 2023—not a January 2024 project."

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3. "Proxy season this year is like...WHOA."

4. "The biggest change in 2023 is that late-breaking changes to the amounts reported for named executive officers in the summary compensation table (SCT) must be taken into account for purposes of the Pay Versus Performance (PVP) disclosure.

So, for example, when the "All Other Compensation" column changes at the last minute because of some late-reported perquisite or other amount, that amount needs not only to be reflected in SCT but must also be carried over to the PVP and reflected in the Compensation Actually Paid (CAP) calculations. I suspect that this is not being done, because folks are viewing the PVP table as they have previously been done.

Remember that PVP is not like your other compensation tables—it will continue to change as the most recent fiscal year's pay numbers change in the SCT."

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5. "My thoughts on proxy season this year are not fit to print."

6. "With all the hype around the impact of universal proxy, I think that many in the proxy/annual general meeting (AGM) space are breathing a sigh of relief that it doesn't appear to have been as impactful as predicted. At least, this is the case so far; maybe a year or two down the road will be different.

Another favorable change is the slight move away from remote meetings. The service providers in that space were simply pushed beyond their ability to do a good job in connection with remote meetings and it's nice to have the option to do an in-person meeting and leave all those stresses behind (hopefully for good)."

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7. "Three words: Pay Versus Performance. That's all that needs to be said."