

## **The Proxy of 2020: Where We Are Now and Where We're Headed**

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### **Overview**

- In the last 10 years, the proxy has arguably changed more than any other SEC-filed document
  - Lengths have increased between 200% and 400%
  - Use of the proxy has broadened as say on pay rolls on and activists use compensation as a battleground
- Dodd-Frank rule-making continues with pay ratio and pay vs. performance
- New strategies are emerging every year, such as elimination of the Q&A model and addition of visualization

## 10 Topics

1. What will the proxy of 2020 look like?
2. Who will be the consumer of the 2020 proxy?
3. Is there a battleground for proxy litigation in 2020?
4. What new requirements will exist in 2020?
5. How influential will proxy advisors be in 2020?
6. How will award designs react to new regulation?
7. What will become of supplemental disclosures?
8. What role will technology play in the proxy of 2020?
9. Will the proxy preemptively speak to activists?
10. What else?

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## 1. What will the proxy of 2020 look like?

- Size / density – larger or smaller?
- Charts and visualization – more or less?
- Use of executive summaries
- “Plain-English” versus legalese

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## 2. Who will the “consumer” of the 2020 proxy be, and what does this imply?

- Who reads the proxy?
  - Proxy advisory firms
  - Large funds (that do not use proxy advisory firms)
  - Activists
  - Plaintiff litigators
  - The media
- Who will be the main consumer, and how will that affect decisions re: “plain-English,” size/granularity, visualization, and supplemental disclosures?

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## 3. Is there a material battleground for proxy litigation?

- Filed vs. furnished
- Confusing or inconsistent disclosure
- Media shaming
- Does this motivate a longer and wordier proxy (to avoid misinterpretation) or a shorter and cleaner proxy (to drive simplicity)?

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## 4. What will be in the proxy in 2020 that's not currently required?

- Mandated
  - Pay ratio
  - Pay vs. performance
  - Clawback provision descriptions
- Optional
  - More supplemental narratives?
  - Sensitivity analysis and what-if scenarios?
- What else?

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## 5. What will proxy advisors be focused on in 2020? Will companies care?

- To what extent will the say on pay vote matter in 2020?
  - Low importance – almost everyone is passing
  - High importance – will the bar change such that passing, in effect, means > 80%?
- What will be core to the proxy advisors?
  - Relative TSR performance (given P4P rules)
  - Share ownership?
  - What else?

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## 6. How will award designs react to regulation and current trends?

- Will regulation and proxy advisor voting criteria drive further changes in award design?
  - Examples:
    - Pay vs. performance → Use of TSR as a metric
    - Proxy advisory firms → 3-year (not 1-year) metrics
  - OR, will design be driven by internal business needs, and the proxy become a vehicle for justifying this?
    - Example: supplemental narrative supporting EPS as a better metric than TSR

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## 7. Will supplemental disclosures become the “new normal”?

- Provide context surrounding calculations
  - Examples:
    - Realized/realizable pay
    - Pay ratio supplemental disclosures
    - Pay vs. performance supplemental disclosures
  - What else?
- Will investors utilize supplemental disclosures, or will say on pay remain “say on performance”?

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## 8. How might technology facilitate better shareholder dialogue?

- XBRL tagging
- Interactive tools within the proxy (or interactive proxies)
- More recurring shareholder engagement

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## 9. To what extent will the proxy preemptively speak to activists?

- How do activists use the proxy as a battleground?
- What can the proxy do, if anything, to stave off activists?

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## 10. What do you think? What are your predictions for the proxy of 2020?

- Will everyone still be on annual Say on Pay vote?
- Will larger institutions pushback on how companies are designing for ISS
- How else might technology further enhance the proxy down the road? Could social media play a role (hard to fathom, but who knows)?

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