

2014-2015 YEAR-END TOOL KIT

PROXY STATEMENT DESIGN AND ITS IMPACT ON COMPENSATION MATTERS

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Speed Read: Effective proxy solicitations depend on effective presentation of management's message in the proxy statement. Investing in review and redesign of content and presentation can return more favorable stockholder participation in the annual meeting votes.

Proxy statements have grown in length and complexity in recent years. In many cases, expanded text has been driven by the desire to explain compensation structure and decisions and to support a strong and positive stockholder response on say-on-pay votes. Unless thoughtfully presented, however, this disclosure can become an obstacle to communicating the company's goals and achievements to investors. Many companies are therefore devoting considerable attention to proxy statement design considerations, especially in the compensation discussion and analysis (CD&A) section. While there is no one-size-fits-all solution to making a proxy statement more readable, engaging and persuasive, the most effective proxy statements reflect a number of the following design and presentation factors:

- **Plain English** is very important to a clear presentation. Use short words and sentences. Write in the active voice. Avoid financial and legal jargon, technical terms and over-use of defined terms.
- **Executive summaries** have become a common, but some are more effective than others. Consider both an overall proxy statement summary as well as a CD&A summary. The CD&A summary should highlight the company's business performance, the key elements of the executive compensation program, any changes made during the year and the rationales that support the company's compensation decisions and programs.
- **Pay for performance** is often highlighted, but less often clearly explained. Make it easier for investors to understand how the company's compensation program structure and decisions relate to the company's stock price performance and the company's business and financial goals and performance. Support the relationship with objective data and facts, not abstract assertions.
- **Checklists** that highlight the company's compensation policies and practices, as well as those that the company avoids ("what we do – what we don't do"), can effectively highlight best practices that investors and proxy advisory firms look for in proxy statements but may not otherwise easily find.
- **Alternative/supplemental pay tables and graphs**, such as "Realized Pay" and "Realizable Pay," can supplement the required SEC tables and help stockholders understand how the compensation committee made compensation decisions and demonstrate the effectiveness of the company's pay for performance structures.
- **Peer group comparisons** are more likely to be persuasive if the company explains how the peer group was chosen and why this peer group provides an appropriate comparison.

- **Charts and graphs**, in color or black and white, can make CD&A easier to read and understand. They can be particularly effective for presenting complex topics that might otherwise require complex or lengthy narrative discussions or complicated tables. Charts and graphs can help break down complex topics and allow shareholders to extract the most important information easily, but companies should avoid “creative” graphs that are difficult to understand easily and intuitively.
- **White space**, especially when combined with color charts and graphs, can dramatically improve the chances that investors will actually read – and understand – the CD&A.
- **Bullet point lists**, which will create white space in text sections, can also improve readability.
- **A detailed table of contents**, with subheadings that highlight the organization and flow of the proxy statement, can also improve readability. For electronic copies, use hyperlinks to help readers get to sections of the proxy statement.
- **Avoid redundancy**. It makes the proxy statement longer, makes navigation more difficult, discourages stockholders from reading the text and frustrates a concise, clear and persuasive discussion of the company’s compensation decisions and programs.
- **Design for the screen**. Many readers, and most institutional investors, will read the proxy materials in electronic form, not paper. This may affect the arrangement of text, tables and other graphic materials to improve readability on an electronic display.
- **Prioritize top destinations**. Most surveys and commentators suggest that the most frequently read sections of the proxy statement are proxy statement summaries and CD&A summaries, followed by pay for performance and board independence issues. Concentrate on clear and effective presentations in these areas.
- **Performance metrics** are becoming a common way for companies to highlight the relationship of pay to performance in a proxy statement or CD&A summary. In many cases, these metrics are “non-GAAP performance measures” under SEC rules and must be presented in compliance with SEC rules. When used only to present compensation target levels, the SEC does not require Regulation G compliance, although the company must provide disclosure that explains how the number is calculated from the company’s audited financial statements. However, if the company uses non-GAAP financial measures for any other purpose in the proxy statement, including to explain the relationship between pay and performance, the disclosure must comply with Regulation G and Item 10(e) of Regulation S-K. This may require either a reference to the same non-GAAP financial measures in the company’s Form 10-K or an annex to the proxy statement with reconciliations and other required disclosure.