2020 AGM Checklist

KINGSDALE Advisors

As the advisor with the largest roster of annual general meeting clients on the TSX, Kingsdale's AGM checklist has become the go-to tool for Canadian companies preparing for their next shareholder meeting.

AGMs are no longer simple and routine. Success requires year-round consultation, preparation, and planning. Companies that are not prepared may be surprised by against recommendations from the proxy advisors or withhold votes from key shareholders.

This year's checklist poses ten questions designed to equip boards to evaluate their readiness and identify vulnerabilities.

01

Do you know your shareholders? Are you aware of how sensitive your shareholder base is to the recommendations of the proxy advisors? Too often companies are taken aback by how many shareholders follow the voting recommendations of Institutional Shareholder Services (ISS) and/or Glass Lewis. At the same time, we know that an increasing number of large institutional shareholders are taking back the decision-making process with the expansion of in-house governance teams with custom, and sometimes stricter, voting policies. For these investors, ISS and Glass Lewis have become data aggregators, not vote-deciders.

02

Is your participation rate at your meeting declining? Beyond the vote results themselves, a high shareholder turnout is a sign of a healthy company. One of the first things an activist will look at is previous years' turnouts. Low turnout means an activist's position can have a disproportionate impact on the outcome of the vote. Running a strategic AGM outreach and solicitation program will not only increase your shareholder visibility and turnout, but also provide management and the board with an opportunity to identify potential issues and address any vulnerabilities. If your turnout is declining as a result of increasing retail shareholder ownership, a solicitation campaign can get your retail shareholders "in the habit" of voting.

03

Are you considering a virtual-only or hybrid AGM? Virtual or hybrid AGMs allow all shareholders the opportunity to participate in your meetings. In fact, with 95% of shares being voted well in advance of an AGM, advance notice by-laws limiting last minute director nominations, and enhanced governance practices at most companies, any incremental benefits of an in-person AGM are debatable. If you have chosen a virtual-only solution, are you aware of Glass Lewis's policy update requiring that shareholders be afforded the same rights and opportunities to participate as they would at an in-person meeting?

04

Do you understand the increasing bar with which executive compensation will be evaluated? This year, proxy advisors set a record for against recommendations on say-on-pay votes while, over the past decade, average support levels have steadily dropped as shareholders have tightened their own policies. The proxy advisors are considering adjustments to the way they evaluate the alignment between pay and performance: ISS is planning to incorporate Economic Value Added (EVA) as a secondary measure in its quantitative pay-for-performance model beyond Total Shareholder Returns, while Glass Lewis is considering changes in its metrics and valuation methodology for incentive awards. For companies that received low support last year (e.g. below 70% for ISS; below 80% for Glass Lewis), companies are expected to demonstrate and disclose reasonable "responsiveness" to, and engagement with, shareholders.

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05 **Is your board diverse enough?** If you are a CBCA company, new federal legislation requires you to “comply or explain” your diversity policies with respect to women, Aboriginal persons, and visible minorities on your board and in senior management positions. If you are a part of a TSX-listed company with a board that is not at least 30% diverse on a gender and racial basis, you risk withhold recommendations from the proxy advisors for incumbent nominating committee members. Be aware that some institutional shareholders are establishing diversity policies that are even more stringent than those of the proxy advisors.

06 **Are your directors suited for your company’s current situation and future challenges?** Do you maintain a skills matrix of the expertise required by your board today and into the future? Are any of your directors at risk of being overboarded or long-tenured? Having long-tenured board members does not necessarily indicate a problem, but activists will target these directors particularly if their tenure is coupled with underperformance. If you do have long-tenured directors, are shareholders clear on why they are important and your broader approach to refreshment and succession planning?

07 **Do your incumbent directors have appropriate skin in the game?** Are directors in compliance with the company’s share ownership guidelines? If not, is there a mechanism and/or policies in place to ensure independent directors attain their minimum ownership requirements within a prescribed window? Are your ownership requirements in-line with industry best practices? Low share ownership can be perceived as a lack of alignment between directors and shareholders and is low-hanging fruit for activists.

08 **Are you prepared for an increase in shareholder proposals?** In 2019, we saw a dramatic increase in shareholder proposals across Canada, with executive compensation, governance, and environmental proposals topping the list. Do you know what types of shareholder proposals your peers have received and what proposals your shareholders have put forward at other companies? Have you scanned your shareholder base for the known ‘serial proposal submitters’ who often have only nominal investments that may fall below your usual radar?

09 **Are you aware of the rising importance of E&S?** Environmental and social issues have become a critical component in the decision-making process for institutional investors and ingrained in a culture of responsible management. Do you know what your shareholders are looking for with regard to E&S? Have you integrated E&S criteria into your executive compensation? Are you providing sufficient disclosure about E&S activities with a Corporate Social Responsibility Report?

10 **Are you planning to renew your rolling reserve equity plan, or do you intend to seek shareholder approval for additional treasury reserves?** Be aware of the ISS Equity Plan Scorecard approach to evaluating equity plans and Glass Lewis’s equity compensation model.

If this checklist has prompted a question, we are here to help. As trusted advisors to boards and management, we regularly help our clients work through these challenging issues.

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