



PROPOSAL ANALYSIS

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Shareholder Proposals – Getting Ready for 2011

By Chris Chi and Rachel Posner¹

For most public companies, November and December mark the time of year when shareholder proposals arrive at company headquarters. These proposals are often submitted by activist investors seeking to instigate a change in board composition, or corporate governance practices or to use the company's annual meeting proxy statement to draw attention to a particular social issue.

Year-end and the subsequent annual meeting season are busy times for public companies. But since shareholder proposals arrive during the hectic holiday season, they sometimes are lost in the shuffle, falling to the bottom of the piles on the CFO's and general counsel's desks.

The consequences of procrastinating, however, can be significant. SEC rules set specific deadlines for responding to – and seeking exclusion of – shareholder proposals. A failure to respond promptly may result in the company's loss of its ability to exclude the proposal from its proxy statement. Moreover, delayed reaction can result in suboptimal investor communications and last-minute scrambling to secure shareholder votes before the company's annual meeting.

As the 2011 proxy season begins, we believe that it is a good time for CFOs and general counsels to refresh their knowledge of the SEC's shareholder proposal rules. Now seems an especially good time to do so since, in 2011, for the first time, public companies will be required to submit to their shareholders "say on pay" proposals. The advent of mandatory say on pay should prompt companies to refine their "how and why" message on executive pay. This message should be clear in the compensation discussion and analysis portion of the proxy statement, in the company's supporting statement for its say on pay proposal and in the company's opposition or supporting statements to any other compensation-related shareholder proposals.

We believe that public companies may see an increase in shareholder proposals this coming proxy season as a result of the SEC's recent move to delay implementation of its new proxy access rules due to pending litigation. Until this delay, labor unions, pension funds and special interest activists reportedly spent significant time identifying director candidates and companies that would have been targeted under the new proxy access rules. With proxy access now on hold for at least another year, these activist investors may refocus on shareholder proposals, which they have traditionally used to vocalize dissatisfaction with corporate governance, executive pay practices and financial performance.

To assist you in planning your 2011 proxy season, we provide this discussion of the SEC's shareholder proposal rules, a sample response timeline and suggestions on how to shape your company's communication strategy and plan your company's annual meeting. We believe that companies can improve their shareholder relations and sharpen their message by viewing shareholder proposals of all kinds – whether pay-related, social policy-oriented or otherwise – as an opportunity to tell the company's story.

Shareholder proposals fall into three categories. The first category relates to executive compensation, a hot-button topic that has grown even more prominent during the current difficult economic environment. According to Georgeson's 2010 Annual Corporate Governance Review², executive compensation-related proposals constituted 33.9% of all shareholder proposals submitted during the 2010 proxy season. The most popular type of this kind of proposal in recent years has been shareholder say on pay which, under the Dodd-Frank Wall Street Reform and Consumer Protection Act, will be required to be put forth by public companies to shareholder vote in 2011 and no less frequently than every three years thereafter.³ Notwithstanding the mandatory nature of shareholder say on pay going forward, we expect to continue to see shareholder proposals seeking to establish guidelines requiring executives to hold equity for specified periods; seeking to limit executive death benefits; and seeking "clawback" of bonuses following accounting restatements, among others.

The second category relates to corporate governance generally. It consists of proposals aimed at reshaping board governance and empowering shareholders to have greater say in company management. This category encompasses, among others, proposals regarding the dismantling of anti-takeover defenses such as staggered boards and poison pills; the separation of the roles of board chairman and CEO; majority voting; and shareholders' rights to call special meetings and vote by written consent. Collectively, these types of proposals accounted for 58.9% of shareholder proposals in 2010, according to Georgeson's research.

The third category covers miscellaneous proposals, largely involving social or political issues. In past years, these have included requests for disclosure of corporate political contributions and proposals that companies cease business in countries with histories of human rights violations. These proposals typically do not meet with much success, although, as discussed below, the SEC's inclination throughout the years has been to allow such proposals into company proxies on the basis that they are socially or politically "significant." The proponents of such proposals seem primarily intent on making political and social statements that can influence public policy, rather than directly changing corporate behavior. This category accounted for 7.2% of shareholder proposals in 2010, according to Georgeson's research.

Below are our suggestions for responding to shareholder proposals in a systematic and effective manner.

Develop a timeline for responding to shareholder proposals. A detailed response timeline (which can be integrated into a larger proxy season time and responsibility list) helps ensure that a company will meet SEC deadlines and avoid having to include a shareholder proposal in its proxy statement that could have been excluded due to procedural or substantive defects. Moreover, a timeline helps general counsels and CFOs appropriately budget time and delegate tasks.

The table below provides a draft timeline. It assumes that the company reports its financial statements on a calendar-year basis, filed its proxy statement for last year on April 1, 2010, will file this coming season's proxy statement on April 1, 2011 and will hold its annual meeting this coming spring on May 5, 2011.

2011 SHAREHOLDER PROPOSAL RESPONSE TIMELINE

Date	Action Item	Notes
December 2, 2010	Deadline for shareholder proposals to be submitted to company for inclusion in proxy statement.	Under Rule 14a-8(e)(2), to be included in the company's proxy statement, shareholder proposals must be received not less than 120 days before the anniversary date of the mailing of previous year's proxy statement release (or a "reasonable time" before company begins printing proxy materials if annual meeting date has moved by more than 30 days).
December 16, 2010	Deadline to notify shareholder proponent of any procedural or substantive defects in its proposal, assuming that proposal was received on December 2, 2010. Deadline will be earlier if proposal submitted earlier.	Such notification must occur within 14 days of receipt of proposal under Rule 14a-8(f).
December 30, 2011	Assuming company notification of defects in proposal occurs on December 16, 2010, this is the deadline for shareholder proponent to respond to such notice.	See Rule 14a-8(f).
January 2-10, 2011	Discuss shareholder proposals with nominating and corporate governance committee; consider engaging proxy solicitor.	"Response team" consisting of investor relations, legal and management professionals should be established.
January 11, 2011	Due date for filing SEC no-action request if company intends to exclude shareholder proposal.	See Rule 14a-8(j). No-action request must be filed no later than 80 days before filing of definitive proxy statement unless company shows good cause for missing deadline.
February 2011	Negotiate with shareholder proponents as appropriate; draft opposition or support statements; prepare shareholder communications and outreach strategy.	Proxy statement should be drafted so that "governance message" comes through holistically in CD&A, shareholder proposal opposition or support statements.
March 1, 2011	Provide shareholder proponent with copy of company opposition statement and proposal.	See Rule 14a-8(m)(3)(i) and (ii); company must provide copy of opposition statement 30 days before filing definitive proxy statement (or no later than 5 days after receiving revised proposal after no-action request).

Date	Action Item	Notes
April 1, 2011	File definitive proxy statement.	2011 proxy statement to include mandatory say-on-pay proposal.
Mid-April to Early May 2011	Conduct shareholder outreach campaign; monitor vote results.	RiskMetrics recommendations usually released about two weeks before annual meeting.
May 5, 2011	Annual Meeting.	Prepare effective script, rules of conduct and investor presentation.

Research the success rate of the particular proposals and model potential vote outcomes. The Georgeson Annual Corporate Governance Report provides a useful resource for estimating the odds that a shareholder proposal has of passing. For instance, Georgeson’s research shows that in 2010, proposals to declassify staggered boards typically received approximately 69% of votes cast, while proposals allowing shareholder action by written consent garnered an average of 54% of votes cast.

Moreover, Georgeson compiles company-by-company shareholder voting results (with respect to both management proposals and shareholder proposals and, where available, providing the identity of the shareholder proponent). You can use Georgeson’s research to identify proxy filings by companies that recently voted on proposals similar to those you now face and to develop a sense of how those similarly situated public companies made the case for or against such proposals. For social policy or politically-oriented proposals, you may need to conduct additional independent research to identify precedent. In most cases, precedent can be located with relative ease using the SEC’s EDGAR database or other SEC filing research tools.

Your team may be able to use this research to project possible vote outcomes (assuming that a comparison company’s investor base is similar to that of your company). Your team should analyze the voting histories and policies of your company’s large institutional shareholders who file on Schedules 13D, 13F and 13G or under Section 16. A proxy solicitor can help with this analysis, which is critical in determining which shareholders will be the focus of outreach efforts.

Determine whether the company will seek a no-action request to exclude any proposal(s) on procedural or substantive grounds.

As indicated in our sample timeline, within 14 days of receiving a proposal, companies must notify proponents of any procedural or substantive defects. Soon thereafter, a company must decide whether or not it will seek to exclude a shareholder proposal using the SEC’s no-action letter process.

Rule 14a-8 sets forth 13 substantive grounds for excluding a shareholder proposal. The company bears the burden of persuading the SEC that it is entitled to exclude a proposal and the SEC will not consider a ground for exclusion unless it is specifically raised by the company. The table below summarizes the Rule 14a-8 grounds for exclusion.

GROUND FOR EXCLUDING SHAREHOLDER PROPOSALS UNDER RULE 14a-8⁴

Grounds	Rule	Notes
Proposal not proper subject for shareholder action under state law.	Rule 14a-8(i)(1)	Proponents typically avoid this ground for exclusion by phrasing proposal as “precatory” rather than “mandatory” - i.e., by asking company to “consider” a proposal rather than requiring its implementation. Staff asks for local counsel opinion if company asserts this ground. Examples: SEC has allowed companies to exclude proposals that would require board to declassify staggered board. SEC has permitted proposals requesting company “take the steps necessary” to declassify staggered board.
Proposal would, if implemented, cause company to violate state, federal or foreign law.	Rule 14a-8(i)(2)	Example: SEC allowed company to exclude a proposal that would require mandatory board retirement age, where doing so would violate state age discrimination law.
Proposal or supporting statement is contrary to SEC proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.	Rule 14a-8(i)(3)	SEC allows exclusion of proposals that are so inherently vague it is unclear what proponent is asking. However, SEC permits revision of proposals to remove statements that company demonstrates are false.

Grounds	Rule	Notes
Proposal relates to redress of a personal claim or grievance against company or other person, or is designed to result in a benefit to the shareholder, or to further a personal interest, which is not shared by the other shareholders at large.	Rule 14a-8(i)(4)	In considering exclusion request, SEC probes motives of proponent. These types of exclusion requests often involve proposals by disgruntled former employees.
Proposal relates to operations that account for less than 5% of the company's total assets at the end of its most recent fiscal year, and for less than 5% of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business.	Rule 14a-8(i)(5)	SEC has been extremely permissive here, allowing proposals deemed to be of social or political "significance" that are somehow related to the company's business, even in some instances where 5% asset and gross sales thresholds were not met (e.g., SEC permitted proposal requesting review of Halliburton Co.'s operations in Iran, though 5% tests not met).
Company would lack the power or authority to implement the proposal.	Rule 14a-8(i)(6)	Examples: SEC allowed exclusion of proposal that would require company to breach existing contracts. SEC permitted revised proposal that applied only to future contracts.
Proposal deals with a matter relating to the company's ordinary business operations.	Rule 14a-8(i)(7)	The most frequently utilized grounds for exclusion, with companies typically arguing proposal seeks to "micro-manage" the business. As with Rule 14a-8(i)(5), SEC has facilitated ability to bring proposals that relate to matters deemed of political or social significance. For instance, SEC has recently permitted proposals urging companies to adopt healthcare reform principles. Additionally, the SEC in 2009 stated that proposals regarding CEO succession planning may no longer be excluded under Rule 14-a(i)(7). In 2009, the SEC also stated that proposals relating to environmental, financial and health risks may represent significant issues that transcend day-to-day company business and therefore will be more difficult to exclude.
Proposal relates to an election for membership on the company's board of directors.	Rule 14a-8(i)(8)	Implementation of proxy access rules would narrow this exclusion, permitting shareholders to bring proposals that seek to reform bylaws to permit proxy access with even less restrictive eligibility requirements than those proposed by SEC.
Proposal directly conflicts with one of the company's own proposals to be submitted at same meeting.	Rule 14a-8(i)(9)	Prevents different and confusing votes on the same issue. Company can utilize exclusion to bring management proposal on same matter. Example: Company that brought management proposal to allow holders of 25% of outstanding voting shares to call a special meeting was able to exclude dissident proposal that would have allowed holders of 10% of outstanding voting shares to call a special meeting.
Company has already substantially implemented the proposal.	Rule 14a-8(i)(10)	"Substantially implemented" is not well defined and is analyzed by SEC on a case-by-case basis. With respect to new say on pay rules, SEC-proposed changes to Rule 14a-8(i)(10) clarify that say on pay or say when on pay proposals may be excluded if company has implemented a say when on pay vote that is consistent with plurality of votes cast in most recent required shareholder vote.
Proposal substantially duplicates another proposal previously submitted to the company by another shareholder that will be included in the company's proxy materials for the same meeting.	Rule 14a-8(i)(11)	Proposal first submitted is included. Management cannot choose between multiple proposals.
Proposal deals with substantially the same subject matter as another proposal or proposals that previously has or have been included in the company's proxy materials within a specified time frame and did not receive a specified percentage of the vote.	Rule 14a-8(i)(12)	Not frequently utilized because minimum previous thresholds of support are so low (3%, 6% or 10%, depending on how frequently proposed during previous five calendar years).
Proposal relates to specific amounts of cash or stock dividends.	Rule 14a-8(i)(13)	Example: SEC allowed exclusion of proposal to declare a dividend of 75% of earnings per share. Such proposals have been very uncommon in recent years.

As a general matter, shareholder proposals are difficult to exclude. Basic eligibility requirements are not onerous. To bring a proposal, a shareholder must have owned only the lesser of \$2,000 in market value of the company's securities, or 1% of outstanding securities, for the year prior to submission of the proposal (and must continue to hold those securities through the annual meeting). Thus, special interest activists and perennial governance gadflies utilize the shareholder proposal process to push pet issues, although they often have miniscule economic interests in the target companies. Furthermore, activists tend to be familiar with the SEC's rules on shareholder proposals and do not often draft defective proposals – and if they do, the SEC often provides an opportunity to cure defects. Moreover, the SEC's posture toward the substance of shareholder proposals over the years has been generally permissive. As indicated in the table above, attempts to exclude proposals on the grounds that they are insignificant to the company's business or encroach on ordinary course management functions pursuant to Rule 14a-8(i)(5) or Rule 14a-8(i)(7) fail if the SEC deems the proposal to implicate a socially or politically significant matter.

Nonetheless, a company may want to seek exclusion of a proposal for a variety of reasons – for instance, because it is misleading or inflammatory, or simply because, in management's view, considering the proposal would be a waste of shareholders' time. If so, company counsel should begin preparing the no-action request soon after the proposal is submitted, because research may be time consuming and the SEC's deadline for filing the no-action request falls 80 days before the company's filing of its proxy statement.

Consider negotiating with the shareholder for a withdrawal of the proposal, taking pre-emptive action or bringing a management-sponsored proposal on the same issue. Shareholder proponents sometimes agree to withdraw their proposals if engaged by the company in a respectful and constructive matter. For instance, environmental activists might agree to drop a proposal after satisfactory discussion with the company about its sustainability efforts. In other instances, activists ask for some form of corporate action in exchange for dropping the proposal, such as the inclusion of certain provisions in the company's corporate governance guidelines or a pledge that the issue be discussed at future management team or board committee meetings.

A company can also sometimes head off a vote on the shareholder proposal by taking pre-emptive action to change its governance practices. For instance, a company without majority voting standards for director elections might receive a shareholder proposal requesting that majority voting be implemented. Majority voting is now the norm among large-cap public companies. Shareholder proposals requesting the implementation of majority voting carried an average of 56% of votes cast in 2010, according to Georgeson's research. Thus, a company's board of directors might consider voluntarily amending the company's bylaws to adopt majority voting. This may enable the company to claim the "high ground" on the issue rather than appear to have been pushed into reform by an activist investor.

Finally, companies can also consider bringing a management proposal on the same issue. For instance, the SEC in 2010 permitted a company to bring a management proposal allowing holders of 25% of outstanding shares to call a special meeting. In doing so, the company was allowed to exclude a similar shareholder proposal that would have set the special meeting threshold at 10%.⁵

Consider engaging a proxy solicitor. Proxy solicitation firms can add significantly to a company's efforts to win a shareholder proposal vote. Among other services, a proxy solicitor will:

- > Help identify the decision maker within an institution who has the most influence on how shares will be voted.
- > Use its research database and market intelligence to predict possible vote outcomes and shape shareholder outreach strategy.
- > Analyze whether a retail shareholder voting campaign may be necessary to assist winning a close vote.
- > Assist in understanding the voting policies of RiskMetrics Group and those of other proxy advisory firms.
- > Advise as to whether a company should welcome a proposal rather than fight it.

Draft the company's opposition statements and/or statements of support. Company counsel usually drafts the statement of opposition or support. A thorough search of SEC proxy filings can provide a sampling of different approaches for listing and presenting shareholder proposals in a company proxy statement. For instance, some companies do not name the shareholder who submitted the proposal, ostensibly to minimize free publicity for the proponent. On the other hand, other companies list not only the proponent's names but also its percentage of outstanding stock (which, in the case of special interest activists, can demonstrate how a very small economic stakeholder has pushed an issue into the company's proxy statement).

However, while precedent from other public company proxy statements may be useful, it should not be substituted for the company's articulation of specific attributes of the company's business or governance practices as described in the proxy statement. For example, the company's position statement on a shareholder proposal regarding equity ownership guidelines might reference relevant portions of the CD&A that discuss this topic. And a proposal that implicates company risk management might reference the company's discussion of risk management now mandated by Item 402(s) of Regulation S-K and Item 22(b)(11) of Schedule 14A, each of which took effect during the 2010 proxy season.

SEC rules limit each shareholder proposal and supporting statement to a total of 500 words, but put no word limits on the company's position statement. However, an effective company position statement need not be lengthy. The objective is to demonstrate that the company's existing practices promote the good governance that the activist purports to seek – and this theme of good governance should run through the entire proxy statement.

Try to participate in RiskMetrics' recommendation process. RiskMetrics Group's heavy influence in corporate governance matters, and its general tilt in favor of shareholder empowerment, are well-known. Its recommendations on shareholder proposals can tip the balance in close contests. Therefore, as part of its response to any shareholder proposal, a company should review applicable RiskMetrics policy guidelines.⁶

Companies should also consider scheduling a meeting with the RiskMetrics analyst who will be making the recommendation on the action items before the shareholders at the annual meeting. Such meetings are granted at the discretion of the RiskMetrics analyst. During the proxy season, such meetings usually occur only by phone, with in-person meetings only available in the case of contentious matters such as proxy contests and votes on mergers. While such a discussion may not yield a recommendation in the company's favor, it will at least provide the company with a chance to sharpen its governance message.

RiskMetrics frequently, but not always, allows companies to review its recommendations in the days before releasing its report.⁷ The company's input here is limited to correction of factual errors in RiskMetric's recommendation; RiskMetrics expressly discourages substantive arguments. RiskMetrics typically releases its voting recommendation reports about two weeks before the company's annual meeting. Whether or not a company plans to meet with RiskMetrics, it will not hurt to contact the RiskMetrics analyst about a month before the annual meeting and request to review the report before it is sent to RiskMetrics subscribers.

Schedule and conduct meetings with key shareholders – but avoid written communications. For proposals on which a close vote is anticipated, the company should reach out to key large investors and schedule a telephone or in-person meeting. A proxy solicitor can aid in identifying the key decision maker at an institutional shareholder, in analyzing the voting tendencies of such shareholder and in setting up a meeting. (Often, the best time to meet is shortly before or after RiskMetrics issues its recommendations.)

Companies should deliver a concise, governance-oriented message to the shareholder's representative. Such representatives will be busy meeting with many public company management teams on similar issues during proxy season and will appreciate brevity. Frequently, a senior company executive (in many cases the CFO and/or general counsel) makes the company's case. An ideal presentation will reiterate the points made in the company's supporting or opposition statement and also tie into a broader story about the company's corporate governance practices, long-term vision for growth and delivery of shareholder value. Telling the company's "governance story" is especially important, due to the increasing tendency of institutions to delegate decision making on shareholder proposal matters to internal governance officers, who often rely on the recommendations of RiskMetrics and other proxy advisory services. Thus, companies should be prepared to emphasize positives in their governance practices (even if not directly related to the proposal), such as adoption of majority voting and any RiskMetrics-favored executive pay practices.

A written, bullet-point outline will assist the company executive in making such a presentation. However, unless the company sees strategic value in disclosing such a written outline publicly, all communications with the shareholder on the proposal should be oral and not written. Under Rule 14a-6, after a definitive proxy statement is filed, a written communication used to solicit proxies must be filed on the same day it is used, but oral solicitations are permitted without any filing requirement. The SEC takes a broad view of "written communications," viewing informal e-mail communications and website presentations as such. Thus, to avoid unwanted proxy filings, company e-mail communications with shareholder representatives in this context should do no more than establish meeting times and should not contain any substantive points regarding the shareholder proposal. Moreover, during these discussions, company executives should be generally mindful of Rule 10b-5 and Regulation FD concerns, avoiding disclosure of material nonpublic information.

Monitor voting results. Your proxy solicitor should provide daily e-mail updates on the voting returns for each proxy ballot item. Much, if not most, of the voting by institutional shareholders occurs in the final days leading up to the annual meeting. Many such institutions wait to vote until RiskMetrics and other proxy advisory firms release their voting recommendations. Typically, companies will see a spike in votes in the day or two after RiskMetrics releases its report, largely reflecting the votes of institutional holders who reflexively follow whatever RiskMetrics recommends. Thus, a company should not be altogether discouraged if the votes suddenly tilt against it in the first couple days following RiskMetrics' release of its recommendations. Such a sudden shift in voting returns can motivate a company to bolster its shareholder outreach in the final days before the annual meeting.

Carefully plan your annual meeting. In most instances, a company will go into its annual meeting knowing the outcome of the votes on the various shareholder proposals and director elections covered by the proxy statement. In-person voting at annual meetings is rare. Furthermore, proposals brought from the floor of the meeting can be excluded as "out of order" if not submitted to the company previously in accordance with the company's advance notice bylaws. And in the rare instance that a shareholder proposal is validly made from the floor, the company will be able to control the vote on the matter if it has, consistent with Rule 14a-4, drafted its proxy card to confer discretionary authority for matters not specified on the card.

Shareholder votes sometimes go down to the wire, with the company and proxy solicitors working until the morning of the annual meeting to secure votes from institutional and retail shareholders. In these rare cases, it may benefit the company to schedule the official shareholder votes for the end of the meeting in order to give its investor relations team and proxy solicitors additional time to secure votes.

The annual meeting represents an opportunity to share management's long-term vision and to create a welcoming environment for all, even dissident shareholders. To this end, companies should anticipate that representatives of shareholder proposal proponents will appear at the meeting and wish to speak on their proposal.⁹ To prevent a circus-like atmosphere from developing, companies can take measures such as restricting attendance to only shareholders or their representatives and by distributing succinct agendas and rules of conduct that place time limits on individual shareholder comments. The annual meeting script should include short and respectful rebuttals that the chairman may make following oral comments from shareholder proposal proponents. Most companies include a management presentation at the end of the meeting on the company's recent performance and strategic goals, often followed by a question and answer session. Here too, rules of conduct and time limits can ensure an orderly and respectful dialogue.

Decide whether and how to implement proposals approved by shareholders. Once the votes are in, a company's board must decide if, when and how to implement any proposal that has passed. In most instances, even though a vote passes, a company will not be required to implement it. This is because most shareholder proposals are "precatory," or suggestive rather than mandatory, in recognition of the fact that state corporate law typically places ultimate management authority in the hands of a corporation's board of directors. (A notable exception here are the kind of binding bylaw amendment proposals that are brought in states, such as Delaware, whose corporate statutes permit shareholders to amend the company's bylaws without board action.)

Ultimately, the board will determine whether a proposal should be implemented. Failing to implement a proposal, however, can have negative implications with RiskMetrics and can strain shareholder relations. In particular, RiskMetrics' director voting policy calls for "withhold" or "against" votes for directors up for re-election who were on the board when a shareholder proposal that received a majority of outstanding shares in the previous year (or a majority of votes cast for the previous two years) has not been acted upon.

¹Chris Chi (cchi@bassberry.com) is a partner at the law firm of Bass, Berry & Sims PLC and a member of the firm's Shareholder Activism Group, which advises public company clients on issues such as contested director elections, shareholder proposals and the SEC's proxy voting rules. Rachel Posner (rposner@georgeson.com) is Senior Managing Director and General Counsel at Georgeson Inc., a leading provider of strategic proxy and corporate governance advisory services to corporations and shareholder groups working to influence corporate strategy. A former attorney with Fried, Frank, Harris, Shriver & Jacobson LLP, Ms. Posner has extensive corporate governance and investor communications experience.

² Available at <http://www.georgeson.com/usa/acgr.php>. Georgeson's annual review examines shareholder proposal voting results for companies included in the S&P 1500 Composite Index that held annual meetings in the first half of the year.

³ The SEC's proposed rules regarding say on pay are available at <http://www.sec.gov/rules/proposed/2010/33-9153.pdf>.

⁴ During the last decade, the SEC has published a series of Staff Legal Bulletins that provide significant guidance and explanation with respect to shareholder proposals. These bulletins are available on the SEC's website and include SLB No. 14 (July 13, 2001); SLB No. 14A (July 12, 2002); SLB No. 14B (September 15, 2004); SLB No. 14C (July 14, 2005); SLB No. 14D (November 7, 2008) and SLB No. 14E (October 27, 2009). The SEC receives hundreds of Rule 14a-8 no-action requests each year and posts the requests and its responses at <http://www.sec.gov/divisions/corpfm/cf-noaction/14a-8.shtml>. Additionally, Robert J. Haft's and Michael Hudson's "Analysis of Key SEC No-Action Letters and Compliance and Disclosure Interpretations" provides a comprehensive review of SEC positions with respect to Rule 14a-8 no-action requests. The authors annually update the treatise, which is published as part of West's Securities Law Handbook Series.

⁵ Response of the Office of Chief Counsel, Division of Corporate Finance, Baker Hughes' request for no-action relief, filed with the SEC on December 18, 2009.

⁶ RiskMetrics updates its governance policy guidelines annually. Its 2011 updates are available at http://www.issgovernance.com/policy/2011/policy_information.

⁷ The SEC's recent "proxy plumbing" concept release includes discusses the possibility of regulation of RiskMetrics and other proxy advisory firms, including reform aimed at allowing greater company participation in the recommendation process. The release is available at <http://www.sec.gov/rules/concept/2010/34-62495.pdf>.

⁸ Attendance at the meeting by the shareholder proponent or a representative thereof is required by Rule 14a-8(h). Failure to appear entitles the company to exclude from the proxy statement all proposals from such shareholder for the next two years.

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The U.S. corporate governance landscape continues to shift, with shareholder activists seeking to influence governance and company strategy through numerous means. We believe that shareholder proposals will continue to be a primary battleground. We welcome any questions you have regarding shareholder proposals that your company receives or that your company plans to make.

GEORGESON CONTACTS

www.georgeson.com

Rachel L. Posner

199 Water Street, 26th Floor New York, NY 10038
(212) 440-9921 | rposner@georgeson.com

Rhonda L. Brauer

199 Water Street, 26th Floor New York, NY 10038
(212) 805-7168 | rbrauer@georgeson.com

David Drake

199 Water Street, 26th Floor New York, NY 10038
(212) 805-7168 | ddrake@georgeson.com

Rajeev Kumar

199 Water Street, 26th Floor New York, NY 10038
(212) 440-9812 | rkumar@georgeson.com

BASS, BERRY & SIMS PLC CONTACTS

www.bassberry.com

J. Page Davidson

150 Third Avenue South, Suite 2800 Nashville, Tennessee 37201-2017
(615) 742-6253 | pdavidson@bassberry.com

Kevin H. Douglas

150 Third Avenue South, Suite 2800 Nashville, Tennessee 37201-2017
(615) 742-7767 | kdouglas@bassberry.com

Christopher Y. Chi

150 Third Avenue South, Suite 2800 Nashville, Tennessee 37201-2017
(615) 742-7819 | cchi@bassberry.com

Stephen Hinton

150 Third Avenue South, Suite 2800 Nashville, Tennessee 37201-2017
(615) 742-7799 | shinton@bassberry.com