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Four Things "To Do" With ESG in Your Proxy (And Three "Not to Do")

As I mentioned last week during our popular "Anatomy of a Proxy" webcast (archive coming soon), there is no requirement to include an "ESG" section of the proxy statement, but as it – along with the annual report – is the most important investor-facing communication of the year, most companies are using the proxy statement to highlight their ESG stories. These disclosures are still evolving, but here are suggestions of four things to do, and three things not to do in the ESG section of your proxy statement. **What to do: 1. Identify the company's ESG priorities.** Take this opportunity to message what the company views as important to its business, strategy and long-term sustainability. The proxy statement is a great place to provide an overview of *your* company's ESG story. **2. Consider whether the company has any ESG metrics that are material to the company and appropriate for disclosure in the proxy statement.** The SEC's recent comments on SEC filings regarding climate-related disclosures highlight the SEC's view that companies should be thinking hard about whether disclosures included in sustainability reports are material to investors and should be in SEC reports. The comment is typically made with respect to the 10-K, and companies should be thinking about what metrics to disclose in the 10-K, the proxy statement, or both. **3. Review disclosures made by companies in your industry that are leading the way on ESG, or have the highest ESG ratings.** As mentioned in #1 above, telling the company's own unique story is important. But, another data point to consider in narrowing down what you cover in the proxy statement – especially in this rapidly changing area – is to benchmark against leaders. ESG areas of focus can be very industry specific, so focusing on leaders within your industry can be an efficient check against your draft. **4. Identify reporting standards or frameworks that the company uses or has adopted.** Many investors and rating agencies are specifically looking for this information, so you may as well make it easy to find. It is becoming commonplace among companies leading on ESG disclosures to include this information in the proxy statement. **What not to do: 1. Reiterate the complete CSR or sustainability report.** That report – whatever form it is in – likely covers some topics that are not important to most investors. But, they may be of interest to certain investors. Take the opportunity to let investors know where the more fulsome report is, without overburdening the proxy statement with information that is generally not considered material. But, be sure to use inactive URL references only and not include hyperlinks. You don't want to inadvertently incorporate the full report into your SEC reports. **2. Report on metrics that have not been subject to disclosure controls & procedures.** This should be true of all of your ESG disclosures, wherever they are. But by putting metrics into the proxy statement, you are signaling that this information that may be material to investors. So be sure that what you are reporting on is information that has been subject to rigorous review, and that you would be comfortable reporting on again in the future (or clearly explaining why you have changed a metric). The same can be said about qualitative disclosures as well. **3. Overpromise and underdeliver.** Much like reporting on metrics, investor-facing disclosures like the proxy statement are not a good place for pie-in-the-sky promises about ESG goals or commitments. If your company is identifying environmental or social goals, be sure that risks related to those goals have been assessed and achievement is feasible in the time frame identified. Empty promises can quickly turn into allegations of greenwashing. By the way, we have scheduled another webcast – "[Proxy Season Roundtable: What You Need to Know Now](#)" – set for Wednesday, December 1st. Join Perkins Coie's own Allison Handy, Andrew Moore and Broc Romanek – and Proxy Analytics' Steve Pantina – as they cover shareholder engagement and shareholder proposal trends; regulatory, as well as proxy advisor and investor voting policy, updates; and a bevy of practice tips that you can use for this upcoming proxy season. [RSVP for this 12/1 webcast today...](#)

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