

Should You Disclose the Identity of a Shareholder Proponent in Your Proxy?

A question we sometimes hear from clients during proxy season is whether to include the name of the proponent in the proxy statement with a shareholder proposal made under Rule 14a-8. Rule 14a-8(l) allows a company to decide whether to include information in the proxy statement on a proponent (name, address, and number of shares held), or state that the company will provide this information to a shareholder upon request. In other words, it's a voluntary disclosure.

Many companies include this information in the proxy statement without giving it much thought, but some routinely leave this information out of the proxy statement for various reasons.

Why, you may ask, are we bringing this question up now, after nearly all calendar-year companies are done with the proxy season? Last week, we both had the good fortune to attend the Society for Corporate Governance's National Conference in Chicago. (An in-person conference!) In two different sessions, we heard pension fund representatives call on companies to provide this information, and thought it was worth amplifying the message. Two points to consider:

1. In both sessions, the underlying issue discussed was the increasing complexity of shareholder proposals. Some of these proposals can be hard for shareholders to follow, even after reading the proponent's supporting statement.

In particular, there is a growing trend of proposals that appear to try to drive votes through using buzzwords that are of interest to certain types of investors, such as greenwashing or diversity - but in fact may espouse views that are the opposite of what a casual reader might think the proposal says. Knowing the identity of the proponent may help investors to better understand the context of the proposal.

2. There can be other benefits to providing information about proponents as well. Investors might read a proposal from a proponent with 200 shares differently than one from a proponent with 20,000. They might also be interested to know when a proposal has been made by a representative that is in the business of submitting these proposals, and not by the shareholder themselves.

For those companies that routinely omit information on shareholder proponents, it may be worth giving it another thought next proxy season.

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