



## **Proxy Project Primer: A Beginner's Guide to the Proxy and Annual Meeting Process**

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## Materials Slides

[http://www.sos-team.com/pdfs/proxy\\_project\\_primer.pdf](http://www.sos-team.com/pdfs/proxy_project_primer.pdf)

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## Agenda

- Legal requirements
- Director, Officer and 5% Holder Questionnaires (“D&Os”)
- Proxy filing (Form Def14A)
- Distribution of the Proxy
- Annual Shareholder Meeting

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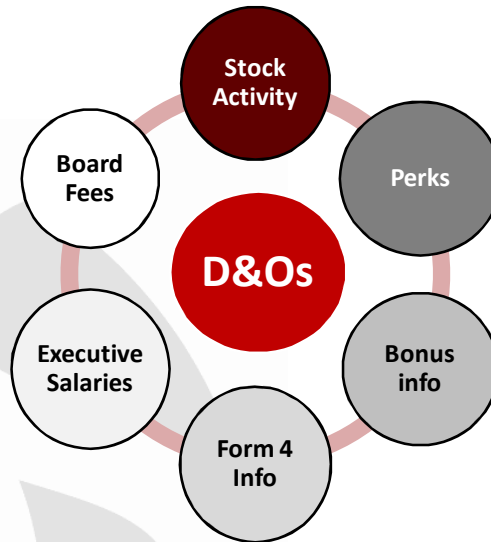
## Annual Meeting

- Legal requirement to hold annual meeting
  - State Corporate Law (Sec. 600-CCC, Sec. 602- New York Business Corporation Law, Sec. 211-DGCL)
  - Company charter/formation documents
  - Stock Exchange Rules (Sec. 302- NYSE Listed Company Manual, Rule 5620-Nasdaq Marketplace Rules)
  - Federal rules?

## Director, Officer and 5% Holder Questionnaires

- Questionnaire covers Company's last fiscal year
- Proxy tables and disclosures based on information provided
- Usually due within 3 weeks of end of Company's fiscal year

## Questionnaires: What information is needed?



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## D&O Questionnaires

- Who is involved in drafting D&Os?
  - Payroll (executive salaries and bonuses)
  - Accounts Payable/Finance (expense reports and board fees)
  - Legal (Form 4 information)
  - Stock (internal system or outside vendor)

## Proxy: What is it?

- Proxy is a notice of upcoming annual meeting as well as information on topics up for vote at the meeting
- Schedule 14A: Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

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## What am I required to include in the proxy?

- Notice of the Meeting-Record Date
- Voting Information
- Information about Board of Directors, Nominees for BOD positions and Executive Officers
- How votes for directors are counted
- Information on the BOD and their committees

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## What am I required to include in the proxy?

- Executive Compensation Disclosure
  - Compensation Discussion and Analysis (“CD&A”)
  - Summary Compensation table
  - Grants of Plan Based Awards table
  - Outstanding Equity Awards at Fiscal Year End table
  - Options Exercised and Stock Vested table
  - Pension Benefits table
  - Non-Qualified Deferred Compensation table
  - Severance and Change of Control Payments

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## What am I required to include in the proxy?

- Shareholder approval of Executive Compensation (“Say on Pay”)
- Compensation Committee Report
- Director Compensation disclosure (same as executive compensation disclosure)
- Beneficial Ownership table
- Section 16 reports
- Audit Committee Disclosure

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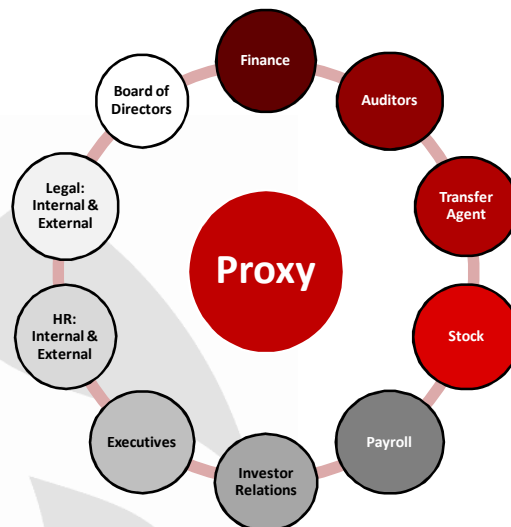
## What am I required to include in the proxy?

- Nominating Committee Disclosure
- Compensation Committee Disclosure
- Shareholder Communications with the BOD
- Independent Auditor Information
- Certain Relationships and Related Party Transactions
- Any equity plan increase requests
- **AND ALL IN PLAIN ENGLISH!!!!**

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## Proxy: Who is involved?



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## Who provides what information?

- Legal
- HR\Comp Committee\Comp Consultants
- Audit Committee
- Nomination & Corporate Governance Committee
- Misc Committees: Risk and Oversight

## Who provides what? (continued)

- Auditors
- Vendors
- Transfer Agent
- Investor Relations

And finally.....



## What Stock provides.....

- Number of registered holders (from TA)
- Security Ownership of Certain Beneficial Owners, Directors and Named Executive Officers data (“beneficial ownership table”) and footnote data.....
- Stock Ownership numbers (if company has stock ownership guidelines)
- Summary Compensation Table
  - Stock award data reflecting the grant fair value of the awards granted in each fiscal year



## What Stock provides.....(continued)

- Grants of Plan-Based Awards table
  - Grant dates
  - For performance awards, the estimated payout
  - Time based award amounts
  - Grant date fair value of the awards
- Outstanding Equity Awards at Fiscal Year-End table
- Option Exercises and Stock Vested Table
- Director Compensation Table
  - Info on Grant Date Fair Value of Stock Awards during last fiscal year



## Parties that need to review final proxy:

- Legal
- Executives
- Compensation Committee
- Full Board of Directors
- Auditors
- Stock

## And WHILE you are drafting the proxy....

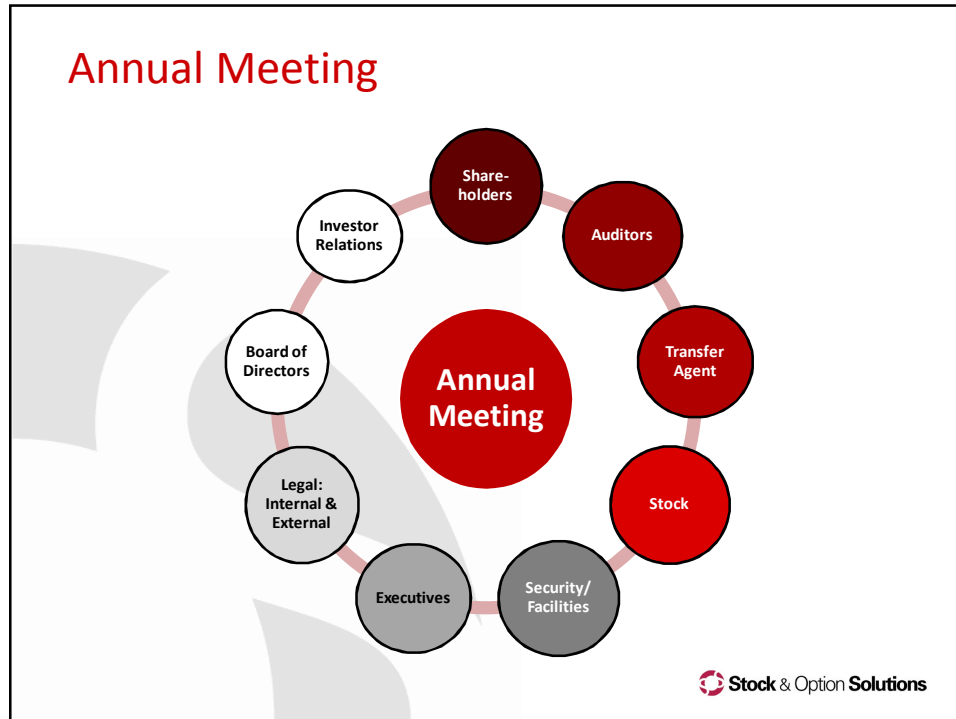
- If you are relying only on electronic delivery, the website needs to be set up
- If you are printing and mailing, printers/mailers will be asking for filing dates and quantities
- Intermediary conducts Broker search with the Depository Trust Company (“DTC”) on behalf of company at least 20 days before the record date
- To solicit or not solicit?
- What about the Annual Report? Will you have one or just send the 10-K?
- Who will be tabulating your votes and be the inspector of elections? Transfer agent? Intermediary? In-house?

## Voting: Who votes?

- Types of shareholders:
  - Registered Holder: Holds shares on books of Transfer Agent
  - Street name holder: Holds shares electronically through broker
    - NOBO: Non-Objecting Beneficial Owner
    - OBO: Objecting Beneficial Owner
  - In theory, this should be everyone, but.....

## How do they vote? Let us count the ways.....

- Registered Holders: Vote directly with the Transfer agent
- Street Name Holders:
  - Both NOBOs and OBOs vote through the banks/brokerages holding their shares.
  - Banks/brokerages then tally votes and submit them to intermediary counting votes.
- Proxy Solicitors can “help” shareholders cast their ballots



## Annual meeting questions:

- Company location or off-site?
- Tone of the meeting: friendly or contentious? Controversial topics on ballot? Activist investor involved?
- Security?
- Attendance by: BOD? Officers? Employees? Auditors? Press? Outside Counsel?
- Refreshments?

### Why not hold the meeting online and forget all this?

- Online meetings allowed in 22 states, forbidden in 18
- Hybrid meeting?
- Does your charter/by-laws allow online?
- Increased shareholder participation
- Logistics nightmare: Shareholder verification, vote changes, increased activism, shareholder questions

### Annual Meeting Roles & Responsibilities

- Investor Relations
- Legal-Internal/External
- Executives
- Board Members
- Security/Facilities: If meeting is on-site
- Inspector of Elections

## What Happens at the Meeting?

- Meeting called to order
- Quorum established
- Physical votes present taken
- Votes tallied
- Unexpected nominees
- Presentations
- Shareholder questions
- Adjournment

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## Post meeting:

- Wrap up:
  - Minutes of the meeting and meeting transcripts drafted
  - Inspector of Election report, Oath of Inspector of Elections collected
  - Voting results communicated to shareholders
  - Current Report on Form 8-K filed with SEC
    - Date and type of meeting (annual or special)
    - Details on each matter voted on

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# Questions?

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