

“Conduct of the Annual Meeting”

Wednesday, April 2, 2025

Course Materials

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2 to 3 p.m. Eastern [archive and transcript to follow]

Companies and investors are busy navigating significant change as the new Presidential Administration moves quickly to implement priority reforms, but peak annual meeting season is right around the corner and will be here before we know it! Our panelists will discuss the latest developments and provide practice pointers to help you prepare for your meeting.

Joining us are:

- **Mary Francis**, Corporate Secretary and Chief Governance Officer, Chevron
- **Carl Hagberg**, Independent Inspector of Elections and Editor of *The Shareholder Service Optimizer*
- **Peder Hagberg**, Independent Inspector of Elections and Co-Editor of *The Shareholder Service Optimizer*
- **Matthew Kane**, Deputy General Counsel, Lucky Strike Entertainment
- **Jason Vinick**, Senior Vice President, Alliance Advisors

Topics:

1. OBO/NOBO Lists
2. Shareholder Engagement Challenges in 2025
3. Pre-Meeting Voting
4. Improving Your Script and Rules of Conduct
5. Disruptions: How Much Can or Should You Plan Ahead?
6. Tips for Hosting a "Best-in-Class" Annual Meeting
7. Shareholder Proposals: Working with Proponents
8. Why and How to "Challenge-Proof" Your Proxy Voting & Tabulation Process
9. Post-Meeting Activities, Post-Mortems
10. How to Better Understand Your Voting Outcomes

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Course Outline

1. OBO/NOBO Lists

- Beneficial owners are classified as either objecting (“OBOs”) or non-objecting (“NOBOs”).
 - OBOs are beneficial owners who do not want their name, address and share positions disclosed to the company’s management by the broker or intermediary.
 - NOBOs do not object to such information being disclosed, and companies can obtain a list of their NOBO holders for a fee (but it might cost in the range of tens of thousands of dollars if not more).
 - See Exchange Act Rules 14b-1 and 14b-2.
- Alliance Advisors has formed the Shareholder Ownership Transparency Alliance “for the sole purpose of eliminating the OBO classification to allow publicly traded companies equal access to all their shareholders” and is asking interested parties to sign a petition asking Congress and the SEC to eliminate the OBO rule.
 - In [an op-ed](#), the Alliance points to the burdens the OBO classification puts on registered owners, NOBOs and public companies, especially smaller companies mostly held by individual retail investors, to ensure major votes pass since “having an unidentifiable shareholder segment with a meaningful share position can easily cause havoc to the outcome of a shareholder meeting.” For example:
 - “Consider the common scenario of a high net-worth investor, such as a hedge fund, owning 100,000 shares as an OBO or an OBO population that owns 25 percent or more of a company. The company cannot engage with these beneficial owners directly so management must double down on its outreach efforts by trying to

contact 1,000 or 10,000 accessible investors who own 1,000 shares each. Imagine how much more efficient and cost effective that outreach campaign would be if management could reach out to that single beneficial owner, whose identity is fully disclosed, with 100,000 shares directly ... Management should be able to effectively engage with all their beneficial owners directly without the interference and cost of an intermediary. This process would drastically improve the shareholder communication process, expedite shareholder votes and lower operational expenses.”

2. Shareholder Engagement Challenges in 2025

- Updates impacting shareholder engagement in the 2025 proxy season:
 - In February, Corp Fin Staff released [updated CDIs](#) on the filing of Schedules 13D and 13G.
 - These schedules are used by investors that beneficially own greater than 5% of a voting class of a public company’s equity securities to publicly report their holdings. Short-form Schedule 13G is used if ownership is deemed “passive.” If not, investors must use long-form Schedule 13D.
 - The new and revised CDIs will impact whether a shareholder’s engagement efforts constitute an attempt to influence or “control” a company, meaning they’re ineligible to use Schedule 13G.
 - First, CDI 103.11 was revised to state that a shareholder’s ability to file on Schedule 13G in lieu of Schedule 13D will be informed by the meaning of “control” as defined in Exchange Act Rule 12b-2, while language about the shareholder’s discussions with management has been deleted.

- New CDI 103.12 now separately describes that “discussion” factor — with significant changes from the previous language. Here it is in full:

“Question: Shareholders filing a Schedule 13G in reliance on Rule 13d-1(b) or Rule 13d-1(c) must certify that the subject securities were not acquired and are not held ‘for the purpose of or with the effect of changing or influencing the control of the issuer.’ Under what circumstances would a shareholder’s engagement with an issuer’s management on a particular topic cause the shareholder to hold the subject securities with a disqualifying ‘purpose or effect of changing or influencing control of the issuer’ and, pursuant to Rule 13d-1(e), lose its eligibility to report on Schedule 13G?

Answer: The determination of whether a shareholder acquired or is holding the subject securities with a purpose or effect of ‘changing or influencing’ control of the issuer is based on all the relevant facts and circumstances and will be informed by the meaning of ‘control’ as defined in Exchange Act Rule 12b-2.

The subject matter of the shareholder’s engagement with the issuer’s management may be dispositive in making this determination. For example, Schedule 13G would be unavailable if a shareholder engages with the issuer’s management to specifically call for the sale of the issuer or a significant amount of the issuer’s assets,

the restructuring of the issuer, or the election of director nominees other than the issuer's nominees.

In addition to the subject matter of the engagement, the context in which the engagement occurs is also highly relevant in determining whether the shareholder is holding the subject securities with a disqualifying purpose or effect of 'influencing' control of the issuer.

Generally, a shareholder who discusses with management its views on a particular topic and how its views may inform its voting decisions, without more, would not be disqualified from reporting on a Schedule 13G. A shareholder who goes beyond such a discussion, however, and exerts pressure on management to implement specific measures or changes to a policy may be 'influencing' control over the issuer. For example, Schedule 13G may be unavailable to a shareholder who:

- recommends that the issuer remove its staggered board, switch to a majority voting standard in uncontested director elections, eliminate its poison pill plan, change its executive compensation practices, or undertake specific actions on a social, environmental, or political policy and, as a means of pressuring the issuer to adopt the recommendation, explicitly or implicitly conditions its support of

one or more of the issuer's director nominees at the next director election on the issuer's adoption of its recommendation; or

- discusses with management its voting policy on a particular topic and how the issuer fails to meet the shareholder's expectations on such topic, and, to apply pressure on management, states or implies during any such discussions that it will not support one or more of the issuer's director nominees at the next director election unless management makes changes to align with the shareholder's expectations. [Feb. 11, 2025]"

- Under new CDI 103.12, a shareholder exerting pressure on management (as distinguished from discussing its views on a particular topic and how its views may inform voting decisions) may be disqualified from using Schedule 13G.

- BlackRock and Vanguard temporarily paused (then resumed) engagements after the release of this guidance.

3. Pre-Meeting Voting

- Developments in Pass-Through Voting
 - Fund managers have traditionally cast votes on behalf of the fund's investors.
 - "Pass through voting" refers to fund managers offering their investors the option to vote themselves — typically not by directly voting but by choosing among voting policy options.

- Disclosing Voting Mechanics
 - Broker Discretionary Votes
 - Sometimes it may not be crystal clear whether a proposal is “routine” (allowing broker discretionary voting under NYSE Rule 452 governing when NYSE member organizations (brokers) have the authority to vote on a proposal without specific client instructions, which is something Nasdaq companies need to understand and navigate as well).
 - In that case, it’s important to make sure that NYSE’s guidance to brokers is consistent with your proxy disclosure. To avoid issues in your definitive proxy statement (which may cause confusion and require a corrective filing), it may be appropriate to get NYSE’s input before mailing. NYSE recently sent its [annual compliance guide](#) to listed companies, and it had this note:

“The Exchange reviews all listed company proxy materials to determine whether specific client instructions are necessary for an NYSE member organization that holds customer securities in ‘street name’ accounts as broker to vote on proxy matters without having received specific client instructions.

“The Exchange recommends that listed companies submit their preliminary proxy materials to the Exchange for review. Exchange staff is then able to provide a view (subject to a final review upon receipt of definitive materials) on the permissibility of broker voting under NYSE Rule 452 on each proposal included in the preliminary proxy statement. This early review helps companies assess whether to include proposals in their definitive proxy statements and plan their

solicitation activities. A submission of preliminary proxy materials should be marked to clearly indicate that it is in preliminary or draft form and that it is confidential.”

- Getting Out the Vote
 - Make sure instructions on the mechanics of voting retail shares are “Plain English.”
 - Consider using a QR code that brings up proxy materials and takes shareholders directly to the voting site.
 - Ensure insiders participate and consider ways to improve retail participation.
- Monitoring the Vote
 - Reading vote reports and understanding who voted and when:
 - Initial Vote Report: Typically sent 15 calendar days prior to the meeting.
 - Daily Reports: Updated reports are then sent on every business day.
 - Day Before Meeting: Generated after 5 p.m. ET the day before.
 - Day of Meeting: Generated around 8:30 a.m. or 12 p.m. ET on the meeting day.
 - Broker proportional votes are issued on average two business days prior to the meeting date.

4. Improving Your Script and Rules of Conduct

- Script
 - No laws require the use of a prepared script, but most companies use them and follow them verbatim.

- This helps ensure that all agenda items are covered, legal formalities are complied with and, if the meeting does not comply with Regulation FD, reduces the likelihood of a Regulation FD violation.
- Many companies take care of the official business — primarily opening and closing the polls — first before moving on to any management presentations and Q&A.
 - It is recommended that presentations and Q&A be scheduled after the announcement of the preliminary voting results and the conclusion of the official meeting to reduce the chance for disruption and better accommodate the more informal nature of these interactions.
- Ensure that the meeting chair is familiar with — and comfortable recognizing — the various alternative scenarios and responses included in the script, particularly those addressing disturbances, technical difficulties, floor proposals and emergencies — as well as proposed responses to particular rule violations (*e.g.*, exceeding time limit, disruptive conduct, matters or proposals raised outside scope of agenda or otherwise improperly).
- Rules of Conduct
 - Rules are strongly advised, as they provide a basis for fair and orderly conduct.
 - It's a good idea to also hand out a meeting agenda with the rules — ideally, with the agenda on one side and the rules on the other — or to post both on the virtual meeting platform.
 - Rules typically cover the following (depending on whether the meeting is in-person, virtual or hybrid):
 - Meeting room admission procedures

- Prohibiting use of AV equipment or taking of photos without the company's express permission
- Order of business to be addressed at the meeting (typically as set forth on agenda, subject to the meeting chair's discretion)
- Limiting speakers and those who may submit questions or vote to shareholders of record and their duly authorized proxies
- Limiting speakers to those recognized by the meeting chair, explaining the procedures for seeking recognition (*e.g.*, raising hand, submitting paper request) and requiring that all questions and comments be directed to the chair
- Limiting the number of questions any one meeting participant may raise or submit on the platform to allow opportunity for all shareholders to be heard or ask questions, and requesting that meeting participants refrain from interrupting other speakers
- Limiting meeting participants' speaking time
- Identifying certain question topics and discussion as "out of order"
- How virtual questions will be handled (*e.g.*, whether similar questions will be summarized and responded to collectively and whether questions the company doesn't have time to answer will be answered on the company's IR site)

5. Disruptions: How Much Can or Should You Plan Ahead?

- Example disruptions that may occur:
 - Venue suddenly unavailable
 - Technical issues

- Imminent storm
 - Unavailability of speaker or inspector of elections
 - Medical emergency
 - You can't make it
 - Unexpected visitors
- If you are prepared, while the occurrence of the event itself may still be unexpected, you will be equipped to respond appropriately and promptly without jeopardizing the meeting. And by being prepared, you will remain calm in the eye of the storm.
 - By writing down all the potential surprises you can think of — and then writing down what you should do in the event one or more occurs — you will have created a crisis management plan that will be at your fingertips should you need it.
 - For the most commonly occurring surprises, it is wise to include remarks that address them in the meeting script that is prepared in advance.
 - But remain flexible.
 - Despite your best efforts to identify and plan for all potential unforeseen events, it is inevitable that something might happen at a meeting that you did not anticipate — even as a surprise event.
 - Make sure you have one or more team members with you at the meeting upon whom you can rely on so that you can tackle any problem that comes up.
 - Even if the issue is anticipated, feel free to deviate from your checklist if that seems to be the best course of action.
 - If a surprise arises that is on your checklist but you decide to handle it differently than

you've outlined — and that response works — remember to update your checklist after the meeting.

6. Tips for Hosting a “Best-in-Class” Annual Meeting

- ICCR recently posted a [statement](#) focused on the shareholder experience at annual meetings. In addition to calling for more hybrid meetings, it suggested a few other meeting improvements, paraphrased as follows:
 - Don't unreasonably limit proposal proponents
 - If virtual, have Q&A mimic the in-person environment
 - Allow time to deliberate and vote
 - For virtual, consider including video

7. Shareholder Proposals: Working with Proponents

- Most companies maintain an open line of communication with proponents before a meeting to determine whether the proponent will:
 - Attend the meeting (or, if not, the identity of the proponent's representative);
 - Appear through electronic media;
 - Prerecord their presentation for the company to play during the meeting; or
 - Designate a corporation representative to read the proposal.
- Such communication helps the company reduce the likelihood of any surprises.

8. Why and How to “Challenge-Proof” Your Proxy Voting & Tabulation Process

- Here are Carl and Peder Hagberg’s tips for “challenge-proofing” your proxy voting and tabulation process (from the 30th edition of the annual “Special Supplement” to the *Shareholder Service Optimizer*):
 - Understand Voting Requirements: Make sure you know exactly what it takes to pass each proposal and ensure these requirements are clearly outlined in your proxy statement. Don’t just rely on your inside or outside counsel for this.
 - Review “Rules of the Road”: Go over the procedures with your proxy tabulator and Inspectors of Election. Ensure your Inspectors are independent, knowledgeable and familiar with activist tactics and street-name voting practices.
 - Inspectors’ Oaths: Ensure that Inspectors’ oaths are sworn and on file before the meeting begins.
 - Introduce the Inspectors: Introduce the Inspectors during the meeting, briefly summarizing their qualifications and duties as independent inspectors. The perception of fairness is just as important as the reality and can help prevent challenges.
 - Prepare Inspectors for Challenges: Review the script carefully and ensure Inspectors know what to say if challenged. They must be ready to defend their processes.
 - File Validity Presumptions: Ensure that your Inspectors’ presumptions about the validity of proxies are on file, agreed upon by your proxy solicitors and tabulators, and observed by all involved.
 - Confidential Voting: Pay special attention to policies and procedures surrounding confidential voting. There’s no room for error here — safeguard the integrity of your shareholders’ privacy.
 - Watch for Stealth Solicitations: Be vigilant for “stealth solicitations,” and pay close attention to last-minute ballots,

reversals and online, faxed or telexed submissions. These are common sources of voting errors.

- Ballots from All Relevant Parties: Ensure signed ballots are obtained from all relevant parties, including “omnibus proxies,” employee ownership plan trustees, the DRP nominee and the Proxy Committee. Elections have been lost due to failure to observe these “technical details.”
- Understand Poll Closing Procedures: In tight situations, make sure you, the Chairman and the Inspectors understand the implications of keeping the polls open or declaring them closed. Avoid rushing to close polls prematurely — especially in a virtual meeting environment.
- Take Time with Close Votes: Avoid rushing to report a final vote, especially if the outcome is close (within one percentage point or less). In such cases, the Inspector should conduct additional due diligence procedures before certifying the final results.

Taking an extra day or two to thoroughly review the results is better than risking an adverse outcome on appeal. Opponents may attempt to mislead you by submitting multiple proxies or reversing a large in-favor vote at the last minute.

9. Post-Meeting Activities, Post-Mortems

- Identify necessary post-meeting action items, *e.g.*, meeting minutes, 8-K, Annual Written Affirmation for NYSE companies, equity plan S-8, if applicable, post responses to unanswered questions on IR site, etc.
- Consider how to keep notes for improvements for next year — *e.g.*, solicit feedback, mark up the script, keep a shared notes document with the team’s comments, share feedback with service providers, etc.

10. How to Better Understand Your Voting Outcomes

- Form N-PX

- The SEC adopted amendments in 2022 that require institutional investment managers that file Form 13F to report their votes on certain matters at public company shareholder meetings on Form N-PX.
 - Subject to certain transition rules, the first reports were required to be filed by August 31, 2024 (covering shareholder meetings from July 1, 2023 to June 30, 2024).
 - Thereafter, an institutional investment manager is required to file Form N-PX annually with the SEC, with the deadline typically being August 31 of each year, covering the previous 12-month period ending on June 30.
 - Form N-PX must be filed on EDGAR.
 - Under Exchange Act Rule 14Ad-1, covered institutional investment managers must report annually on Form N-PX each Say-on-Pay and Say-on-Frequency vote over which the manager exercised voting power. The disclosure requirement also extends to votes to approve golden parachute compensation in connection with a merger or acquisition.