Successfully navigating the stakeholder landscape

NICOLE BRUNSCHWEILER
Nicole Brunschweiler is Principal at Agnes Blust Consulting with both in-house and consulting expertise focusing on executive compensation, governance and disclosure as well as board of director support. She has an economics background, holds a Master in Advanced Studies in HRM, and most recently enjoyed an INSEAD programme.

Sometimes it might be easier to start with a clean slate, from scratch. Especially in times like these, when it feels like new regulation is being created and introduced as a direct or indirect result of other regulation, as this bears the question: Where does it end? And does it even make sense anymore?

By Nicole Brunschweiler

On 2 June 2017, SIX Exchange Regulation (SIX) announced a partial revision of the Directive on Information relating to Corporate Governance (DCG) to include a new transparency rule as it concerns proxy advisors. In its letter, SIX referenced the introduction of the Ordinance against Excessive Compensation (Ordinance) in 2014 as a source for the increasing importance of proxy advisors. Therefore, SIX proposes to introduce new transparency rules in the DCG which requires companies (issuers) to disclose any proxy advisors that have both rendered advisory services to them during the reporting year, as well as professionally advised investors in the exercise of their voting rights at the general shareholder meetings (AGM) of these companies.

At the center of attention

The growing importance of proxy advisors is undisputable. And given this is an unregulated profession, the intention to address potential issues such as conflicts of interest is commendable. But there are quite a few issues with the proposal: The draft new rules put the onus on the issuer rather than on the proxy advisors, when the latter should really be at the center of any regulation to ensure their independence, improve transparency and accountability, with an objective to protect shareholders' and other stakeholders' interests. Additionally, the proposed disclosure may give more raise to questions rather than providing answers, as shareholders will need more details on the services provided and on any measures taken to avoid conflicts of interest for example, to facilitate a sound assessment. And whether more information is necessarily more helpful is questionable.

Proxy advisory firms, most of which were founded in the 21th century, provide services to (primarily institutional) shareholders to exercise their voting rights at the AGMs of listed companies. Given the growing magnitude of institutional investors and the focus on some topics such as executive compensation, the international importance and impact of proxy advisors has substantially increased. Even more so in Switzerland where more activism was observable during the recent AGM season in the context of the binding votes on compensation as well as the annual election of board members under the Ordinance. However, even if proxy advisors recommend a no-vote, proposals may still be accepted by shareholders. It is also important to note that there are very different approaches (e. g. discretionary vs rules based vs interaction-based approach, etc.) taken by proxy advisors, both nationally and internationally.

Is it that simple though?

The underlying issue however is broader and stems from a combination of examples of bad citizenship within some companies, of the current highly shareholder-oriented model as well as of an inherent recent belief that the more regulation, the better. The shareholder-centricity goes back to the 1970ies agency theory, whereby shareholders are the owners of the company and management (board and executive) act as their agents, that is, in their interest - a model that is currently being challenged: Shareholders have no legal duty towards the company, they can freely invest and divest and significant shareholders are typically remote (institutional) investors with limited long-term interest.

More recent thinking promotes a more integrated approach, considering the financial but also the broader environmental and society perspective. This approach places the long-term success and sustainability of the company at the center, which requires the company to focus on strategy, innovation and investment. And should ensure "good company citizenship" without a need for further regulation.

But what to do in the meantime?

Until an ideal integrated good citizenship model does reflect reality however we need to operate in the existing environment. Regardless of any final regulation by SIX, here are some points to consider when navigating the increasingly complex regulatory landscape with a focus on proposals submitted to shareholder vote, keeping a sustainable, all stakeholder- and business-oriented model in mind:

1

Be sure about the strategic foundation of any proposals made
We recommend considering the business value proposition, the market dynamics, as well as keeping execution and controls in mind, to ensure the rationale underlying any proposal is robust and sustainable. And it is important to walk the talk – value and ethics live and are part of a company's DNA, from leadership (both board and management) through to all employees.

2

Understand key stakeholders as well as regulatory requirements
It is advisable to bear the perception of all stakeholders in mind: Can any proposals be supported from a financial through to an environmental and society perspective, and if there are any issues from any perspective, how do you mindfully tackle those? Considering significant stakeholders in particular, from a financial (shareholders, customers), an environmental (e. g. government, regulators, proxy advisors) and a society (e. g. employees, citizens – again, customers) perspective is important.

And it is key to ensure compliance with relevant mandatory requirements as well as being aware of any non-binding guidelines.

3

Communicate honestly and openly
Another important factor is pro-active, ongoing and open communication. And while it may not always be in the best interest to be a good soldier and voluntarily disclose potential issues, it is definitely not advisable to try to hide or negate anything.

Companies that manage to know their stakeholders and to keep an open and authentic dialogue going are the most effective in successfully navigating today's complex environment.