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Behind the Boardroom Door: Don't discount disclosure docs

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On Jan. 15, the National Association of Corporate Directors New England chapter hosts its annual "proxy season" conference. The panel is scheduled to feature Margaret Farrell, chair of Hinckley Allen's securities law group; Jim Miller, deputy head of U.S. research at ISS / Institutional Shareholder Services; and Mary Ropes, national professional practice director for Grant Thornton's Northeast region, along with moderator Bob Lamm, independent senior advisor to Deloitte's Center for Board Effectiveness. Below is the latest edition of an ongoing series exclusive to the Business Journal from the NACDNE, in which Lamm offers a preview of the issues the panel will discuss:

Q. What's the top piece of advice you'd give publicly traded companies to ensure a smoother proxy season?

A. As a disclosure lawyer, I'm a bit uncomfortable saying this, but most companies do a poor job of disclosure. They treat all disclosure documents — but especially the proxy statement — as legal documents, when they should craft them as communications/advocacy documents that explain why the company is succeeding, why the board is a great board, and so forth. Instead, too many companies simply respond to the disclosure requirements and nothing more.

Q. What are some specific ways can improve disclosures?

A. One common example is director attendance. You must disclose whether any directors attended fewer than 75 percent of the board and committee meetings they were eligible to attend. So most companies just say: "All of our board members attended at least 75 percent of the board and committee meetings they were eligible to attend." In reality, most board-attendance levels are much higher — but companies rarely point this out, and they miss the chance to underline their directors' commitment and engagement.

Similarly, companies can and should do a better job of "humanizing" their boards. By sticking only to the minimum biographies and required details, they lose the opportunity to demonstrate to shareholders that they have a highly qualified, distinguished board. As a wise institutional investor once told me, the proxy statement should detail why each director is better than an empty chair at the board table. Very few proxy statements do this.

Q. What role should a board's audit committee play, when they seem to be handling everything these days — from financial auditing to cybersecurity to reputation protection and more?

A. This is a longstanding challenge. I've sometimes heard audit committees called "the kitchen sink committee" or "the garbage can committee," because they tend to be tasked with anything that doesn't seem clearly assignable to another committee. Overall, though, I see improvement. More companies are forming risk committees, or otherwise realizing that the audit committee can't evaluate and mitigate every kind of risk. And back to improving disclosure: Audit committees — and other committees — should do a better job of explaining what they do. Proxy rules require disclosure only about who's on a committee and its charters, but little about what the committees actually do. Audit committees should think about explaining, for example, why the company's auditing firm has been selected or retained for the year ahead. What does the committee think about the merits and downsides of keeping long-tenured auditors?