Seven Predictions for Boards in 2015

Four industry experts offer their predictions on the challenges for boards

The New Year will be an eventful one for corporate boards if the end of 2014 is any indicator. As the fourth quarter closed, the **SEC** gave the green light to a **Whole Foods** proposal that will help companies seize greater control of the proxy access process. Meanwhile, the recent cyber attack against **Sony** has reinforced concerns about the vulnerability that all companies face today.

With these events in mind, directors can expect 2015 to be an interesting year. So, to help boards prepare for it, we asked industry experts for their predictions for the year ahead. This is what they said:

Jim Barrall, partner at Latham & Watkins and co-chair of the firm's compensation and benefits practice.

1. Say-on-pay votes will continue to be focused on pay for performance and the alignment of CEO pay with company performance. As a result, companies will carry on refining their analytics and proxy disclosures for demonstrating alignment. Additionally, investors and proxy advisors likely will continue to scrutinize the rigor of performance goals for annual bonuses and long-term incentive compensation, looking back at what compensation committees did in 2014 or early 2015. Through it all, companies may struggle with demonstrating the rigor of outstanding awards without disclosing competitively harmful confidential information.

2. The plaintiff's bar will attack equity plans, awards and disclosures even more than they did in 2014. Consequently, companies will be very careful in how they administer, adopt, amend and disclose their plans and awards, especially the 1,000 or so companies that will submit new plans or amendments for shareholder approval in 2015.

Stuart Levine, founder of Stuart Levine & Associates and director at Broadridge Financial Solutions, D'Addario and North Shore-LIJ Health System.

3. Companies likely will face greater cyber-security threats. In effect, the issue should not be viewed just as an IT issue but rather as an enterprise-wide issue. To mitigate risks, boards should ensure that their companies draft a cyber-threat management plan that runs through the entire organization. This plan should take into account President **Barack Obama**'s executive order on creating higher business standards in critical security areas.

4. Boards may find it increasingly difficult to communicate and justify director reelections to shareholders, while simultaneously managing the concerns of activist investors. This challenge will prompt boards to make an important internal review of their function. Further, governance and nominating committees will take a more uniform and direct response to addressing the renomination of underperforming directors.

5. Meanwhile, boards will ensure that their companies' strategic planning processes are not just an annual event, but rather are performed on an ongoing basis facilitated by data automation. A board should consider beginning every meeting with an executive session to discuss strategy, so that all directors participate in the process.

Stephen Bainbridge, the William D. Warren distinguished professor of law at the University of California, Los Angeles.

6. The Delaware legislature will not ban fee-shifting bylaws that force shareholder plaintiffs to reimburse companies for their legal fees if they lose a lawsuit. The **Delaware General Assembly**'s inaction on the bylaw — which the state's **Supreme Court** upheld — will result in considerable and highly controversial growth in the number of companies adopting such bylaws. In response, boards can expect noticeable but largely unsuccessful pushback from institutional investors.

Mark Borges, principal at Compensia, a compensation consultancy.

7. In the next year or so, the SEC will propose and adopt rules that require companies to address the relationship between the compensation actually paid to their executives and their financial performance. Thus, the disclosures being made now could significantly influence whether the SEC decides to give companies discretion on how they present this relationship or, instead, prescribes a specific format for this information. ■