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Top of the Agenda - 15(c)

Will remote 15(c) meetings lead to better practices?

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By Hillary Jackson

For many of the nation's mutual fund boards, it's 15(c) season. In the current environment, that means independent directors and counsel are grappling with completing the process of approving and renewing advisory contracts in a virtual setting, when folks can't step off to the side and have a quick conversation or as easily address issues that arise organically during board discussions. Despite the new meeting format, however, boards are adapting—and in many cases becoming more efficient with 15(c)-related and other tasks on their agenda.

Especially for boards overseeing large and/or complex fund families, the 15(c) process normally can be spread out over several meetings—either as a matter of course on the regular schedule or in between-meetings gatherings or conversations. When "Zoom fatigue" is added to the mix, the process can be even more drawn out, given the amount of work that needs to get done. Indeed, this is true for boards of all sizes overseeing whatever type of fund family is within their purview; meeting virtually just changes things.

"Some common processes have emerged," said Paulita Pike (pictured, top left), a partner at Ropes & Gray in Chicago. "Boards have lengthened the number of days [of their meetings]; if it was two to three full days, now we're seeing it spread over four to five days." During the meeting times, breaks are being scheduled more often and for longer periods so participants can stretch their legs and take a screen break, she told *Fund Board Views*. "These are all techniques to try to address the Zoom fatigue factor." Another strategy Pike pointed to is for boards to hold an executive session on a Friday in place of what

would have been an in-person dinner or early-morning session at the start of a regular in-person meeting. That way, the board chair can address issues with management over the weekend and get the virtual meeting started right away on the Monday.



Formalizing the Process

David Mahaffey (pictured, top right), a partner at Sullivan & Worcester in Washington, D.C., said many of the boards with which he works already had started formalizing their 15(c) process before they were forced to meet remotely. Because of this, they've eased fairly seamlessly into the virtual setting, he told *FBV*.

"For our clients, major clients, we had been working on the 15(c) process in a way to make it more formal and better documented," Mahaffey explained. "It used to be that you had a 15(c) meeting and the trustees would say 'what about...?' and go back and forth [on an issue]. What we've been trying to do is to get the process more formal, so well in advance of the meeting we have identified the list of funds that are of concern" and can address other issues as well, he said, adding that queries are more thorough and can be submitted to management in writing. This process allows for management to then have the opportunity to respond in writing and/or attend the board's meeting prepared to answer questions and provide a deeper dive into areas of concern when necessary, Mahaffey said.

"If you do it that way, the informal in-the-hallway conversations aren't necessary," Mahaffey underscored. "This process is good from a litigation perspective, but it's also good because it's just a better process."

Andrew Tarica (pictured, bottom left), independent chairman of MetWest Funds, told *FBV* that his board begins working on its 15(c) process at its June meeting, and the votes take place at its September meeting. Even in "normal" times, much of the work has been done telephonically in recent years, which has positioned the board well to cope with current circumstances caused by the global COVID-19 pandemic, he said.

This year, the board already has had a telephonic meeting with independent counsel at Dechert and another with Broadridge, which provides peer group analysis for the MetWest Funds. "It went very smoothly," Tarica said. Over the next six to eight weeks, information will flow among the board, independent counsel, and the adviser. Then, about three weeks ahead of the September meeting, the board will conduct a telephonic meeting with the full board, counsel, Broadridge, and management. "This

is the heart and soul of the process," Tarica said, noting this has been the board's process for about five years. "We've turned that into our fifth board meeting," he said, adding that the meeting is only 15(c)/contract renewal work. "It's very efficient and effective."

This year's August meeting will be "unique," Tarica said, explaining the board will spend a fair amount of time on COVID-19 and the pandemic, including reviewing how the adviser has coped in terms of the market volatility and performance, as well as how it has handled its workforce. Over the past several months, Tarica has been on phone calls with the adviser roughly twice a week to ensure he and the board are up to date on the situation, but everything will be reviewed in August in the context of 15(c), he said.

Remote Lessons

With many fund boards already moving toward a more formal, systematic process of handling 15(c) before the pandemic, the forced move to remote meetings may hasten things along a bit for those that haven't yet tightened their processes.

"We've seen the process get incredibly formalized," Jay Keeshan (pictured, bottom right), a partner at Management Practice Inc. in Stamford, Conn., told *FBV*. What's different about virtual meetings, he said, is that the agenda and the participants are more focused and therefore more efficient. That could carry on once directors are back in actual boardrooms, he added.

Mahaffey said he anticipates more efficiencies and more formality as a result of the current environment and in response to the ever-increasing scrutiny of board processes. "If anybody thinks that they're not getting done what they should get done because of a lack of formal process, they need to get more formal," he underscored. Especially now, "you need a more formal process to make up for informal interactions you can't have and bolster the case that you were acting diligently."

Tarica was equally optimistic about good practices resulting from remote meetings. "I think there will be a silver lining, and I think boards will adapt to some of the better practices that we're exhibiting in this remote environment," he said.

Benefits of Being Together

"This has been a very helpful experience," Pike agreed, though she remains a proponent of returning to in-person meetings when it's safe to do so again. "There are important aspects of a board meeting you can't replicate virtually. Regular 15(c) meetings really should be conducted in person," she asserted.

"If we move completely to virtual, you take away the camaraderie, the social interaction, the bonding," Keeshan echoed, suggesting that a combination of in-person and remote meetings throughout the year, suited to individual boards and their needs, may be a good solution. The ability to be flexible and nimble with the schedule would be a positive, he said. "I could see in the future maybe they move to one physical meeting per year that is required."

For the rest of this year, at least, it's unlikely boards will be able to host in-person meetings. And even beyond the end of 2020, it's unclear when it'll be safe for fund directors to gather together in boardrooms. "It might be a long time," Tarica pointed out.

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