How to keep off Santa's naughty list – what not to do with 2019 executive remuneration!

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It is that time of year when Santa is working out who has been naughty and who has been nice. So, here is our go at a checklist of 'what not to do' that should keep your company and board off Santa's naughty list.

1 . *Do not volunteer what you will be doing if you have done nothing wrong.*

Some boards consider it good governance to let shareholders know what changes have been made for the current remuneration year as well as the year being reported on. Unfortunately, good governance often gets in the way of a proxy adviser's assessment of the remuneration framework.

If the company discloses some details of the changes it is proposing for the current year in the remuneration report, you can expect the proxy advisers to have regard for that usually very limited information in formulating their view. For example, disclosing a fixed pay increase might put you on the naughty list without the full benefit of the rationale AND, a year earlier than when it actually happens.

Providing some, but limited, details of prospective changes to the remuneration framework can definitely get you onto the naughty list. This is because investors and proxy advisers are forming a view based on incomplete information. While you may be coming from a position of good governance and proactive disclosure, it will not help you .

2 . *Do not write for the lawyer, accountant or regulator, write for the reader*

A technical response to the requirements of section 300A of the Corporations Act 2001 is not enough. Most remuneration report assessments by proxy advisers and institutional investors are made on information that is not technically required.

Minimally complying may not get you a strike, but you will make the naughty list.

And, after six 12-hour days a week for 12 weeks, proxy advisers and many investors are tired and grumpy. So make your report easier to ready. Short sentences. No conjunctions. Words of few syllables. See HERE .

If your colleague director who is not on the remuneration committee is struggling with the final draft, rest assured, you are heading for the naughty list.

3 . *Do not obfuscate (or, do not try to justify the unjustifiable)*

If it has been a bad year, investors expect management will share in the pain (rightly or wrongly). If you try to gloss over it, say all the good things that management has done and effectively lack transparency, you are heading for the naughty list.

If the board has paid variable pay, the directors have turned their collective mind to the issue, made a decision and determined to make the payment. Clearly explain the rationale for the decision.

4 . *Do not tell your investors that remuneration should not be so complex*

It is – and for a reason.

You have hired experienced, skilled and intelligent executives to run a complex business. An ASX 300 company is a complex organisation with a lot of moving parts, operating to a small or large extent in a regulated environment, in a capitalist economy across borders – should be simple, huh?

It is a complex business. If your pay framework is simple, you will get simple outcomes – but they may not be what investors expect, or want.

The board’s objective is to have a remuneration framework that is fit for purpose for the company. Not a framework that tries to meet the expectations of a range of different stakeholders. If you have done the work to determine what is best fit for purpose (and that will be a lot of work), you will have the rationale for the framework, will be able to articulate it, and should have it accepted by investors.

5 . *Do not set performance targets below consensus/guidance*

If your company pays out around 50% of maximum STI at a level below consensus, you can expect to be on the naughty list.

A total remuneration framework is often not well understood. Companies should clearly explain their remuneration framework right upfront and, probably, in no more than 3 or 4 paragraphs.

A total remuneration framework should comprise fixed pay and variable pay with target and maximum levels of pay outcomes for performance. Subject to the robustness of the settings, it should ordinarily be expected that the target level of performance will be met, resulting in the target level of variable pay. This means the starting point for pay outcomes should be target with increases or decreases from that level depending on the performance measures and the achievements.

So, ensure your explanation of your framework and the way in which pay outcomes are determined is clear, concise and easily understood.

6 . *Forget simple*

Everyone cries out for simplicity. But the more simple, the more likely you will not tick anyone’s boxes. You will be naughty.

Forget just paying a base salary. It is not variable with performance.

Forget providing pay as mostly a grant of stock to align with shareholder experience. For some mysterious reason, this too is not acceptable to most shareholders where it has been tried in the UK.

Most times, forget paying salary and an annual incentive with most of that incentive deferred in shares. You have to have an LTI or otherwise you will be on the naughty list.

Forget just a salary and LTI. It will not be sufficient for the bulk of investors insisting on pay reflecting “what have you done for me lately”.

Forget using a simple single performance measure consistent for annual and long term rewards and perfect for the business. It will not likely be TSR, so you will be naughty. It will be said to be double dipping, despite being better governance to measure the same thing over different time periods. Go to the naughty corner.

Best to bamboozle with complexity then. You may not be nice, but it will be too hard to fathom if you are naughty.