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WRAPPING UP A 'SCATTERSHOT' PROXY SEASON

AI-related shareholder proposals emerged among a record number of shareholder proposals in 2024

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WRAPPING UP A 'SCATTERSHOT' PROXY SEASON

AI-related shareholder proposals emerged among a record number of shareholder proposals in 2024, but the overall impact of the 2024 proxy season was muted.

BY RICHARD CARPENTER

Some proxy seasons lend themselves to bold thematic headlines. Others are more a grab bag of initiatives with a few trends gaining momentum and other trends showing signs of a quick fade.

The 2024 proxy season falls into the latter camp—an idea that had begun to take hold well before voting began.

In February, The Conference Board described the 2024 proxy season as having a "'scattershot' feel to it." Meanwhile, a corporate governance expert predicted in Forbes in February that the coming proxy season would be "anything but typical, largely due to the intense and divisive social, political and environment we all live in."

Another reason why the 2024 proxy season is hard to pigeonhole is that investors and directors each had very different sets of priorities. In a recent survey, EY discovered directors in the Americas were focusing on economic conditions, capital allocation, cybersecurity and data privacy.

Investors, on the other hand, were paying keen attention to the talent agenda (63%), climate change and environmental stewardship (56%), and supply chain matters and capital allocation (both at 31%).

If 2024 goes down in proxy history for its lack of cohesiveness, some trends from earlier years held steady or intensified. For instance, 2024 broke the record for the most shareholder proposals ever filed, beating out 2023, another record-setter in this regard.

In addition, as has been true for many years, the vast majority (76.1%) of known shareholder proposals continued to be aimed at larger companies, specifically those in the S&P 500.

In 2023, Amazon had the dubious distinction of again receiving the highest number of shareholder proposals (18) of any public company, down slightly from 21 last year.

Below are more highlights of this hard-to-categorize 2024 proxy season as it winds down.

Universal Proxies and Big Management Wins?

Two of the highest-profile proxy fights of the 2024 season—at The Walt Disney Company and at Norfolk Southern—ended with management staving off dissident threats.

Management at Norfolk Southern, which was prominently linked to a 2023 Ohio chemical disaster after a train derailment, faced a board challenge from activist investor Ancora Holdings. Ancora sought to take control of Norfolk Southern's 13-person board by nominating a slate of seven of its own candidates. Proxy advisor Glass Lewis endorsed six of the seven nominees, while ISS endorsed five.

The May 9 vote brought changes for Norfolk Southern but nothing cataclysmic. After the vote, Alan Shaw remained as CEO in spite of Ancora's efforts to oust him; and while Ancora gained three board seats, this was not enough to alter the balance of control in the boardroom.

At The Walt Disney Company, activist Nelson Peltz also ran a high-profile campaign to gain influence by winning two board seats but he, too, proved unsuccessful at the April 3 vote.

In April, the New York Times attributed the win by The Walt Disney Company's management to CEO Bob Iger's blunting Peltz's change agenda by proactively mapping out and communicating a series of bold initiatives, including cost-cutting efforts.

That so few dissident nominees were elected to boardrooms is "perhaps the most notable trend emerging from proxy contests in 2024," according to a June 15 post by the Harvard Law School Forum on Corporate Governance.

One factor favoring Iger and other CEOs in 2024, according to Harvard, was the Securities and Exchange Commission's (SEC's) new rule requiring the use of a universal proxy card.

In 2022, the SEC changed a longstanding rule so that companies would now send shareholders a single proxy card listing all board nominees, including those nominated by dissidents so long as they complied with nomination procedures. The single or "universal" proxy card allows shareholders to mix and match votes for directors rather than being forced to choose between management's slate and the full slate of nominees proposed by dissidents.

In a March 12 proxy season preview, ISS noted that "contrary to predictions," universal proxy cards had limited impact in 2023. Last year, there was no wave of contested elections and dissidents did not score a number of dramatic wins even with the SEC's new rules. Even just a few months ago, however, ISS hadn't ruled out the possibility that the 2024 proxy season could be shaken up by the universal proxy.

Now that the results from the 2024 proxy season are in, experts are reaching a surprising conclusion: the universal proxy is not immediately proving to be a boon for shareholder activists.

As was written in a June 6 post on Harvard Law School's Corporate Governance Forum, "the early stages of the 2024 proxy season have been marked by outright company successes at the ballot box—results which run contrary to the tidal wave of predictions concerning the ease with which shareholders would obtain at least partial victories through the use of universal proxy cards."

Backlash Proposals: The Latest in E&S

After enormous excitement (or foreboding) a few years back when environmental and social (E&S) proposals began gaining momentum, these proposals generated low levels of shareholder support in more recent proxy seasons.

As of late June, only three E&S proposals received majority support. On the environmental side, proposals asking Wingstop and Jack in the Box to adopt greenhouse gas emission standards gained more than 50% shareholder support. Among social-issue proposals, one at healthcare company DexCom, requesting the issuance of a report on political contributions, also boasted majority support.

What's more, environmental and social corporate activism also suffered the indignity of a rise in backlash proposals, largely in the form of requests that companies reconsider diversity, equity and inclusion (DEI) initiatives. Among other things, anti-ESG proposals asked companies to report on whether their DEI programs lead to illegal discrimination.

When looking more broadly at all environmental, social and governance (ESG) proposals, proxy solicitor Georgeson found that the numbers of anti-ESG proposals grew by over 90% in the past two years. In 2022, there were a mere 57 anti-ESG proposals, and yet in 2023 there were 94, and this past season saw 112.

Even though the number of anti-ESG proposals may have surged, support has been extremely underwhelming. Georgeson reports that average votes in favor of anti-ESG social proposals hovered around 2.3% in 2024, compared to 2.7% average support in 2023 and 7.7% in 2022.

'G' Sees Successes, Again

When it came to the trio of areas represented under the ESG umbrella, governance proposals again garnered higher levels of support in 2024 than environmental or social proposals.

One new wrinkle for 2024 was a request for companies to address the problem of "zombie holdover" directors, or board members who failed to secure a majority of shareholder support in an election and yet continue to serve. This year, some proponents asked companies to spell out procedures so holdover directors would tender resignations by a given date.

Governance proposals may have seen more widespread support than in other areas, but attempts to rein in executive compensation through Say on Pay votes again faltered. In fact, just 0.9% of companies in 2024 received a majority vote on Say on Pay, versus 1.6% at the same time last year.

The collective indifference to executive compensation practices stood out sharply against the rise in CEO pay during the past several months. In 2024, the median total compensation for S&P 500 chief executives skyrocketed by 12.6% to $16.3 million, up dramatically from the 0.9% rise in 2023, according to the Equilar/Associated Press CEO Pay Study, released on June 3.

No-Action Relief Returns

The results of any proxy season are shaped by which proposals regulators allow to reach shareholders' inboxes. In 2024, the SEC reversed a recent trend and once again gave its blessing to the exclusion of far more shareholder proposals than it had in the past few years.

In 2024, nearly 100 more requests for no-action relief were submitted to the SEC than in 2023, while the SEC nearly doubled the number of exclusions of shareholder proposals compared to the previous year.

Put another way, from November 2023 to May 1, 2024, the SEC granted company requests for no-action regarding shareholder proposals roughly 68% of the time.

This year, when asked by shareholders to break down greenhouse gas emissions by product category, Walmart and Tractor Supply both sought and received no-action letters. Similar no-actions were given to Wells Fargo, Bank of America, and Goldman Sachs when proponents requested that the proportion of sector emissions attributable to clients not aligned with a credible Net Zero pathway be disclosed.

One reason that the SEC gave for allowing proposals to be excluded was that it dismissed several shareholder proposals as attempts to "micromanage" company activities.

AI Proposals: A New Frontier

As Microsoft, The Walt Disney Company and the Royal Bank of Canada came to know firsthand, shareholder proposals about artificial intelligence (AI) were increasingly popular this proxy season.

One form that shareholder proposals took was a request for "transparency reports" detailing a company's use of AI. Via a 2023 shareholder proposal, the AFL-CIO asked five entertainment companies (Apple, Comcast, The Walt Disney Company, Netflix, and Warner Brothers) to report publicly on their use of AI in their operations and to disclose any ethical guidelines that had been adopted.

Other shareholder proposals went further in their AI demands. For example, the proposal that Arjuna submitted to Meta and Alphabet sought a report on AI risks as well as a plan for remediating any potential harm stemming from misinformation and disinformation.

One shareholder proposal that experts anticipate could soon gain in popularity is for public companies to have at least one board member with the requisite expertise to address AI-related issues.

From what's been disclosed to date, an ask like this would prove problematic for the vast majority of major American companies. In the year leading up to September 2023, only about

No matter which precise issues emerge as central for 2025 and beyond, one reality has remained constant: Shareholders appreciate thoughtful and data-rich disclosures that reflect the changing concerns of the times.

15% of companies in the S&P 500 provided some disclosure of board oversight of AI in their proxies, according to analysis by ISS-Corporate on March 21.

Many experts believe that AI disclosures are about to become *de rigueur* for public companies. In the SEC's 2024 Examination Priorities, artificial intelligence was among a handful of topics that the agency specifically addressed.

Meanwhile, about 41% of S&P 500 companies are already making some mention of AI in their annual reports or 10-Ks, according to Bloomberg Law. These percentages are almost certain to continue to ratchet upward.

Looking Ahead

Following are four takeaways based on 2024 proxy trends:

1. Continue to keep an eye on universal-proxy trends. The shift to a universal proxy card has not proven to be the bonanza for shareholder activists that public companies feared. In fact, as can be seen from the major wins for corporate management in 2024, there are even signs that the universal proxy may be boomeranging and proving to be no help to activists at all. That said, many experts believe it's still too early to tell what the long-term effects of the universal proxy will be. This rule change is a powerful one and it may take time for its full impact to be felt.

2. Be proactive about explaining corporate actions. Now more than ever, the C-suite seems to grasp that engaging with shareholders can dissipate much of the rancor and distrust that prompts the filing of a shareholder proposal in the first place. As the New York Times said in early April about The Walt Disney Company's victory against activist Peltz, "a robust defense matters."

3. Consider classifying AI as a governance issue. Just as cybersecurity is increasingly viewed as a governance issue, AI can arguably fit the same bill. For some companies, discussing AI policies and procedures in an ESG or sustainability report therefore makes sense, and is a way to heighten attention to an issue of growing importance.

4. Err on the side of more communications, not less. In a survey by KPMG, 41% of boards said they spent significantly more time discussing risk disclosures, including cyber and AI, in 2024, versus only 25% who said the same in 2023. In addition, 35% of boards said they spent significantly more time discussing board composition, including skills and diversity, in 2024, versus 33% last year. Given these trends, cyber, AI, and board composition may be hot topics during the coming year.

No matter which precise issues emerge as central for 2025 and beyond, one reality has remained constant: Shareholders appreciate thoughtful and data-rich disclosures that reflect the changing concerns of the times.

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