




ALLIANCEBERNSTEIN®

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2023 US Proxy Season Preview



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2023 US Proxy Season Expectations

The 2023 US Proxy Season is expected to continue the trend of an active shareholder proposal landscape, fueled by the evolving regulations on shareholder rights, climate risk management and people management. In this preview, we outline how these key topics may remain on the scene throughout the season.

Key Themes We Expect to Continue

Implications of Regulatory and Political Developments

Shareholder Proposal (Rule 14a-8)

As discussed in our 2022 Proxy Season Review, we expect a potential increase in the number of shareholder proposals that remain on the ballot due to a stricter requirement to omit them based on the three criteria defined by the US Securities and

Exchange Commission (SEC) in its updated Shareholder Proposal rule. Specifically, the updated Shareholder Proposal rule states that companies will not be granted permission by the SEC to take no action on, or to omit, a proposal submitted by the shareholder proponent unless the company can prove one of the following three amended requirements.

| Requirement | Prior to the Amendment | After the Amendment |
|----------------------------|--|---|
| Substantial Implementation | The company has already substantially implemented the proposal. | The company has already implemented the essential elements of the proposal. |
| Duplication | The shareholder proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting. | The SEC added that "the proposal substantially duplicates another proposal if it addresses the same subject matter and seeks the same objective by the same means." |
| Resubmission | The shareholder proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years; the matter was voted on at least once in the last three years and did not receive sufficient shareholder support. | The SEC added the following two conditions: <ol style="list-style-type: none"> 1. Provide that a proposal constitutes a resubmission if it substantially duplicates a prior proposal; and 2. Specify that, as with the duplication exclusion, a proposal "substantially duplicates" another proposal if it "addresses the same subject matter and seeks the same objective by the same means." These changes would align the "resubmission" standard with the "duplication" standard, in consideration of the similar objectives of these exclusions. |

Source: <https://www.sec.gov/files/34-95267-fact-sheet.pdf>

As shareholder proposals become more difficult to omit and continue to reflect divided viewpoints on environmental, social and governance (ESG) issues and current socioeconomic challenges in the US, we expect the shareholder proposal landscape to become more heated in the coming season.

Universal Proxy (Rule 14a-19)

Shareholders were previously forced to vote solely on either the management or dissident card, whether by a company requirement or because of operational constraints, which often results in supporting a specific side versus electing a set of the most qualified directors across the two slates. The updated Universal Proxy rule now requires proxy contests to allow shareholders to support directors across both management and dissident nominees on a universal proxy card (effective for contested elections held after August 31, 2022). The updated rule also requires shareholders to solicit holders of a minimum of 67% of the voting power of shares entitled to vote in the election, which we expect will make the vote outcome more reflective of the broader shareholder group.

Pay v. Performance

The finalized Pay v. Performance rule attempts to standardize companies' executive compensation disclosure to make the information more comparable and digestible for shareholders. Specifically, the amendments require registrants to provide a table disclosing specified executive compensation and financial performance measures for the last five completed fiscal years.

Shareholder Activism

The shareholder proposal landscape continues to evolve more broadly, with more stakeholders providing platforms for retail investors to participate and express their viewpoints. In the UK, the threshold for retail holders to vote on or share their preference on specific proposals is becoming lower, with apps that collect retail shareholders' opinions. In the Asia-Pacific region, more activist investors are using highly publicized campaigns to increase pressure on large-cap companies to improve their corporate governance and actions around environmental and social issues. We think that current market conditions, the Universal Proxy rule and movements in other markets could potentially increase the level of shareholder activism in the US.

Expected Finalization and Impact of SEC Climate Disclosure Rule

On March 21, 2022, the SEC proposed changes to its Climate Disclosure rule that will require companies to include information about material climate risks in their registration statements and periodic reports, as well as certain climate-related financial statement metrics in their audited financial statements. Specifically, issuers will need to disclose their governance and risk-management process around climate risks, as well as the realized and potential impacts of such risks on their business. Importantly, companies will also be expected to report on their direct greenhouse gas (GHG) emissions (i.e., Scope 1), indirect emissions from purchased electricity or other

forms of energy (i.e., Scope 2), and, if they are material or if a company has included them in its emissions-reduction targets, emissions from upstream and downstream activities in its value chain (i.e., Scope 3). The anticipated disclosures are similar to what many companies already report based on broadly accepted frameworks, such as the Task Force on Climate-related Financial Disclosures and the Greenhouse Gas Protocol.

Amid significant investor, company and lawmaker pushback, the proposed rule change has been delayed on multiple occasions from the original deadline of October 1, 2022. Though the final language of the rule has yet to be determined, it is likely that the change will provide much-needed standardization and transparency regarding companies' material climate risks. Throughout the 2023 Proxy Season, we expect to see more issuers enhancing their climate reporting in alignment with the expected finalization of the SEC's Climate Disclosure rule.

Say on Climate Evolution

Over the last few years, the number of European shareholder proposals requesting an annual Say on Climate (SoC) vote—which allows shareholders to review companies' climate transition strategies—has steadily increased. While it is common in European markets for proponents to seek climate transition plan votes, US shareholders have focused their proposals on environmental reporting and disclosure. The finalization of the SEC's Climate Disclosure rule may affect shareholders' future expectations of US companies. A recent controversy around BP—due to the company scaling back its emissions-reduction target after having received more than 80% support from shareholders on the management-proposed SoC proposal at its 2022 annual general meeting (AGM)—highlights the weakness of SoC's advisory nature. The case may support requests by US shareholder proponents for companies to take specific actions rather than promoting the SoC vote mechanism.

As outlined in our Proxy Voting and Governance Policy, we consider SoC as an additional opportunity to express our view, but our engagement and fundamental research processes will continue to drive our consideration of climate-related risks apart from the SoC mechanism.

Potential Emergence of Biodiversity as a Topic Stemming from COP15

In December 2022, the UN Biodiversity Conference (COP15) was held in Montreal, bringing together governments and stakeholders from across the globe to establish a plan intended to halt and reverse nature loss, as outlined in the Global Biodiversity Framework (GBF). A central component of the GBF is the 30×30 Pledge, which is an international agreement to put 30% of the planet and 30% of degraded ecosystems under protection by 2030, alongside a commitment to triple the current international aid for biodiversity by 2030. Among 23 targets, the GBF includes a goal to "take legal, administrative or policy measures for businesses and financial institutions to assess and disclose impacts on nature

and act to reduce impacts.” Similar to the Paris Agreement in 2015, the negotiations of COP15 are expected to result in heightened investor scrutiny of companies’ practices related to biodiversity and conservation, which may spill over to the US shareholder proposal landscape moving forward.

In 2022, we observed a number of shareholder proposals that addressed various biodiversity topics. At Home Depot’s AGM, Green Century Capital Management slated a shareholder proposal requesting that the company “issue a report assessing if and how it could increase the scale, pace and rigor of its efforts to eliminate deforestation and the degradation of primary forests in its supply chains.” Although Home Depot has some disclosure around wood purchasing in its supply chain, we voted in support of the proposal, as we believe that shareholders would benefit from increased transparency around the company’s management of deforestation risks.

Another biodiversity-related topic—water risk management—was raised at Alphabet Inc., Tesla and The Kraft Heinz Company. The proponents of these resolutions emphasized that the material risks of water scarcity and contamination pose threats to not only biodiversity but also to company performance and shareholder outcomes. While we voted for the shareholder proposals at Alphabet and Tesla, Kraft Heinz already publishes a report that outlines water-related risks, which we believe warranted a vote against the proposal.

Proposals asking companies to report on their efforts to reduce plastic use were also slated at a number of US issuers, including Amazon.com, ExxonMobil, General Mills and McDonald’s. We voted in favor of the shareholder proposal at General Mills, because the company has not made a commitment or set targets around an

absolute plastic reduction, lagging behind the practices of peers such as Kellogg, which has established goals to reduce absolute plastic use and reports on the progress made toward these goals. We voted against the proposals at Amazon.com and McDonald’s because the companies have strong and transparent practices around plastic reduction already in place, and we voted against the proposal at ExxonMobil based on overly prescriptive wording. We expect that biodiversity will continue to remain in the shareholder proposal landscape, perhaps to a greater extent, both in terms of the volume and range of topics, through 2023.

People Management: Here to Stay

AB continues to evaluate a company’s approach to people management through a materiality lens, in which companies are expected to create a competitive advantage over their peers through an effective talent-development approach. In addition to diversity representation, workers’ rights and pay gap disclosure are related topics that are explored to evaluate companies on their overall people management as described in the following examples from 2022. We expect the discussions on these subjects will carry on into the 2023 US shareholder proposals list.

Racial Equity and Civil Rights Audit

With regard to racial equity and civil rights audits, we expect that the success of these shareholder proposals in 2022 will set the stage for the 2023 season and may result in an increase in proposals asking for them. Below are a few examples of proposals from 2022 that requested racial equity or civil rights audits that we either supported or did not support.

Supported in 2022

- At Alphabet Inc., we supported a shareholder proposal asking for a third-party racial equity audit. Though the company’s current efforts address product equity for Black- and Latino-owned businesses, a broader review of the company’s impact on all communities throughout its product lines would serve as a comprehensive risk assessment identifying potential gaps, and trigger mitigation processes. With the increasing influence of artificial intelligence— and algorithm-based technologies among various stakeholders, expected regulatory developments raise the need for big tech companies to proactively monitor related risks.
- We engaged with MAXIMUS prior to its AGM and concluded that the company is not sufficiently addressing all material impacts on customers and communities of color from its business activities. Although the company has conducted a third-party audit of its own human resource policies and practices related to diversity, equity & inclusion (DEI), a more comprehensive audit is warranted.
- At Sysco, recent allegations surrounding hiring discrimination made a third-party civil rights audit proposal particularly relevant. We supported the proposal, as more information and transparency regarding the company’s DEI data and practices would benefit all shareholders, in our view.

Did Not Support in 2022

- Badger Meter made progress on advancing its diversity efforts after receiving an identical proposal related to a third-party racial equity audit from the same proponent in 2021. Considering this progress, we did not support the proposal in 2022.
- We voted against a shareholder proposal asking Wells Fargo to conduct a racial equity audit because the company had already conducted a human rights impact assessment, disclosed the outcome and highlighted four main areas of “priority recommendations” in 2022. Although we supported a similar proposal in 2021, we acknowledged the positive improvements the company has made in response to previous shareholder requests.

Workers' Rights

Continuing the trend from the 2022 Proxy Season around workers' rights, Apple recently announced its intention to assess its US labor practices and its efforts to comply with its Human Rights Policy, including freedom of association and collective bargaining, in response to shareholder concerns and ongoing accusations of union busting. Though the commitment to conduct an independent audit is a positive development, we will be on the lookout for whether the company will heed the findings of the assessment and take credible, concrete steps to commit to noninterference in worker organization.

In the same context, in a breakthrough victory for employees at Amazon.com to organize a union, a federal labor agency rejected the company's attempt to overturn it at a warehouse in Staten Island, removing a key obstacle to contract negotiations between the union and company. The case is the first and only successful union push at an Amazon.com warehouse in the US and involves more than 8,000 workers.

In 2022, AB was supportive of a proposal asking Amazon.com to report on how its current human rights policies and practices protect the fundamental rights of freedom of association and collective bargaining. Although the proposal did not pass, it received nearly 40% support. In light of the aforementioned developments, we will look for increased disclosure and transparency around how the company is managing its human rights-related risks in 2023.

Pay Gap Disclosure

In 2022, AB was supportive of all five shareholder proposals asking for greater disclosure around existing gender and racial pay gaps.

Because organizations are under increased pressure to address pay disparities following new salary transparency laws (in California, Washington and New York City), we expect to see an increased number of shareholder proposals focused on promoting fair and transparent pay practices. This would mirror trends in the UK, Denmark, France and Germany, which already require gender pay gap disclosures. Investors and union leaders continue to push regulators to require firms in other markets to publicly disclose information about gender pay gaps in an attempt to reduce workplace inequality.

Overall, we think that shareholder proposals will continue to increase the ongoing discussions around DEI, employees' rights and climate risk management in the US. AB will continue its efforts to evaluate shareholder proposals based on our Shareholder Proposal Assessment Framework within our Proxy Voting and Governance Policy, where factors such as the materiality of the issue and a company's existing practices will be considered.

Conclusion

The themes of regulatory development, Say on Climate, biodiversity and people management grew in volume during the 2022 Proxy Season. As we head into the 2023 Proxy Season, we believe that

these topics will remain at the forefront of shareholders' minds. At the close of the season, we will share some of the key examples in our US Proxy Season Review.

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