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2024 US Proxy Season Preview

As responsible stewards of our clients' capital, we actively exercise our right to vote in accordance with our robust global rules- and principles-based in-house Proxy Voting and Governance Policy. We make investment and proxy-voting decisions in our clients' best interests, and support strong corporate governance structures, shareholder rights and transparency. For more details on our proxy-voting philosophy, policy and process, please see our Global Stewardship Statement.

Introduction

As we kick off the 2024 Proxy Season, we expect three trends to shape the proxy-voting landscape: 1) polarizing views on environmental, social and governance (ESG) issues; 2) a rise in environmental shareholder proposals; and 3) holding directors accountable over governance concerns.

We expect the polarizing views on ESG issues to affect the shareholder proposal (SHP) landscape, as stakeholders throughout the political spectrum are expected to ramp up SHP activity. All of this should be considered against the backdrop of a federal election year in the United States and uncertainties around the future of ESG.

Off the back of the 2023 season, we can expect a continued rise in the number of environmental- and social-related proposals, with a steady focus on climate, human capital management and political contributions. In addition, with artificial intelligence (AI) and biodiversity drawing great attention from a variety of stakeholders, we expect these topics to emerge on the ballot. The rapidly evolving regulatory developments will likely contribute to the volume of shareholder proposals and the broader proxy landscape; these developments include the US Securities and Exchange Commission's (SEC's) The Enhancement and Standardization of Climate-Related Disclosures for Investors, No-Action Process (Staff Legal Bulletin No. 14L) and the Universal Proxy rule.

When governance concerns are not addressed year over year, directors in leadership positions may face increased pressure from investors seeking to hold them accountable for their disregard of investor priorities.

Regulation

The rapidly evolving regulatory environment will likely contribute to the volume of SHPs in the proxy-voting season this year, such as the new requirements for certain companies to disclose climate-related information.

SEC: The Enhancement and Standardization of Climate-Related Disclosures for Investors

The highly anticipated rule was released in February 2024 after nearly two years of intense debate and scrutiny. While the final rules do not directly relate to proxy voting, they present an interesting backdrop ahead of the proxy-voting season, and they may influence the shareholder proposal and disclosure landscape, given that some filers will be required to report as soon as 2026. Key disclosure requirements for public companies include:

- Actual and potential material climate-related risks
- Activities to mitigate or adapt to such risks
- Information about the registrant's board of directors' oversight of climate-related risks and management's role in managing material climate-related risks
- Information on any climate-related targets or goals that are material to the registrant's business, results of operations or financial condition
- Disclosure of Scope 1 and/or Scope 2 greenhouse gas (GHG) emissions when those emissions are material
- The filing of an attestation report covering the required disclosure of such registrants' Scope 1 and/or Scope 2 emissions
- Disclosure of the financial statement effects of severe weather events and other natural conditions, including, for example, costs and losses

Revisiting the No-Action Process (Staff Legal Bulletin No. 14L)

The No-Action Process is a procedure used by the SEC to provide guidance on whether proposed actions would violate securities laws. Essentially, it allows companies to exclude certain shareholder proposals from their proxy statements without fear of legal action against them from the SEC. Staff Legal Bulletin No. 14L, released in 2021, effectively reversed the SEC's approach to how it evaluates the "ordinary business" and "relevance" exemptions for shareholder proposals, raising the bar for issuer no-action requests and making it easier for shareholder proposals to go to vote. We expect this to continue to have a major effect on the shareholder proposal landscape, as the change in policy likely contributed to the spike in volume of shareholder proposals in 2022 and 2023.

As it is difficult for issuers to get shareholder proposals excluded through the no-action process, some issuers have adopted a more aggressive approach in countering shareholder proposals, turning to alternative measures such as litigation. One notable example is ExxonMobil's lawsuit against the shareholder proponents Arjuna Capital and Follow This. The aim of the lawsuit is to exclude a shareholder proposal on Scope 3 GHG emissions from the ballot on the grounds that it deals with "ordinary business" and is substantially similar to proposals that were submitted in 2022 and 2023 but failed to gain sufficient support to be resubmitted. The proponents withdrew the proposal, but ExxonMobil has yet to drop the lawsuit. This is a clear example of where the use of lawsuits can be the means to exclude proposals. There is potential for other issuers to explore similar aggressive means of excluding proposals from ballots.

The Second Year of Universal Proxy

The rule requires the use of a universal proxy card (UPC) during contested director elections, which allows shareholders to vote on directors nominated by both management and dissidents. The 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. The year 2024 has already had several high-profile activist contests, including at Starbucks and Disney, and it is possible that we will see an increase in activist campaigns as investors get more comfortable with the use of UPCs.

In the second year, we expect: 1) both activists and issuers to get more savvy about the use of UPCs; 2) activists to be more focused with their nominees, nominating more short slates with specific skill sets and targeting specific directors; 3) issuers to be proactive with board refreshment to fill perceived skills gaps, as scrutiny of individual director skills and qualifications have increased; 4) an increase in settlements as issuers try to avoid the cost and disruption of a proxy contest; 5) investors and advisors to be more sensitive to amendments to advance bylaw provisions; and 6) investors to hold boards accountable if unreasonable barriers to entry have been put in place for board nominees.

Shareholder Proposals

AllianceBernstein (AB) believes that a company's ESG practices can be material to the value of the company, and we encourage corporate action on material ESG risks and opportunities. We take these factors into consideration when voting. In addition, our policy guidelines are not intended to address all issues that may appear on all proxy ballots. We will evaluate on a case-by-case basis any proposal not specifically addressed by the policy guidelines, whether submitted by management or shareholders, while always keeping in mind our fiduciary duty to make voting decisions that, by maximizing long-term shareholder value, are in our clients' best interests.

We anticipate that the trends observed in 2022 and 2023 will remain at the forefront of shareholders' minds, with a rise in the number of shareholder proposals that are brought to vote and a continued emphasis on environmental and social topics. Climate change, human capital management and political contributions are expected to remain prominent themes, while emerging topics such as AI and biodiversity are also likely to gain traction. Simultaneously, the polarization of ESG is expected to have a significant effect on the SHP landscape, with an increase in the number of so-called "anti-ESG" proposals, which have already increased more than 250% at S&P Composite 1500 companies since 2021.[1]

Environmental Proposals

Climate proposals will continue to be prevalent, especially because most proposals were submitted prior to the release of the final SEC climate disclosure rules. We expect to see proposals related to GHG emissions targets, in addition to requests for companies to publish climate transition plans in alignment with the Paris Agreement; both actions will likely be among the most common climate-related shareholder proposals. We will likely see a focus on financed emissions at banks and insurance companies. And while Scope 3 emissions disclosures were notably omitted from the final SEC climate disclosure rules, we may see an increase in proposals related to them. Finally, given that it is an election year, we may see an increase in the volume of proposals related to climate lobbying.

In 2023, we anticipated that biodiversity proposals would gain momentum in the wake of the United Nations Biodiversity Conference (COP15). While the volume ended up being smaller than expected, we believe biodiversity-related proposals will rise in 2024. With the release of the final Taskforce on Nature-related Financial Disclosures (TNFD) recommendations in late 2023, we expect a renewed focus on biodiversity and natural capital, and we may see shareholder proposals that seek disclosures directly aligned with the recommendations of the TNFD.

Social Proposals

We anticipate that human capital management proposals will be high in volume. The market's focus on diversity, equity and inclusion in 2024 is driven in part by the Supreme Court's decision to overturn affirmative action and the uncertainty surrounding the timing of the SEC's human capital management disclosure requirements.

Emphasis on workers' rights, including the rights of freedom of association and collective bargaining, is a trend that we saw last year and predict will continue in 2024. Emphasis on workers' rights was notable at a Starbucks proxy contest. The contest was an escalation from last year's shareholder proposal that sought a third-party assessment of the company's commitment to freedom of association and collective bargaining. The contest was ultimately resolved, and the dissidents withdrew their nominees following an announcement that Starbucks would resume talks with the Workers United union. The trends suggest the prevalence of both proposals to adopt a commitment to uphold the rights to freedom of association and collective bargaining, as well as requests for third-party assessments of companies' commitments to such rights.

Political contributions and lobbying proposals have been fairly consistent year over year, making up a significant portion of social votes. Again, as this is an election year, we anticipate that both transparency and congruency proposals will be points of emphasis for proponents as investors seek to understand how companies are spending their political dollars.

AI has dominated the headlines for the past couple of years, and roughly over 40% of S&P 500 companies mention AI in their most recent annual report.[2] A company's ability to address risks related to AI and its transparency surrounding AI is important to shareholders, and we expect to see new shareholder proposals on the topic introduced in 2024. Risks related to AI fall across a broad range of topics, including board and management oversight mechanisms, transparency, workers' rights, intellectual property and so forth, as well as the broader effects of AI on stakeholders.

1 *2023 Proxy Season Review: Part 1*, Sullivan & Cromwell, August 11, 2023.
2 Matthew Bultman, "AI Disclosures to SEC Jump as Agency Warns of Misleading Claims," *Bloomberg Law* (February 8, 2024).

Director Voting

While director support has remained relatively high year over year, we have begun to see a willingness among investors to hold board leaders more accountable. Investor discontent over a company's governance or board oversight has translated into an increase in votes against board leaders, especially board chairs, lead directors, and nominating and governance committee chairs. As investors are placing a greater emphasis on corporate governance and board oversight of ESG factors, we expect these trends to persist.

In terms of board oversight, we have seen investors looking to hold board leaders accountable in recent years. In 2023, for example, we saw nominating and governance committee chairs at S&P 500 companies receive an average of almost 4% less than the average director support.[3] This demonstrates investors' willingness to hold leadership accountable for concerns surrounding board diversity, governance or lack of board independence.

Like many investors, AB has built board accountability into our Proxy Voting and Governance Policy. AB's general approach to director accountability is to implement a multiyear escalation strategy. In the first year of voting against management for a given concern, AB will target the chair of the relevant board committee. If the concern persists after a year, AB will then vote against all incumbent directors on the committee. If the concern remains unaddressed by the company in the third year, we may vote against all incumbent board members.

3 Jamie Smith and David A Hunker, *What directors need to know about the 2023 proxy season*, EY, July 19, 2023.

Conclusion

As we look ahead to the 2024 proxy-voting season, we anticipate a dynamic landscape shaped by several key themes. These themes include a rapidly evolving regulatory environment, a vibrant shareholder proposal landscape, and a heightened emphasis on board oversight and accountability. Against the backdrop of an increasingly complex and uncertain ESG landscape, we are eager to see how the season will unfold. The 2024 Proxy Season will be an important moment for companies and investors navigating these challenges and opportunities.

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