King & Spalding
Client Alert

Corporate, Finance and Investments

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BlackRock's 2021 Policy Guidance

Each January, BlackRock typically previews its stewardship priorities in CEO Larry Fink's annual letter to portfolio companies, followed soon thereafter by updated proxy voting guidelines. Given BlackRock's position as the world's largest asset manager, with nearly $8 trillion in assets under management, companies are prepared for this typical release of information. But as one more oddity of 2020, BlackRock is front-running its traditional proxy priority roll-out with yesterday's release of a "2021 Stewardship Expectations" document that signals significant shifts in BlackRock's priorities and approach, coupled with "Proxy Voting Guidelines" issued yesterday, to be effective January 2021. These holiday season gifts include a number of takeaways for public companies, a few of which we highlight below.

Support for More Shareholder Proposals – Perhaps most eye-catching is BlackRock signaling an increased willingness to vote against companies in the coming year, whether in respect of shareholder proposals or in director elections. This is a significant shift with regard to shareholder proposals. BlackRock writes: "We see voting on shareholder proposals playing an increasingly important role in our stewardship efforts around sustainability. Accordingly, where we agree with the intent of a shareholder proposal addressing a material business risk, and if we determine that management could do better in managing and disclosing that risk, we will support the proposal. We may also support a proposal if management is on track, but we believe that voting in favor might accelerate their progress," going on to note that supporting shareholder proposals significantly increases the likelihood of a company implementing the requested actions. Later, they write "Where our analysis and engagement indicate a need for improvement in a company's approach to an issue, we will support shareholder proposals that are reasonable and not unduly constraining to management."

Efficacy of Votes Against Directors – It is also likely BlackRock will be marginally more demanding with other votes against a company, particularly on directors. BlackRock evaluated the "effectiveness" of its votes against and found that voting against directors was an effective way

to cause change. They evaluated the effect of votes against directors over compensation concerns in FTSE 350 and found that the underlying concerns were substantively addressed by 83% of companies where they voted against a director the prior year. They also found that votes against U.S. directors for gender diversity concerns led 41% of companies to improve board diversity the following year. The use of these statistics is a clear message from BlackRock: it believes that voting against directors is effective.

Additional Highlights of 2021 Guidelines – The following bullets briefly highlight certain themes reflected in BlackRock's proxy voting policies.

- Heightened attention to board ethnic and gender diversity, including disclosure of diversity characteristics, specifically EEO-1 reports;
- New attention to board tenure, using average tenure to "evaluate processes for board renewal" and potentially opposing boards that "appear to have an insufficient mix of short-, medium-, and long-tenured directors – though not explicitly linked, companies should expect that BlackRock will look for board refreshment that is aimed at meeting BlackRock's desired diversity standards;
- Increased focus on management compensation, including a new preference for annual Say-on-Pay votes, with the explicit warning that if a "company has failed to align pay with performance", BlackRock will vote against the management compensation proposal and consider voting against the compensation committee members;
- Requirement that companies disclose plans for how "their business model will be compatible with a low-carbon economy," specifically a scenario (a) in which global warming is limited to well below 2 degrees Celsius and (b) consistent with an aspiration to reach net-zero GHG emissions by 2050 (which may be a difficult lift for some industries);
- Support of enhanced political activity disclosure, which includes monitoring trade associations in which a company is an active member to ensure consistency with a company's public statements on key policy issues, including sustainability; and
- "More holistic commentary on our approach to natural capital," including expectations on water and energy scarcity, promoting biodiversity, and counteracting deforestation.

BlackRock also provides companies with some flexibility by clarifying that companies should no longer focus exclusively on shareholders; rather to maximize long-term value, BlackRock encourages companies to focus on stakeholders, including employees, business partners, clients, consumers, government and regulators and the communities in which companies operate – how BlackRock will measure this commitment is unclear.

Further, while this early release was unexpected, we urge our public company clients and friends to take advantage of this preview of BlackRock's priorities to consider how they may be assessed under this new guidance and potentially consider modifications to adapt their approach ahead of proxy season.

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