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Proxy Season: Early Highlights and Emerging Themes

The COVID-19 pandemic, volatile market conditions, and increasing stakeholder attention to a range of environmental and social topics made 2020 a remarkably difficult year for many public companies. 2021 will bring new challenges, as major investors and proxy advisors signal enhanced scrutiny of director nominees and executive compensation programs, as well as more openness to environmental and social shareholder proposals.

As many companies prepare for upcoming annual meetings, we take stock of early proxy season activity, highlighting early results and emerging themes relevant to corporate leaders.

Say on Pay. In the early days of the pandemic, some investors and proxy advisor representatives cautioned companies that their pandemic-related pay actions would be put under a microscope, as a referendum not just on corporate performance but also on the level of commitment to their current compensation design when times got tough. While acknowledging the unprecedented effects on public companies, many suggested positive adjustments to pay would be viewed skeptically.

Early results do show more scrutiny of pay than last year. Based on Proxy Insight voting results through April 19, 2021, average support for all say on pay proposals has dropped roughly 2.5% in the Russell 3000 compared to calendar year 2020. Failures are also up over last year, with 4.3% of Russell 3000 companies failing so far this year, compared to 2% last year.

The drop-off is more significant in the S&P 500, where average support has declined from 89.9% to 86.2%. Three S&P 500 companies have failed say on pay votes so far, compared to 11 in the entirety of 2020.

ISS has been more critical of executive pay this year than last, especially at larger companies. While the sample size is small, in the S&P 500, ISS has recommended in favor of just 73.1% of say on pay resolutions so far, compared to 89.3% last year. In the Russell 3000, ISS supported 85.3% of proposals, down almost 5% from last year.

Director Elections. Investors and proxy advisors have identified more reasons than ever to vote or recommend against the election of a director – lack of diversity, tightening overboarding policies, presence of disfavored governance provisions, lack of responsiveness to shareholders, compensation decisions, and more. Over the past few years, the average level of support for directors has dropped, and the likelihood of an ISS recommendation against directors has grown.

As of now, however, support for director nominees has not diminished. In the Russell 3000, directors have averaged 95.2% votes in favor, up slightly from 95.1% in calendar year 2020. ISS has supported 94.6% of Russell 3000 directors so far, up from 89.3%. In the S&P 500, average voting support this year is roughly the same as in 2020 – 96.6% – and ISS support has increased from 97.8% to 98.5%. Expect these numbers will drop over the proxy season.

Climate Change. Climate change remains the dominant environmental topic this year, with at least 136 climate-related shareholder resolutions filed so far this proxy season.[1] Consistent with recent years, the most popular type of environmental proposals concern greenhouse gas emissions. With some major investors including BlackRock announcing their intent to support more proposals of this nature, we expect already significant average support levels to rise. Relatedly, an emerging effort to require companies to hold an annual advisory "say on climate" vote giving shareholders a chance to weigh in on climate strategy is gaining traction this proxy season. While investors appear to be split on this concept currently, activist fund TCI has announced a goal of convincing at least 100 S&P 500 companies to adopt "say on climate" by the end of 2022.

Political and Lobbying Activity. Corporate political involvement proposals are also popular, with at least 30 filed this year.[2] Attention to corporate political activity – including lobbying efforts and trade association memberships – has grown in recent years, but this past year may prove to be a watershed given (1) growing attention to corporate statements on important social issues, such as race relations, and whether political activities are consistent with public corporate statements, (2) blowback against corporate contributions to legislators who challenged electoral college vote certification, and (3) significant pressure on businesses to take positions on voting legislation in Georgia, Texas, and elsewhere. On the heels of calls for disclosure and accountability on political spending following the attack on the Capitol, expect investors to support more of these proposals.

Diversity. Against a backdrop of recent legislation in California requiring board quotas based on racial and ethnic categories, and sexual orientation, as well as Nasdaq's proposed rule that would require listed companies to disclose statistics in a prescribed matrix format, the number of diversity-related proposals has increased significantly this year. Investors expect 40 resolutions to require disclosure of EEO-1 data, up from 22 last year.[3] Other diversity-related proposals seek more detail on diversity, equity, and inclusion initiatives, with many filed at companies that publicly supported the Black Lives Matter movement last year. Proposals for Rooney Rule policies for board selection have become less common given significant voluntary adoption by the corporate community, but there has been an uptick in attention to Rooney Rule requirements for employee hiring (either for the entire organization or only for certain executive positions).

Governance. Outside of the E&S space, traditional shareholder rights topics remain both common and frequently supported. There have already been at least 150 of these governance proposals filed this year.[4] Some of these proposals seek to either create special meeting, written consent, or proxy access rights, or make existing rights more shareholder friendly. Other proposals seek to eliminate takeover defenses seen as unfriendly to shareholders, including classified boards and supermajority voting requirements. Last year saw an uptick in the level of support for proposals to require an independent board chair, including the passage of two proposals; it is not yet clear if that was a blip or the beginning of a trend.

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[1] Investors Seek Greater Climate Action in 2021 Proxy Season", www.ceres.org, April 2, 2021, https://www.ceres.org/news-center/press-releases/investors-seek-greater-climate-action-2021-proxy-season
[2] "2021 Proxy Preview Report", https://www.proxypreview.org/
[3] Leslie P. Norton, "Proxy Season 2021 Looks Unusually Active, as Investors Press a Range of Concerns", www.barrons.com, April 16, 2021, https://www.barrons.com/articles/proxy-season-2021-looks-unusually-active-51618610010
[4] Proxy Season Preview (April 2020)", www.allianceadvisors.com, April 21, 2020, https://www.allianceadvisors.com/newsletters/proxy-season-preview-april-2020