2024 Proxy Season Preview

The 2024 proxy season will take place during a time of elevated activism activity, heightened geopolitical risk and greater scrutiny of how companies are managing through challenging markets. The following five trends will shape how companies and investors navigate annual meetings this Spring.

1 | Investors Will Focus on Board Effectiveness as New Risks Emerge for Companies

Companies are contending with geopolitical uncertainty, challenging labor dynamics and the emergence of new risks and opportunities such as artificial intelligence (AI) and other disruptive factors. In this complex environment, investors are focused on how well boards are positioned to provide effective oversight and support value-accretive decision-making. For 2024, investors have articulated engagement priorities and policy updates emphasizing the importance of strong board composition and succession planning practices and have signaled continued interest in understanding how boards identify and oversee material risks.

Investors are paying particular attention to how director skills and competencies, both individually and collectively, align with the strategic needs of the business — a significant topic of engagement through 2023 and continuing into 2024. In response, proxy statements in 2024 will feature refreshed skills matrices that include greater detail on skill definitions, disclosure of how director experiences support oversight and enhanced director biographies to clearly show each director's qualifications. Companies are beginning to rotate the directors that participate in engagement to offer a variety of voices in direct dialogue with investors and some investors are being more explicit in asking to speak with a director in a specific leadership role on the board.

2 | Activism is Heightened as Universal Proxy Card (UPC) Enters its Second Season

The pace of activism activity picked up at the end of 2023. Heading into the 2024 proxy season, activists are emboldened by strong fund returns and market conditions and are poised to press for change across market caps and sectors. A number of headline proxy contests have already been launched with demands that target operational improvement, executive and board refreshment and enhanced human capital management practices. Campaign dynamics are further complicated in cases where multiple activists bring differing demands.

Entering year two under UPC, both activists and companies are adjusting to the new mechanics of proxy fights and adapting offensive or defensive tactics to strengthen their respective positioning. Activists continue to nominate shorter slates to increase their probability of success. For companies, the calculus around settlement is evolving — several have proactively refreshed their boards in anticipation of activist interest to avoid fights or preempt investor support of dissidents, while others have reached private agreements rather than risk the disruption of a proxy contest. As proxy fights become more about individual directors under UPC, including candidate qualifications, companies are taking a more active approach to assessing board composition, director succession planning and disclosure.

3 | Investors Will Hold Companies Accountable for Pay-for-Performance Alignment

While 2023 was a rebound year for market performance, companies may face challenging say-on-pay votes this year, particularly where macroeconomic pressures, geopolitical instability or C-suite turnover have brought added complexity. Last year, average support for say-on-pay ticked up, suggesting that companies have adapted to certain investor preferences on compensation. However, each year presents new challenges to achieve strong support for pay practices and performance outcomes.

For 2024, investors will be focused on pay-related governance, encompassing disclosure around strategy and philosophy on executive pay. Compensation committees' discretionary adjustments to annual or long-term incentives will be closely reviewed and investors will also scrutinize supplemental awards that were granted outside of the normal award cycle for new hires and to support retention — a relevant trend this year as CEO turnover remains elevated across the market. Companies can enhance support for say-on-pay, even in challenging times, by providing clear rationale for the board's decisions and detailed disclosure around how shareholder feedback has been considered.

4 | Companies are Navigating a More Complex Shareholder Proposal Landscape

The 2024 shareholder proposal landscape is already proving to be more complex than in recent years. Environmental and social proposals continue to be more prescriptive and encompassing of a broader range of topics. There will be a number of first-time proposals on topics as wide-ranging as AI, fairness in director nominations, director resignation policies and biodiversity concerns. Many companies are also facing repeat proposals, particularly on contentious social topics such as labor and human rights risks. A high volume of anti-ESG proposals is expected, but they will likely receive minimal investor support despite the media attention they attract. Governance proposals have had a resurgence, with two already passing in early 2024.

Given the high volume of shareholder proposals, many companies are continuing to pursue behind-the-scenes dialogue and negotiations with proponents to determine if there is a path to withdrawal. This year companies will also be watching the outcome of the SEC's decisions on no-action requests and litigation around excluding a proposal. Investors are expected to continue to scrutinize proposals closely while remaining open to supporting companies that can provide compelling rationale against proposals, both in their opposition statements and through engagement, including describing the board's oversight and the cost and risks to the company.

5 | Diverging Views on ESG Puts Companies' Practices under a Spotlight

Many companies are finding themselves in the center of the growing debate around ESG. The consistency and forcefulness of investor expectations on sustainability disclosure has been tempered over the last year. A number of large asset managers are placing greater emphasis on holding companies accountable to set and disclose progress on business-aligned environmental and social priorities, with some shifting away from rigid disclosure and goal requirements and their own participation in climate coalitions. Other investors, including many asset owners and European investors, have broadly maintained or even expanded their expectations for company disclosure and progress.

The recent Supreme Court decision on affirmative action in education has prompted threats of litigation around company approaches to diversity, equity and inclusion. A forthcoming Supreme Court decision may reshape the role of federal agencies, including the ability of the SEC to set standards, even as the regulator continues to signal climate, board and human capital-related rulemaking remains a priority. At the same time, Congress and state legislatures are taking divergent paths toward promoting or banning ESG practices.

These ESG crosscurrents have created uncertainty in the market. In response, companies are applying greater nuance in their framing and communication of ESG-related matters and emphasizing those topics that are most relevant for their business as they seek to maintain investor support while also balancing stakeholder expectations.