THE ADVISOR

Alliance™ ADVISORS

2021 PROXY SEASON – KEY ISSUES AND EARLY VOTING TRENDS (THRU APRIL)

By James Miller CFA, CPA

May 2021

With the proxy season in full swing, this note looks at the issues and trends that thus far have defined the 2021 season.

Takeaways

Director Elections

- Year-over-year average investor support for directors remains statistically unchanged at 95.6% compared to last year's support level at this time, however, many expect support levels to drop as the season progresses based on 2020 full-season results
- Average support for female directors is 1.1 ppts. higher than male nominees - in line with prior years

Say on Pay

- Increased opposition to say on pay votes at Russell 3000 companies and is more pronounced at S&P 500 companies (based on small sample)
- The unusually low support levels (89.0% Russell 3000 and 87.1% S&P 500) coupled with a high failure rate 4.2% - twice as high as the failure rate observed at this time last year – likely indicate the discontent of shareholders/ proxy advisors with those companies that made significant changes to executive compensation without descriptive disclosure and/or a compelling rationale[1]

ESG

- E&S hot topics remain unchanged - climate change, political activity, diversity – but shareholder support has greatly increased, most notably, at large institutions
- Most expect support levels to beat historical averages as investors signal increased willingness to support reasonable proposals

Director Elections

Reasons cited for adverse votes/recommendations against incumbent nominees include:

- Lack of board diversity
- Board accountability - problematic governance provisions, director attendance
- Compensation related issues
- Board responsiveness concerns
- Poison pill issues – term, trigger, failure to submit for shareholder approval
- Tightening of investor over-boarding policies*
- Lack of progress on climate related reporting or SASB indexing*

*New and/or greater impact this year

Notwithstanding the myriad of reasons incumbent directors can receive an adverse vote from shareholders, investor support for director nominees is running on par, 95.6%, with last year's results. Moreover, ISS has supported 94.8% of Russell 3000 directors to date, up from 89.3% in 2020. Similar results hold for S&P 500 companies where average support this year, 96.7%, is comparable to 2020, and where ISS support for these largest companies has increased from 97.8% to 98.5%. [2] That said, based on full season results in the past, most expect a drop in support levels as the proxy season enters its historically busiest month (for meetings) May, before tailing off thereafter.

Say on Pay

Early in 2020, large investors and proxy advisors cautioned companies that their pandemic-related pay actions would be viewed with greater scrutiny, partly as a referendum on the level of commitment to their current compensation design during difficult times. Though acknowledging the pandemic's adverse impact on corporate performance and human resources, shareholders and proxy advisors signaled positive pay adjustments would be viewed skeptically.

Early vote results appear to validate that shareholders and proxy advisors are evaluating companies in strict accordance with their Covid-19 guidance. Proxy Insight voting results available through April 28, 2021, indicate average support for all say on pay proposals has dropped roughly 1 percent in the Russell 3000 compared to calendar year 2020 and failures are also up over last year, with 3 percent of Russell 3000 companies failing so far this year, compared to roughly 2 percent last year.[3]

In the S&P 500, average support has declined at a slightly lower rate, dropping from 89.8% to 87.7%. A total of eight Russell 3000, including four S&P 500 companies, have failed say on pay votes thus far (as of 4/23/21), compared to 56 Russell 3000 which included 11 S&P 500 companies in the entirety of 2020. [4]

While it appears too soon to tell if 2021 will confirm the early trends, it certainly is pointed that way, and most notably, at larger companies. For example, at S&P 500 companies, ISS has recommended in favor of just 77.1% of say on pay resolutions so far, compared to 89.2% last year. Among Russell 3000 companies, ISS supported 86.4% of SOP proposals, compared to about 90% last year. [5]

ESG

Overview

The events of 2020 triggered many new shareholder proposals that investors will consider in 2021. Though many expected an increase in resolutions linked to racial justice and equal opportunity, proponents appear to be crafting innovative proposals tied to worker safety, climate transition planning, and lobbying. Proponents have filed at least 435 shareholder resolutions on environmental, social and sustainability issues for the 2021 proxy season, with 313 pending as of February 19. SEC staff have allowed the omission of 24 proposals so far in the face of company challenges; companies have lodged objections to at least 74 more that have yet to be decided - 12 more than at this time last year.[6]

BlackRock Leads the Way

While most expect average support levels for ESG proposals to rise given the signaling statements by major investors, most notably BlackRock, the degree of support is, nonetheless, surprising. From 7/1/2020 to date, BlackRock has backed 91% of environmental proposals, 23% of social proposals and 26% of corporate-governance proposals of the roughly 170 ESG shareholder proposals it voted on during the first half of this proxy year. In contrast, for the 1,000+ ESG proposals for the one-year period ending June 2020 (7/1/2019 to 6/30/2020), BlackRock backed 6% of "E" proposals, 7% of "S" proposals and 17% of "G" proposals. [7]

Climate Change

Climate change continues to be the leading environmental ("E") topic this year, with approximately 136 climate-related shareholder resolutions filed so far this proxy season.[8] The most popular environmental proposals are reported to pertain to greenhouse gas emissions, consistent with prior years.

Say on Climate Vote?

New this year is an effort led by activist hedge fund magnate Sir Chris Hohn and his firm, The Children's Investment Fund (TCI). TCI's campaign began in the U.S. with filings in November 2020. To date, the proponents have reportedly engaged 75 companies with a plan to file hundreds of proposals at the end of 2021. [9] The idea behind this campaign is to hold an annual advisory "say on climate" vote. Such a vote would seek a climate transition assessment and investor feedback—in the form of annual shareholder advisory votes, analogous to the "say on pay" vote for executive compensation. Though this effort has gained some traction, investor reactions appear mixed. Proponents think "this will become the standard for holding companies' feet to the fire, skeptics suggest such approach may prove an ineffectual way to trim emissions, allowing companies to vaunt shareholder approval while not affecting their damaging trajectory."[10]

Social

Many believe the boost in "S" focused proposals is being driven by:

- Growing attention to corporate statements on important social issues, such as race relations and/or whether political activities are consistent with public corporate statements
- Corporate contributions to legislators who challenged the certification of the electoral college vote in January
- Pressure on companies to take a position on Georgia's new voting law, and similar state laws

As in past years, the Social related proposals in this category remain quite broad ranging from lobbying to racial-justice resolutions. What some feel is a big-ask are proposals that seek third-party audits to see how companies are promoting racial equity in the workplace. [11] In addition, there are more than 30 Political and Lobbying proposals that have been filed which correlates with the growth in recent years of proposals tied to disclosure and accountability around, among other things, lobbying and trade association memberships.

Most expect investors to support more of these proposals given the calls for disclosure and accountability on political spending following the insurrection attempt and attack on the Capitol.

Diversity

This year, Nuveen, the investing arm of TIAA, says it expects some 40 resolutions seeking EEO-1 disclosures, up from 22 last year. Sustainable investors, such as Calvert Research & Management, also are pushing companies to report EEO-1 data. [12] The significant increase may be the result of Nasdaq's proposed rule that would require listed companies to disclose statistics in a prescribed matrix format, and California's legislation requiring board quotas based on racial and ethnic categories, and sexual orientation.

For the most part, proposals in this category seek increased disclosure on diversity, equity, and inclusion initiatives, with many filed at companies that publicly supported the Black Lives Matter movement last year. "Rooney Rule" policies for board selection have become less common given significant voluntary adoption by companies, however, there has been an increased attention to Rooney Rule requirements for employee hiring. [13]

Governance

The number of "G", proposals, are expected to equal or exceed than the 150 or so proposed last season. Governance proposals generally receive substantial support of votes cast by unaffiliated shareholders since the issues are neither new nor particularly controversial. These generic legacy-type proposals typically seek to:

- give shareholders the ability to call a special meeting or change the threshold to do so
- give shareholders the ability to act by written consent
- adopt or amend proxy access rights
- eliminate takeover defenses, such as classified boards, or supermajority vote requirements
- require an independent board chair

The last point is worth a short discussion. There have been eight independent board chair proposals voted for U.S. companies to date, and those proposals have received an average of 31.6% support, compared to 29.9% in 2019. Twenty-four additional independent chair shareholder proposals will be subject to a vote by the end of May, which suggests the total for 2021 will top the 47 filed at U.S. companies throughout the entirety of 2020. Many feel "The increase in support partly reflects a dip during the pandemic proxy season this year, when combined CEO/chairman roles were given some slack, but several companies are veering close to what would be a powerful rebuke of their CEOs. As a lack of board independence continues to be cited as a crucial reason for investor dissent, companies might be wise to review their board structure." [14] Given the relative high level of support, a policy change from one of the major investors could be the difference between a pass or fail.

The team at Alliance Advisors will continue to monitor these events to keep our readers informed of seasonal trends.

Endnotes

[1,4] 2021Say On Pay & Proxy Results, 4/29/2021, Semler Brossy
[2,3,5,13] Early 2021 Proxy Voting Results, 5/4/2021, King & Spalding
[6,10] [proxy preview] 2021
[6] SEC
[7] BlackRock Starts to Use Voting Power More Aggressively, WSJ, 4/30/2021
[8] Investors seek greater climate action in 2021 Proxy Season, 4/2/2021, Ceres
[9] Investors Seek Greater Climate Action in 2021 Proxy Season, 4/2/2021
[11,12] Proxy Season 2021 Looks Unusually Active, as Investors Press a Range of Concerns, BARRON'S, 4/16/2021
[14] Activism & Voting This Week, 4/30/2021