



The surge in environmental and social resolutions is posing new challenges for companies and their IR teams.

SHAREHOLDER ESG PROPOSALS ON THE RISE

BY ALEXANDRA WALSH

There's nothing particularly groundbreaking about shareholder proposals. More than 16,000 have been submitted to corporations in the S&P 1500 since 1997.

But a new noteworthy trend is that the majority of shareholder proposals now involve environmental or social concerns. "While the type of entities sponsoring those resolutions –

social investment funds, public pension plans, and religious orders – hasn't changed significantly, environmental and social proposals overall are on the rise," notes Shirley Westcott, a senior vice president at Alliance Advisors, who advises public companies on corporate governance practices. "The highwater mark by my count was in 2014, when 490 environmental and

social resolutions were filed. This year so far, 443 have been submitted, so the number has fallen back a bit but this is still a huge increase compared to 10 years ago.” She says a total of 943 shareholder resolutions have been filed this year.

According to Alliance Advisors’ “2016 Proxy Season Review,” the Paris Climate Summit, which set out a global action plan to limit global warming below 2 degrees Celsius, brought a new impetus to shareholder campaigns on climate change. Social and religious investors and public pension funds filed over a dozen carbon asset risk resolutions urging energy companies to “stress test” their business plans against the Paris accord’s carbon reduction goal or to disclose the risk of stranded assets resulting from lower demand for fossil fuels.

Elizabeth Ising, a partner at Gibson Dunn & Crutcher and co-chair of the firm’s Securities Regulation and Corporate Governance practice group, observes that one reason for the increase in sustainability proposals is that shareholders have been encouraged by their success with governance-related proposals as they see companies implementing governance reforms requested by shareholder proposals.

Greater Engagement

“Activism around governance has been around a long time and shareholder proponents are encouraged by their successes over the last decade with governance shareholder proposals – whether it is high votes, companies implementing changes, or increased engagement on these issues,” Ising suggests. “A growing number of stakeholders concerned about environmental and social issues have seen these successes and are using the SEC shareholder proposal process to advance their specific environmental cause with company shareholders.”

Another trend Ising sees with environmental and social shareholder proposals is that major institutional investors are increasingly supporting them. “Some of the large institutional investors are sending letters reflecting their concerns and seeking dialogue on environmental issues to CEOs and board chairs of S&P 500 companies because they, in turn, are being questioned by their investors about their voting records on these issues,” explains Ising. “And, in turn,

the increased willingness of these investors to vote for these proposals has encouraged proponents, which is why there is an upward trend both in the number of, and level of support for, environmental and social shareholder proposals.”

CamberView Partners, a firm that advises companies on shareholder engagement, points out in a recent white paper, “While major investors such as BlackRock and State Street Global Advisors have historically preferred to wield influence through constructive engagement with their portfolio companies, this year they have made it clear that they will also back up their sustainability policies with their vote if engagement proves ineffective.” (See sidebar, “Climate Change Resolutions Win Broad Support.”)

“There are different factors at play here, including the growing recognition that climate change can be both a risk and opportunity for companies,” notes Allie Rutherford, a partner at CamberView. “One factor driving increased engagement is that almost every large asset manager is now a signatory to the United Nations-supported Principles for Responsible Investment (PRI), which requires investors to incorporate sustainability into their investment practices.”

In the past, sustainability was typically the domain of socially responsible investors, but today almost all large institutional investors are engaging on environmental and social topics, Rutherford says. “Shareholders want to know how a particular company’s board looks at sustainability and what the board deems material. What’s changed this year is that long-term governance-focused investors are backing up their engagement with support for shareholder resolutions calling for greater transparency and disclosure around climate change.”

Rutherford adds that shareholder proposals on sustainability topics are becoming more nuanced and appropriately targeted to specific companies. “Investors today don’t separate sustainability issues from how they evaluate a company’s governance. They are more sophisticated about how they engage on sustainability and the shareholder proposals reflect that.”

As examples, Rutherford points to the inclusion of sustainability metrics in executive compensation as well as ensuring that certain skill sets are on the board to ensure proper oversight.

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THE IR PERSPECTIVE

There are different perspectives among IROs on the value of sustainability reporting and the merit of sustainability-related shareholder proposals.

A 2016 NIRI survey report about the views of IR professionals on sustainability noted that in many sectors, only 40-60 percent of IROs think a sustainability strategy is necessary to be competitive, and only 18 percent of IR professionals say their company communicates how sustainability aligns with corporate strategy.

Also, 69 percent of non-U.S.-based IR professionals said that sustainability issues are either permanently or temporarily on their top management's agenda compared with 39 percent of U.S.-based IR respondents.

At the same time, some NIRI members report that they are constantly being asked by investors, especially those from Europe, to be on one index or another that scores sustainability efforts, to respond to sustainability questionnaires, or to adhere to specific standards when compiling sustainability reports. These members express concern that the requests are seemingly "never ending."

Some NIRI members also believe that the priorities of most activists submitting proposals is to attract public attention and to fund their activism, rather than make a return on investment. A few IROs have expressed frustration that their companies have negotiated settlements with ESG proponents only to see them the following year with a new resolution that seeks additional information.

But not all IROs share these views. "We have not been subject to any ESG shareholder proposals, but decided several years ago to begin a data-driven sustainability reporting program using the Global Reporting Initiative standards," explains Theresa Womble, director of IR and assistant treasurer at Compass Minerals International. (See the "IR Ideas @ Work" column authored by Womble on page 22 for more background on this.)

What Activists Say

Andrew Behar is the CEO of As You Sow, a nonprofit organization that promotes environmental and social corporate responsibility through shareholder advocacy, coalition building, and legal strategies, and he contends that one thing shareholders are really good at is risk analysis.

"Shareholders are constantly looking at what risks are being presented to the company, and they're doing it in a friendly way," says Behar. "When we engage a company around an issue, such as climate change, if there is no movement on the board and we think there is risk, we advise the company to write a report and have transparency around the risk. We hope they do the report, see the risk, and mitigate it."

Behar points out that As You Sow has had many successes. "There are many instances where we called a company or sent a letter, and the company responded positively without us having to file a resolution – no resources expended on our part and no embarrassment for the company."

Behar says he's seen a conscious shift by company boards and management and an awareness that they are part of a bigger system. "By being accountable to all stakeholders, the company can be a more successful organization and part of a bigger ecosystem," he says.

"There are good people at all these companies and whether they're in CSR or IR, we find those people because we always need an internal advocate, and they welcome us. They're happy someone from outside is knocking on the door. Companies have a knee-jerk reaction that this is going to cost them money, but actually they usually end up making more money because we are all about efficiencies."

What Does the Future Hold?

According to the Proxy Review published by As You Sow, corporate political activity and climate change remain the key issues for investors to consider in 2017 proxy statements, but resolutions about diversity on the board and in the workplace have surged past previous levels, as have those about pay equity.

Climate change proposals continue to ask about strategic implications and how companies will adapt to physical changes, new regulations, and new technologies. They also address methane leaks from U.S. energy production and encourage more carbon tracking and goal setting, but renewable energy proposals have been cut in half. New climate-related resolutions ask about high-carbon asset divestment and carbon finance risks. Other environmental issues include antibiotic resistance

CLIMATE CHANGE RESOLUTIONS WIN BROAD SUPPORT

In a significant development, climate change proposals won majority support at three major energy companies during the spring 2017 U.S. proxy season.

The proposals asked each of the companies — Occidental Petroleum, the Pennsylvania utility corporation PPL and Exxon Mobil — to issue a report providing a 2-degree scenario analysis, a term that refers to the goal of the Paris Climate Accord of limiting global temperature increases to 2 degrees Celsius (3.6 degrees Fahrenheit). The report would assess the impact on the company's asset portfolio of long-term climate change.

At Occidental, the shareholder proposal was approved by a two-thirds vote, PPL reported a 57 percent vote in favor, and the proposal at Exxon Mobil received 62 percent support. The proposal to Occidental was submitted by CalPERS along with a coalition of other large asset owners, while the proposals to PPL and Exxon Mobil were submitted by the New York State Common Retirement Fund.

According to *The Washington Post*, "The shareholder rebellion at the Exxon Mobil annual meeting

was led by major financial advisory firms and fund managers who traditionally have played passive roles. Although the identity of voters wasn't disclosed, a source familiar with the vote said that major financial advisory firm BlackRock had cast its shares in opposition to Exxon management and that Vanguard and State Street had likely done the same. All three financial giants have been openly considering casting their votes against management on this key proxy resolution."

Ceres issued the following statement on the vote. "The vote at Exxon, coupled with recent majority votes at Occidental Petroleum and PPL Corporation, represent a historic shift in investor support for climate risk disclosure. As recently as 2015 these resolutions averaged 23 percent support. Now the very largest investors in the world are challenging the companies representing some of their biggest holdings on this issue."

In light of these vote results, energy companies are likely to see similar proposals in the future, assuming of course, that the Financial CHOICE Act's limits on resolutions never become law.

in the meat supply chain, the reduction of food waste, and the use of nanomaterials in infant formula.

In light of the Trump administration's recent decision to withdraw the United States from the Paris Climate Agreement, Mindy Lubber, CEO and president of Ceres, a nonprofit sustainability advocacy organization, said in a statement, "In the face of the Trump administration's failure to lead on climate change at the national level, the business community will not back down. Investors and companies will redouble efforts to support and invest in solutions that will accelerate the transition to a sustainable, low-carbon economy."

Westcott adds that if Congress approves far more rigid ownership requirements to submit shareholder proposals (see the Spotlight on Advocacy article, "Lawmakers Seek New Limits on Shareholder Proposals" on page 8), individual filers, social investment funds, and union pension plans, which typically don't own large positions, will be unable to file proposals at all. "In a deregulatory environment where President Trump is pull-

ing back from environmental regulations and accords, activists will be drawn to more engagement with issuers," Westcott says.

Confirming this perspective, Behar says, "With a new administration bent on cutting government regulation and rolling back key legislation, shareholder proponents remain committed to protecting hard-won gains that form the underlying bedrock of the relationship between corporations and the shareholders that own them.

"Advocates won't go away, there will just be more lawsuits because there will be no avenue for conversation, and this will be time-consuming and onerous for companies to deal with.

"The system we have now has worked well for many years — 90 percent of companies have never had a resolution filed with them. Having this engagement is great for the company as it allows them to hear from their shareholders, and why wouldn't they want that?" 

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