

Key takeaways

2024 Proxy Season Update: Proxy Advisory Firm and Institutional Investor Policy Highlights and Advice

At our Comp Talks session on January 17, 2024 – **2024 Proxy Season Update: Proxy Advisory Firm and Institutional Investor Policy Highlights and Advice** – Cooley partners Jaime Chase, Megan Arthur Schilling and Ali Murata discussed various trends and policy updates for the 2024 proxy season and beyond. Below are some key takeaways summarized by Cooley associate Megan Drill.

Pass-through voting is growing in popularity, which may make it more difficult to predict proxy proposal outcomes. BlackRock, Vanguard and State Street have launched pass-through voting programs allowing certain investors to direct, on a proportional basis, how the fund votes shares. Pass-through voting programs vary, but generally range from allowing investors to exercise control over their voting to investors directing the fund to cast votes according to third-party policies, board recommendations or consistent with the fund's judgment.

Institutional Shareholder Services (ISS) and Glass Lewis (GL) have updated voting policies for 2024.

ISS updated its policy regarding stockholder proposals calling for executive severance arrangements or payments to be submitted for stockholder ratification. This policy applies to all stockholder meetings that will occur on or after February 1, 2024. GL adopted policy updates relating to compensation, board oversight and composition, and certain other matters, including board responsiveness and material weaknesses. The GL policy updates are currently effective.

Stockholders continue to hold directors accountable for an expanding scope of topics. Average support for director elections is generally high and has remained relatively flat since 2019 for the Russell 3000 index, but certain industries, including life sciences, experienced increases in opposition for directors in 2023. The most common issues impacting director elections include traditional governance issues – such as lack of responsiveness to prior stockholder concerns, compensation issues and adverse governance provisions – as well as evolving expectations covering board and workforce diversity, oversight of environmental and social issues, and overboarding. Companies should understand that there are practical implications for negative vote recommendations and “low” levels of support, such as reputational harm, triggering director resignation policies, and potentially making the company a target for stockholder activists and/or stockholder proposals.

In 2023, although trends related to say-on-pay proposals remained relatively unchanged, data suggests that negative proxy advisor recommendations are less impactful.

Low say-on-pay support was often driven by the usual suspects (such as pay-for-performance disconnect, problematic pay practices and lack of stockholder responsiveness). Many issues that lead to negative proxy advisor vote recommendations can be identified early and proactively addressed. In particular, investors continue to expect detailed, transparent proxy disclosure of rigorous performance goals for both short- and long-term incentive compensation. Executive perks remain a Securities and Exchange Commission (SEC) enforcement focus and a hot button issue with

stockholders, with executive perks often viewed as an indicator of poor governance practices.

Be aware of updates relating to clawback policy and equity grant practices disclosures. A company's 2024 proxy should include a description of the company's clawback policy, which also will need to be filed as an exhibit to the company's Form 10-K. There are additional disclosure requirements if a company's clawback policy is triggered. Beginning with proxy statements filed in 2025 (for most calendar year companies), additional narrative and tabular disclosure relating to the company's equity grant practices will be required. Because this new 2025 proxy disclosure will cover equity awards granted in 2024 and equity grant practices applicable in 2024, companies should be mindful of the disclosure obligations in connection with equity awards granted in 2024.

There are new cybersecurity disclosure requirements for Form 8-K and Form 10-K, and new insider trading policy disclosures. Beginning December 18, 2023 (or, for smaller reporting companies, June 15, 2024), companies must disclose on Form 8-K any material information related to a cybersecurity incident within four business days of determination that the incident was material, with a narrow exception for substantial risk to national security or public safety. Beginning with annual reports for fiscal years ending on or after December 15, 2023, companies must disclose in their Form 10-K information related to cybersecurity threats, including processes for assessing, identifying, and managing material risks, board oversight and management's role in assessing and managing material risks. Beginning with the 2024 Form 10-K filed in 2025 and the proxy statement filed in 2025, companies must disclose whether they have adopted insider trading policies and procedures, or otherwise explain why not. Companies also will be required to file a copy of their insider trading policy as an exhibit to the 2025 Form 10-K.

Stockholder proposals increased but received lower stockholder support. Contributing to this, there was an increase in executive compensation proposals and environmental & social (E&S) proposals. Support for E&S proposals in particular plummeted likely due to various reasons, including stockholder sentiment that proposals were too prescriptive, company efforts to address general concerns, and anti-environmental, social and governance efforts.

Use of universal proxy cards in 2023 did not increase the number of proxy fights, but settlements increased and occurred earlier in the season. In response to the universal proxy, more than 685 companies amended advance notice bylaws. Proxy advisory firms generally did not take issue with a middle-of-the-road approach, but they had limited tolerance for advance notice requirements that were viewed as impeding or stifling the stockholder election process. Companies that have not amended their bylaws should adopt revisions on a "clear day" when there are no activism concerns and err toward a middle-of-the-road approach.

Delaware General Corporation Law (DGCL) has been amended. In response to a change in the DGCL extending exculpation rights to executive officers for duty of care violations, 249 companies proposed charter amendments in the first half of 2023, with all but 39 passing. Proxy advisory recommendations didn't appear to have a meaningful impact on vote outcomes. Companies that have not adopted charter amendments should consider adopting in 2024, after reviewing governing documents and Delaware law closely to confirm the procedures involved, and build in time for preliminary proxy statement filing and SEC review. In addition, effective August 1, 2023, a new subsection (d) was added to DGCL §242 relating to stock splits and changes to the authorized number of shares. Affected companies should review governing documents carefully and make sure to update the voting standards rather than relying on precedent (and reach out to New York Stock Exchange for a "routine" vs. "non-routine" determination).

Additional SEC rulemaking expected throughout 2024. The SEC is expected to propose or finalize new

Comp Talks

rules related to climate change disclosure (April 2024), human capital management disclosure (April 2024), incentive-based compensation arrangements at certain financial institutions (April 2024), and corporate board diversity disclosure (October 2024).

[Alessandra Murata](#)

Partner
Palo Alto

[Jaime Chase](#)

Partner
Washington, DC

[Megan Arthur Schilling](#)

Partner
San Diego

[Megan Drill](#)

Associate
San Diego

[Janice Chan](#)

Resource Attorney
New York