WHITE PAPER

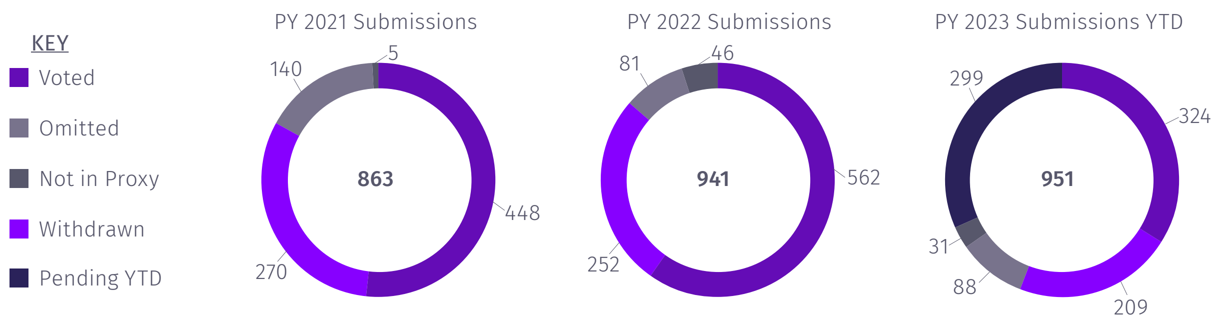
Reporting Trends for 2024: What Comes Next?

Each proxy season functions like an annual checkup; it's a way to gauge changes in shareholder sentiment, as well as keep abreast of new trends to be monitored or adopted. For the 2023 proxy season, an important takeaway is higher overall numbers of shareholder-sponsored proposals on the ballot, including a dramatic rise in a new phenomenon: anti-ESG proposals. In addition, increased velocity of new Securities and Exchange Commission (SEC) proxy-related rulemaking as evidenced by the use of universal proxies in contested board elections and the requirement to include new Pay versus Performance (PvP) information. Notably, the latter was the first — but will not be the last — element of proxy disclosure requiring inline XBRL (iXBRL) data tagging, making this new structured data more analyzable and comparable.

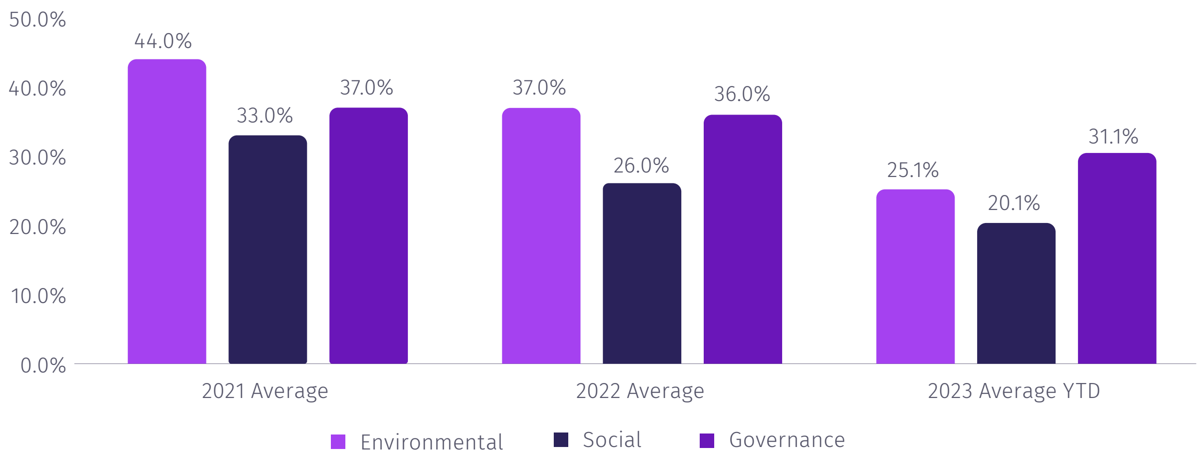
By the end of the summer of 2023, 951 shareholder proposals had been submitted and included in proxies, up from 941 in 2022 and 863 in 2021. And yet support for the proposals that ultimately reached a vote was down slightly compared to the same time period in 2022.

As in other years, support in 2023 tended to vary by the type of proposal. Not surprisingly, governance proposals garnered the highest levels of support at 31.1 percent year to date, relative to environmental proposals at 25.1 percent and social proposals at 20.1 percent.

Submission Volume High, Support for Proposals Restrained



Average Support for Shareholder Proposals



Source: *All data from Georgeson's "An Early Look at the 2023 Proxy Season"

One reason for lower levels of across-the-board support could be the existence of conflicting proposals, sometimes even within a single proxy statement. Permitting investors the choice to spread their support across more than one proposal can either confuse investors, or have the effect of watering down the support that a single choice may have garnered.

A prime example is anti-ESG submissions, which sometimes made asks that were directly opposed to what other groups of proponents were requesting in more traditional “pro-ESG” proposals.

In 2023, 94 anti-ESG proposals made it to the shareholder ballot, almost ten percent of all proposals submitted. In these proposals, anti-ESG proponents make a number of claims, including that ESG considerations do not correlate with financial performance, are not consistent with directors’ fiduciary duties, and are a distraction to core business functions.

Although experts were surprised at how quickly anti-ESG proposals increased in number, they predict further spikes in their numbers in 2024 as the US presidential election cycle begins in earnest. Frequency aside, these proposals are also notable for receiving low levels of investor voting support, averaging in the single digits with many below the five percent minimum support required for re-submission of a first-year proposal.

Another forecast? As the very broad term “ESG” becomes increasingly politicized, its use by investors and other proponents will be replaced by alternative and more specific terms. “E” can involve climate risk and impact and carbon reduction transition plans. “S” can involve Employee Health & Safety, Diversity Equity & Inclusion, and community impacts. “G” can involve shareholder rights, executive compensation, and board oversight of risk and of ESG. However named, ESG, according to major investors such as BlackRock, is a means to measure and mitigate long term investment risks, putting it squarely into financial and shareholder value terms.

New Priorities

One central concern of the last proxy season was the new Pay versus Performance disclosures that finally went into effect.

Although these new disclosures – along with the earlier requirement of pay ratios calculated according to a prescribed formula — spurred enormous handwringing, the disclosures themselves were anticlimactic.
In Year One of PvP, the overwhelming majority of companies located their PvP disclosures outside of the CD&A, generally preceding or following the pay ratio – and the disclosures themselves were met with little fanfare. As mentioned earlier, this was the first element of the proxy statement requiring iXBRL tagging.

New PvP metrics provided yet another set of pay measures, in addition to the summary compensation table; how companies described their pay programs in the CD&A, often using the term Pay for Performance (PfP); and proxy advisor methodologies. While these new PvP disclosures often differed from what companies were describing in their CD&As, the exercise generally went smoothly. A handful of companies did explicitly draw a distinction between the new PvP disclosures and the traditional PfP story they described in the CD&A, encouraging investors to rely on the CD&A for insight into the board’s thinking.

Because PvP disclosures are quite new, they’re sure to evolve with time. Experts believe, however, that companies will grow ever more comfortable with describing pay practices two ways — as the regulators require and as companies view them internally — affording investors the opportunity to draw their own conclusions. In our view, this further raises the imperative that companies tell their own stories clearly and credibly, in the manner they want them understood, or else investors will be forced to rely on alternative views about the alignment of pay with relevant measures of performance.

Another long-running possibility that finally became a reality in 2023 was the universal proxy. Since an SEC rule change, companies must now list all director candidates on their proxy cards, regardless of whether the candidates were nominated by management or by shareholders. Prior to this past year, management was only required to list its own slate of director nominees on what was known as "management's proxy."

One important upshot of universal proxy is that it is now easier for investors to pick and choose among alternative candidates, and so director seats are now less secure than they were in the past.

Although universal proxy has yet to make enormous waves in boardrooms, it holds the potential for disruption. For this reason, public companies are proactively beefing up their proxies to humanize their existing directors and highlight important details about these individuals' backgrounds and the unique contributions they are making.

Practically speaking, directors increasingly are humanized through full color photos, board skills matrices, and additional details that call attention to the value an individual brings to the company and the integral role that he or she plays in promoting ESG or other corporate priorities.

In addition to more detailed director descriptions, forward-thinking companies are taking steps to make proxies easier and more inviting to read. Examples include using brand colors to highlight key pieces of information, spotlighting key ideas from the narrative in charts or infographics, and improved navigation via multiple tables of contents (TOCs), header navigation systems and similar means.

Another important area to watch is what toll the new clawback rules, effective late in 2023 will take on public companies. Experts, for instance, warn that companies that have tied ESG performance to executive compensation may find that if they fail to meet ESG goals, clawback provisions could be triggered.

A Glimpse at Future Rulemakings

The current regulatory agenda for the SEC is a long and consequential one.

First and foremost are the much-awaited climate disclosure rules, which hold the distinct possibility that public companies will soon need to disclose their Scope 3 emissions. The final rules are slated to appear by year end.

When it comes to climate disclosures, many leaders are less interested in when the SEC will finalize its rules than in being forthcoming on the key issues. Pressure on companies to voluntarily disclose is great, as
a) investors want this information now, and
b) many of their peer companies are already filling this informational void. To this end, companies are doing everything from disclosing methane emissions and reduction targets to providing details around board oversight of these initiatives.

In the case of climate disclosure, a company's peers are of paramount importance. That's because a company's governance is often judged against that of its peers, with which it is competing for investor capital. Therefore, some of the most forward-thinking public companies are not waiting for an SEC mandate but are communicating ESG agendas *now*.

Even without the release of the SEC's final climate rules, companies need to be preparing for more detailed (and onerous) climate disclosure. Recently, for instance, the Public Company Accounting Oversight Board (PCAOB) indicated that it wants its auditors to go into detail on climate-related disclosures to the extent that financials are implicated. Precisely what this will entail remains to be seen, but it's worth paying attention to this and other non-SEC developments.

States are not waiting for federal regulation either. California recently enacted climate-related disclosure laws that require not just California-located or incorporated companies, but other companies doing business in California, to report on emissions including eventually Scope 3.

Beyond the US regulators, public companies should begin looking more carefully at EU-related trends in the regulatory space. Public companies will, for instance, need to consider the effects of the EU's Corporate Sustainability Reporting Directive (CSRD) on their own disclosure practices. CSRD will not only impact an estimated 50,000 EU companies, but over 10,000 non-EU companies as well, including an estimated 3,200 US companies doing business in the EU.

In addition, final standards from the International Sustainability Standards Board, or ISSB, have recently been issued. While these standards are not mandatory, many believe that what's called for by ISSB will affect the regulations that come from the SEC in the future.

How DFIN Can Help

The pace of regulatory activity – increasingly requiring use of structured data – remains high. When looking at everything from new clawback rules to the need to present PvP disclosures and pending SEC climate disclosures requiring iXBRL data tagging, it's clear that public companies are facing enormous change, with more disruptions to come in the months and years ahead. DFIN is here to help you understand these developments.

Investors themselves will not just receive, but also may have to make, their own structured data disclosures. The updated beneficial ownership reporting changes (primarily updates to schedules 13D and 13G) call for use of a "structured, machine-readable data language," specifically an XML-based language designed for these filings.

Fortunately, public companies do not have to do all this alone. DFIN is the country's largest SEC filer and has been providing XBRL and now iXBRL tagging for as long as they have been required. As with PvP, we anticipate (not just await) release of new tagging taxonomies to ensure we are prepared to support our clients in this critical area. Our ActiveDisclosure SaaS solution, for instance, is easing these and other burdens by monitoring regulatory changes and including them in the latest iteration of the product offered to clients.

In addition, we offer complimentary reviews of your proxy and ESG disclosures — along with practical recommendations — to keep you abreast of evolving investor expectations, trends, and innovations as companies continue to raise the bar for making critical disclosures. In this area, one useful tool is our **Guide to Effective Proxies, now in its 11th edition**, which is the most comprehensive and widely relied upon resource of its kind.

Looking forward, public companies will inevitably face more mandates around structured data, or presenting human-readable financial statements in a machine-readable and structured format. Rest assured that DFIN and ActiveDisclosure have your back!

For more information on regulatory changes ahead and how DFIN can help, please contact **Ron Schneider**, Director, Corporate Governance Services.