Let’s talk: governance
An early look at proxy season 2014: emerging shareholder proposals to watch
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Some investors use the shareholder proposal procedures afforded under SEC rules to seek inclusion of proposals for a shareholder vote in a company’s proxy statement. These proposals can offer valuable insights into investor priorities. It’s important for companies and boards to understand shareholder proposal trends since new and emerging proposal topics can serve as an indicator of what may become broader focus areas for companies.

In this document, we provide an overview of emerging shareholder proposal trends in the 2014 proxy season and the broader shareholder proposal landscape based on Ernst & Young LLP’s proprietary corporate governance database. This proposal data is based on proxy statement filings, SEC no-action requests, and information shared by proponents. Many of the emerging proposal topics request enhanced disclosure to encourage companies to explore risk oversight and mitigation, and many seek to ensure that a company’s policies and practices are aligned with its publicly stated policies and goals.

Emerging shareholder proposals

Cybersecurity and consumer data protection

Shareholder proposals on cybersecurity emerged after the SEC issued guidance regarding a public company’s disclosure obligations relating to cybersecurity risks and cyber incidents. Three large technology companies received proposals in 2013 asking them to publish a report explaining how the board is overseeing privacy and data security risks. Recent high-profile data security breaches are making this topic a priority for some investors, though most of these incidents were made public after the shareholder proposal filing deadlines for 2014 meetings had passed.

This year, a small number of select telecommunications and health care companies received proposals focusing on consumer data protection. These proposals seek increased disclosure around government requests for customer information or a report explaining how the board is overseeing privacy and data security risks.

Based on EY’s investor outreach, we believe it is likely that company-investor conversations on this topic will be ongoing and a greater number of such proposals can be expected in the future.

Corporate tax strategies

Investors first submitted shareholder proposals looking at the board’s oversight of tax strategy a few years ago. The topic re-emerged in 2014, with a few proposals asking companies to adopt ethical principles, overseen by the board, to consider the impact of the company’s tax strategies. The underlying concern for investors submitting these proposals is whether companies are exploiting differences in national tax codes to reduce their taxes. This topic is also being raised during private company-shareholder engagement.

Lobbying activities

Disclosure and oversight of lobbying expenditures is the top proposal topic submitted this year, with nearly 50 submitted to companies across a wide range of size and industry. Most of the proposals seek an annual report on the following: policies and procedures governing lobbying, company payments used for lobbying, company membership in and payments to any groups that

Shareholder proposal topics

Proposals focusing on environmental and social topics account for the greatest proportion of shareholder proposals submitted as a broad category, continuing the trend of the last couple of years. So far this year, environmental and social proposals represent nearly 60% of the total submitted compared to 45% for the same period in 2013.

The 10 most common shareholder proposal topics to date

1. Review/report on lobbying activities
2. Review/report on greenhouse gas emissions
3. Eliminate classified board
4. Issue sustainability report
5. Adopt majority vote to elect directors
6. Review/report on political contributions
7. Appoint separate/independent board chair
8. Review/report on global labor practices/human rights
9. Allow shareholders to call special meeting
10. Limit access to interim proxy vote tallies
write and endorse model legislation, and a description of the decision making process and oversight by management and the board for these expenditures. The proposals focus on what some are terming indirect lobbying, in which company payments to other groups, such as business or trade associations, are used for lobbying, even if only in part. New variations focus on whether these corporate expenditures align with stated company policies and practices on environmental sustainability.

Impact of director tenure on independence
An emerging question among investors is whether lengthy tenure on a board impacts an individual director’s independence, and whether tenure considerations could help stimulate board refreshment. The Council of Institutional Investors recently adopted a new governance policy recommending corporate boards consider an individual director’s years of service when determining whether that person is independent. Additionally, leading proxy advisory firm ISS is exploring making director tenure a factor in its voting policy for director elections. One potential approach would consider directors with lengthy tenures non-independent. In some non-US markets, individual directors with a certain length of service are not considered independent (e.g., after nine years in the UK).

Given this focus, a shareholder proposal has emerged this year asking a handful of US companies to adopt procedures providing that no current or future director be classified as independent after 10 years of service.

Methane and other greenhouse gas (GHG) emissions
A number of investors are cites new urgency around climate change issues. EY is tracking more than 40 proposals – the second most submitted proposal this year – across 10 industries asking companies to report on and/or set quantitative goals to reduce GHG emissions. In some instances, these proposals relate to the targeted company’s operations, while in others they relate to business operations financed by the company. Proposals seeking GHG emissions cuts emerged over five years ago; however, the prevalence of these proposals this year and the new variations make them an area to watch.

Human rights risk assessment
Over the past two years, two new shareholder proposals focused on labor practices and human rights across the global supply chain have emerged. One proposal calls on companies to report on the company’s process for identifying and analyzing potential and actual human rights risks of company operations and supply chain. The other asks companies to provide annual, independently verifiable sustainability reports on or from their suppliers with disclosures focused on global labor practices.

About 15 of these proposals have been submitted to companies in 2014 across a wide range of industries. It is too early to tell whether these proposals will go to a vote; so far a few have been withdrawn as a result of agreement between companies and the proponents. The SEC has permitted omission for two because it determined those companies’ public disclosures sufficiently addressed the request.

Limit access to interim proxy vote tallies
New this year are proposals to limit management’s ability to use interim vote tallies to solicit proxy votes. The current practice going into this proxy season for uncontested voting items is that management has access to the interim results – and shareholders may be provided access if they sign a confidentiality agreement and management agrees. So far, just under 20 proposals have been submitted, and nearly all are pending no action determinations from the SEC.

The shareholder proposal landscape so far

- Filings down – Shareholder proposal submissions are down slightly compared to the same period last year. This is partly driven by increased company-investor engagement, which is resulting in fewer proposals being filed, as well as the adoption by many large companies of governance practices that have been a mainstay of shareholder proposals over the years (e.g., annual elections for the full board and majority voting in director elections).

- Withdrawals up – As of 13 February, 13% of submitted proposals have been withdrawn compared to 8% for the same period last year. And, more proposals are being withdrawn as a result of agreement – over three-quarters of the withdrawals so far compared to just over half at around the same time last year.
Let’s continue the conversation.

Find out more at ey.com/governance or contact one of the following professionals:

Allie Rutherford  
Center for Board Matters  
Ernst & Young LLP  
+1 202 327 7026  
allie.rutherford@ey.com

Ruby Sharma  
Center for Board Matters  
Ernst & Young LLP  
+1 212 773 0078  
ruby.sharma@ey.com

Endnotes

2 The Council of Institutional Investors is a nonprofit association of investors overseeing more than $3 trillion in assets.
4 ISS Benchmark Policy Consultation, including auditor tenure, EY, 2014.
5 The proposals cite the importance of human rights risk assessments as reflected in the United Nations Guiding Principles on Business and Human Rights, often referred to as the “Ruggie Principles” after John Ruggie, who authored the principles.