

Why Proxy Contests Are Turning 'Green'

Expect more social, environmental proposals in 2012, and consider "settling" pre-meeting.

By Karen M. Kroll | September 19, 2011

Companies can expect shareholders' social and environmental initiatives to keep rising as a percentage of overall proxy proposals in 2012, based on this year's experience. Another possible lesson to be learned this year: Perhaps management should consider settling with holders, rather than fighting it out at the annual meeting.

During the 2011 proxy season, social and environmental proposals -- such as those calling for information on a company's employment diversity, or for an evaluation of its financial risks from climate change -- accounted for two of every five initiatives, up from 30% a year earlier, according to Ernst & Young's 2011 Proxy Season Update.

But even this year's rise to 40% was short of E&Y predictions, which held that half the proposals might relate to elements of what some call "the triple bottom line." That term refers to the financial, social and environmental measures that management critics often site as being overlooked in determining broader corporate performance. As the accountancy explains it, a number of proposals were dropped after proponents resolved the resolutions with ever-more-willing corporate executives.

"Companies that really get this," says Ann Brockett, E&Y's leader on climate change and sustainability for the Americas, "see dealing with these issues as a compelling business imperative, versus just a response to a request for information."

It was a dramatic annual meeting season in several ways. In addition to the evolution of social and environmental issues, and their reception by managements, proxy-access rules went through serious revisions after a court ruling that invalidated part of the Security and Exchange Commission's approach to broaden such access. (See "Meeting-Season Lessons, Part Two," later this week on CFOworld.)

The Impact of Say-on-Pay

When it comes to social and environmental proposals this past year, though, one reason for the rise as a proportion of overall initiatives was that the number of executive compensation-related shareholder proposals declined. According to calculations by Proxy Monitor, compensation proposals made up just 13% of all initiatives this year, down from 28% in 2010. Says James Copland, director of the Center for Legal Policy at the Manhattan Institute, the reason was that say-on-pay regulations provided shareholders with another mechanism for voicing their opinions on executive pay.

Even so, shareholder support for the proposals definitely grew overall. "We're seeing both an increase in the number of proposals, and an increase in the level of support they're receiving," EY's Brockett says. The average social proposal received support from 21% of voters in 2011, compared with 10% in 2005, according to the E&Y report, which covered 2011 shareholder meetings held through June 30.

Moreover, the percentage of resolutions capturing support from 30% of voters -- the level at which many boards begin to take notice, according to Brockett -- skyrocketed between 2005 and 2011, climbing from a mere 2.6%, to nearly a third (31.6%), the E&Y report says.

Aiming Above Single Digits

"We used to be thrilled with single digit votes," says Andrew Behar, chief executive officer of **As You Sow**, a San Francisco-based shareholder advocacy group that has introduced shareholder proposals. "Now, when we file a resolution, they (companies) come to the table."

Behar says the goal of his organization, and others like it, is to help improve the companies with which it works, while it also improves environmental conditions. For instance, if a company reduces the amount of packaging it uses in basic operations, both the environment and the company's bottom line benefit, along with the firm's image among consumers. "Companies are waking up to this," he says.

That's not to say that all companies view shareholder proposals positively, of course. Some energy companies, especially, have been resistant to such a shareholder approach, Behar says.

Indeed, some experts, along with companies, question whether shareholder resolutions that focus on social goals have any value at all. "If they (the groups behind the proposals) want to get something done, they should engage in the political environment," advises Aneel Karnani, associate professor of strategy at the University of Michigan. "Get a law passed."

The resolutions that come forward often are vaguely worded and non-binding; what's more, often just a handful of companies are targeted. As a result, they are of limited effectiveness, he adds. "It's better to use government intervention to achieve social goals."

Karnani does support the use of shareholder resolutions for such issues as executive compensation, things tied directly to issues of corporate governance. In fact, shareholders should become even more active on these matters, he suggests. Still, he adds, "environmental issues are more effectively handled in the political arena."

An Uncertain Role

At times, it can be hard to discern the role a specific proposal plays in a company's decision to implement a program.

When Best Buy began testing an in-store recycling program in 2008, it was at about the same time that the company received a shareholder proposal on the topic, but wasn't the reason for the program, according to spokesperson Kelly Groehler. "While the proposal didn't prompt our program launch," Groehler adds, "it certainly did validate that the program was a smart step for us to take."

According to its Fiscal 2011 Sustainability Report, Best Buy collected 83 million pounds of consumer electronics and 73 million pounds of old appliances for recycling in 2010. The company breaks even on the program, Groehler says.

Even tracing a company's action to a specific proposal may be difficult, says E&Y's Brockett, executives should "be prepared to respond" to shareholders. That means understanding the issues of concern in the proposals.

In addition, companies that haven't done so should consider implementing sustainability reporting, and adding non-traditional performance metrics that incorporate the triple bottom line, Brockett says.

One example: the level of greenhouse gas emissions per unit of production. Moreover, an effective sustainability effort can't be restricted to a silo within a company. "It has to be embedded across the organization."

Finally, "pay attention," says the Manhattan Institute's James Copland. "What once was viewed as a little bit extreme," he explains, "can become best practice."