Governance Insights Center | September 2023

Boardroom recap: the 2023 proxy season

Here's what boards need to know about the drop in support for shareholder proposals.

This year was another active one for shareholder proposals, marking the third straight proxy season in which the total number of submissions that went to a vote increased.[1] But the rise in volume didn't automatically correlate to greater support. Shareholders were more discerning when casting their votes, leading to declining support for almost every category of environmental, social and governance proposals. We saw a similar result in 2022.

While year-over-year comparisons may not always reveal an accurate picture of voting sentiment since the mix of topics and proposal requests can change every proxy season, boards should understand the 2023 results as they perform annual governance reviews and conduct offseason shareholder engagements.

[1] Unless otherwise sourced, voting data on shareholder proposals was provided by Proxy Analytics as of June 30, 2023.

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Shareholder proposals

Proposal volume increased but support dropped off

The 580 proposals that were put to shareholder vote represented a slight uptick from last year and a 25% increase from 2021. Before the proxy season began, we anticipated high proposal activity, but the tally exceeded our expectations.

Several factors largely accounted for the increase in shareholder proposal activity. First, a 27% jump in the number of executive compensation proposals signaled a renewed focus on executive pay packages. Shareholders continued to show interest in environmental and social issues, which accounted for more than half of the proposals tracked. Also playing a part was the after effects of the SEC narrowing the circumstances a company can use to exclude shareholder proposals from their proxy statements. The number of no-action letters — requests from companies to exclude proposals on grounds such as "duplication" and "ordinary business" — continued to drop, although 2023's success rate was significantly higher than 2022's.

Overall support dropped to 23% from around 32% last year. We believe three key factors contributed to those results:

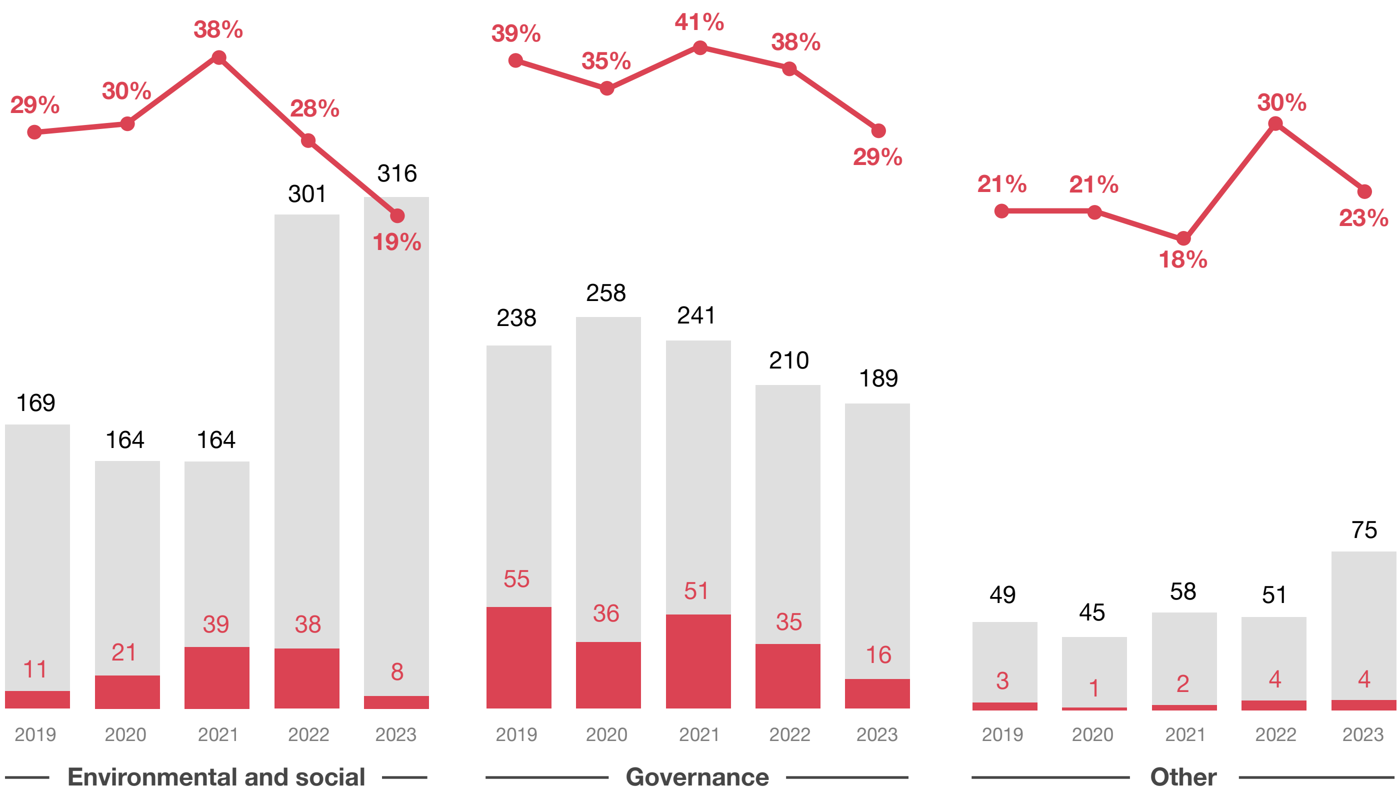
- There was limited shareholder appeal for proposals that were too prescriptive or that encroached on management's responsibilities.
- Companies were proactive in responding to shareholder concerns and their tangible actions were already addressing the spirit of the proposal.
- Anti-ESG backlash influenced voting patterns, with some shareholders showing reduced support for environmental and social proposals.

Russell 3000 shareholder proposals	2023	2022	2021
Proposals announced before proxy filed[2]	182	256	152
14a-8 No-action letters submitted	116	140	224
Proposals voted on	580	562	463
Total	878	958	839

Source: Proxy Analytics

[2] "Proposals announced before proxy filed" counts proposals that proponents announced publicly, but were not ultimately included in the proxy statement or excluded through the no action process.

Proposal support is not representative of ongoing ESG focus



Source: Proxy Analytics

Environmental and social issues

Shareholder support for environmental and social proposals plummets

The 2023 proxy season featured opposing trends related to environmental and social proposals.

The total number of environmental and social proposals that made it to a vote continued to rise, reversing a trend of relatively flat volumes during the pandemic. One of the biggest drivers of the increase in volume was the emergence of so-called “anti-ESG proposals” that encourage companies to rescind ESG initiatives they are considering or already have in place. Russell 3000 companies had 89 of these proposals, up from 54 last year. The 41 that made it to a vote averaged just 6% support (none passed).

Social issues included calls for greater disclosure of diversity, equity and inclusion information as well as racial and civil rights audits. Support for more traditional proposals fell as well and overall the average support for environmental and social proposals dropped to 19%, the second straight year in which support slipped. Shareholders were more reserved when casting their votes this year. Just eight of the 316 total environmental and social proposals received majority support, and across the board it was difficult to find any pockets of support. It’s easy to interpret these results as an indication that investors have pulled back their focus on ESG risks, but our discussions with investors suggest that this may not be the case.

So what could be behind the decline? The ESG information companies provide to external stakeholders has evolved in response to investors focusing on these issues and in preparation for enacted (or soon to be enacted) mandated disclosure requirements. Also, companies that conduct shareholder engagements can help proponents gain a better understanding of the goals of their sustainability strategies. We believe both facts may have led to proposals being withdrawn or shareholders deciding that companies were already complying with the spirit of the proposals.

Investors appear to be more cautious and may be looking for a direct link between environmental and social topics being addressed in shareholder proposals and a perceived unmitigated material risk at a company. Investors have responded to criticism of their own investing programs by being more transparent about which proposals they support.

Executive compensation

Say-on-pay support rebounds and severance agreements gain the spotlight

Average support for say-on-pay proposals fell in the years following the pandemic as shareholders sought stronger ties between compensation and performance and challenged the rationale for one-time awards as well as the rigor of performance goals. But support for pay packages rebounded this year, with S&P 500 and Russell 3000 companies receiving 88.6% and 90% support, respectively, for their compensation plans.

In addition to the rising support levels, there was a significant drop in the number of votes on executive compensation for which support was below 50% through the first half of the year, from 66 in 2022 to 38 this year. We believe this is indicative of both companies getting the message on the disconnect between pay and performance and investors' continuing to consider executive compensation on a case-by-case basis. It also means that boards can offer the compensation needed to retain top talent if they are mindful of the guardrails that have been established over the past decade.

A key compensation topic this proxy season was severance agreements. There was a marked increase in the number of proposals that sought shareholder approval of any senior manager's new or renewed pay package that provided for severance or termination payments with an estimated value exceeding a certain multiple of the executive's base salary and bonus. However, the proposals that went to a vote received average shareholder support of 24% and just two received majority support. At many companies, we believe the voting results were swayed by whether they already had appropriate pay policies in place or were in the process of adopting them.

We expect greater focus on executive compensation going forward due to the SEC's new rule that requires enhanced disclosure of this information. This was the first year the disclosure appeared in proxy statements, so investors will be evaluating whether, and how, they might consider the new information in their decision making going forward.

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Source: Semler Brossy, *2023 Say on Pay & Proxy Results*, June 2023.

Director elections

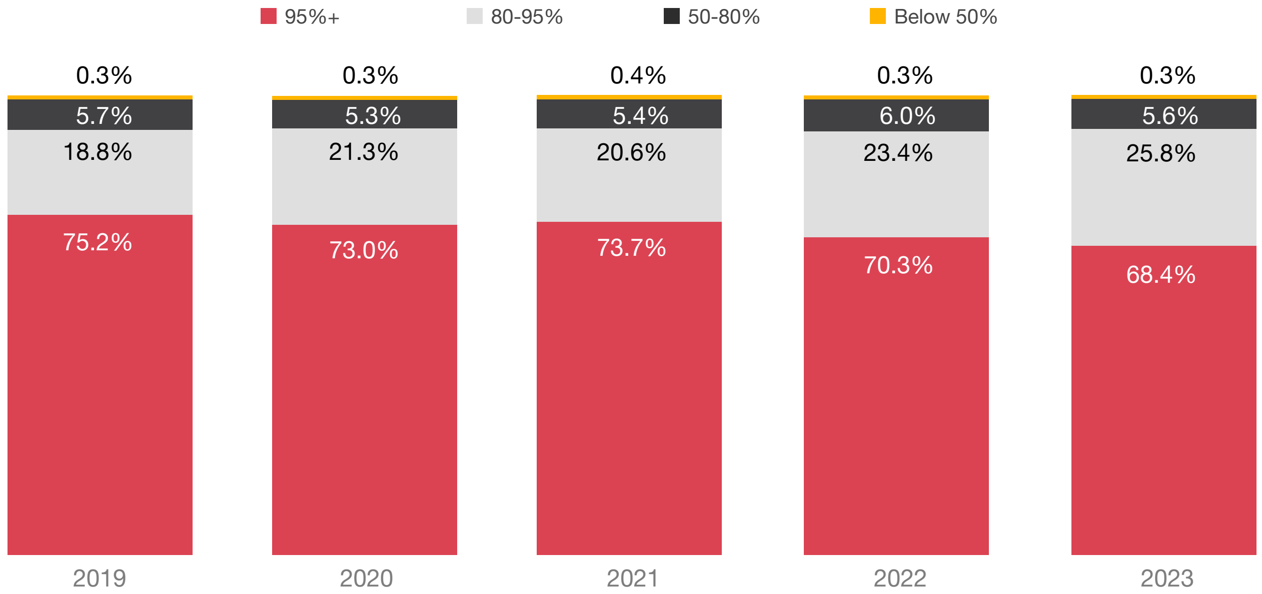
Directors are still subject to shareholder scrutiny

The vast majority of board elections are routine, but even small movements in support can be telling. Boards should be regularly analyzing the voting policies of their major shareholders and conducting engagements so that they can understand any changes and proactively take action. Common reasons for voting against directors include lack of board diversity, oversight failures, poor climate risk management disclosure, failed engagement activities, executive compensation issues and overboarding.

Heading into this proxy season there was a lot of speculation about whether proxy contests and director elections would be upended by the SEC's new universal proxy card rule that allows shareholders to select from slates of director nominees assembled by both management and a dissident on the same card. There were a handful of proxy contests that featured a universal proxy card. Of these, several were withdrawn, settled or challenged in court. To us, the jury is still out on whether this new rule will have a sweeping impact.

Meanwhile, unqualified support for directors at Russell 3000 companies continued to fall, as indicated by a smaller percentage of nominees receiving over 95% support. When evaluated in the context of the falling support for shareholder proposals, it appears that investors are preferring to use the director vote to voice concerns over shareholder proposals. This is a reversal of a decade-long norm of viewing a vote against directors as an escalation from supporting shareholder proposals.

Breakdown of director election results in the Russell 3000



Source: Semler Brossy, *2023 Say on Pay & Proxy Results*, June 2023.

Looking ahead to the rest of 2023

As boards look ahead to fall engagement activities, it will be paramount for them to analyze and understand developments that could impact shareholder proposal volumes and topics. However, boards should also consider the growing list of topics that could lead to a negative director vote. Finally, while there has been significant media attention on retail voting, efforts to boost retail involvement do not appear to have had a material impact yet.

How PwC can help

To have a deeper discussion about how this topic might impact your business, please contact your engagement partner or a member of PwC's Governance Insights Center.

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