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Navigating the 2025 Proxy Season: Six Key Developments to Watch

A flurry of changes has created an unusually tumultuous proxy season for many companies. Key among these changes are recent guidance from the U.S. Securities and Exchange Commission ("SEC") on 13G reporting eligibility, executive orders targeting diversity, equity and inclusion ("DEI") initiatives at companies, a change in leadership within ISS's special situations team which oversees the proxy advisor's recommendations in contested situations, and changes to the SEC's guidance on Rule 14a-8 shareholder proposals.

We highlight below six key developments to watch this proxy season and their potential impact on companies.

1. Institutional Investors Pare Back Engagement

On February 11, 2025, the SEC released updated guidance on circumstances where an investor may lose its eligibility to report its holdings on Schedule 13G. As discussed in further detail in our earlier alert, the guidance stated, among other things, that an investor who "explicitly or implicitly conditions its support of one or more of the issuer's director nominees at the next director election on the issuer's adoption of its recommendation" may lose its 13G filing eligibility.

Institutional investors have responded to the latest guidance by paring back engagement with companies. Stewardship teams at the largest index funds are shifting to listening mode, leaving companies to set agendas and drive discussions. Actively managed funds that are 13G filers are also reviewing their engagement approach with companies.

Potential Impact: Until the largest institutional investors receive greater clarity on the circumstances that may trigger 13D reporting obligations, companies will need to prepare for less direct and less frequent engagement with their largest investors, particularly during the days leading up to annual meetings. Companies involved in contested situations may find it especially difficult to obtain guidance from their largest investors, given the heightened impact and scrutiny over investor voting decisions. The SEC's guidance is unlikely to change how investors vote. But with less information being readily made available, companies that do not adapt their approach to investor engagements could face "surprises" and uncertainty heading into shareholder meetings.

2. Number of Control Slate Proxy Contests Signal More Proactive Activists Ready to Push for Greater Change

Currently, just under half of pending proxy fights involve the dissident nominating a control or full slate of directors, a noticeable jump from the 2024 proxy season where board control was sought in approximately 20% of fights. The number of pending control slate contests is even more surprising given that the proportion of board seats won in a contest (as opposed to a settlement) dropped in 2024. The data suggests that activists are increasingly willing to make bolder governance demands, whether it be a CEO change or more comprehensive changes to the board. A number of factors could be driving this trend, including dissatisfaction with earlier settlements, macroeconomic headwinds accelerating the timeline for strategic and operational changes, and the large number of new entrants increasing pressure for activists to deliver greater impact in each of their campaigns.

Potential Impact: Growing activist pressure may be particularly noticeable at small- and mid-cap companies where competition among activists is particularly acute. But large-cap companies should also be prepared for more aggressive tactics as market volatility increases opportunities for activists to acquire stakes in blue chip companies at attractive valuations and also increases investor anxieties on the appropriate scale and pace of strategic, operational and governance changes.

This proxy season will also see Andrew Borek at the helm of ISS's special situations research team which provides recommendations in contested situations, replacing Cristiano Guerra who led the team since 2017. While ISS recently re-affirmed its commitment to its two-prong analytical framework for contested situations (Is change warranted? If so, how much change?) at the Council of Institutional Investors Conference, there remains speculation as to how the tone and direction of ISS's recommendations may evolve in the 2025 proxy season and beyond.

3. SEC's "Return to Normalcy" May Signal Further Shifts in Disclosure Practices

The Trump administration's executive orders on DEI programs have already prompted many companies to review their public disclosures. Acting SEC Chair Mark Uyeda has signaled that more changes may be coming our way. Describing the SEC under former Chairman Gary Gensler as a "stark aberration from longstanding norms," Uyeda stated last month that his "first priority is to return normalcy to the Commission." Already, the SEC has abandoned its climate-related disclosure rules, shelved anticipated rules on board diversity and human capital management, and rescinded guidance on Rule 14a-8 that had led to a surge in environmental and social shareholder proposals in recent years.

Potential Impact: Companies may expect the SEC to continue taking steps to reverse the initiatives implemented under Chairman Gensler. In particular, under Chairman Gensler, the SEC issued comment letters asking companies to provide climate-related disclosures in their risk factors and Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A"). While the letters sought to address guidance issued by the SEC in 2010 on climate change disclosures, they also touched upon specific issues such as transition risks, litigation risks, capital expenditures for climate-related projects, impact of severe weather events and increased compliance costs. As companies continue to review their sustainability disclosures, they may need to keep in mind how recent shifts within the SEC, evolving disclosure obligations adopted by the European Union and California, and other changes in the sustainability landscape may impact the nature, scope and presentation of certain disclosures as well as determinations of materiality.

4. Rule 14a-4 Becomes a Workaround to Rule 14a-8?

The Staff's recent guidance rescinding Staff Legal Bulletin 14L will likely make it significantly more difficult for shareholders to successfully submit Rule 14a-8 shareholder proposals on environmental and social issues. SLB 14L prohibited the exclusion of shareholder proposals that addressed matters of social policy significance. Going forward, shareholders submitting environmental and social proposals will need to demonstrate that such proposals address issues that are significant to the company's business.

Last year, the AFL-CIO and Starboard Value both deployed Rule 14a-4 to submit governance proposals at Warrior Met Coal and News Corp, respectively. Prior to the universal proxy rule amendments to Rule 14a-4, a shareholder making a proposal could not include the company's nominees on its own proxy card. This restriction meant such shareholder's proxy card could not be used to vote for directors and limited the ability of such shareholder to garner support for their proposals. Now, shareholders can include all director nominees on their proxy card and a shareholder who complies with the target company's advance notice bylaw provisions is able to submit and solicit support for an unlimited number of shareholder proposals under Rule 14a-4. Unlike Rule 14a-8, there are no minimum ownership or holding requirements. Nor would the company be able to seek exclusion of a Rule 14a-4 proposal from the SEC. Proponents using Rule 14a-4 will, however, be required to file and deliver their own proxy materials, which greatly increases the cost as compared to Rule 14a-8 proposals.

Potential Impact: It remains to be seen if shareholders who have historically relied on Rule 14a-8 proposals will turn to Rule 14a 4. While costly, there may be circumstances where Rule 14a-4 is deployed by better resourced proponents, such as the AFL-CIO, looking to draw attention to companies facing investor scrutiny on a range of issues without nominating directors.

However, Rule14a-4 shareholder proposals are highly unlikely to make up for the anticipated decline in Rule 14a-8 ESG proposals.

5. Institutional Investors Expand Pass Through Voting but Clients Continue to Lean on Stewardship Policies

Amid ongoing pressure and criticism of the voting power of the largest index funds, institutional investors have continued to expand their voting choice programs. On March 3, 2025, nearly four million investors across eight Vanguard equity index funds became eligible to opt into its voting choice program which permits investors to vote their proxies in accordance with (1) the recommendations of the board of the portfolio company, (2) the Egan-Jones Wealth-Focused Policy, (3) the Glass Lewis ESG Policy, (4) the proportion of votes cast by other shareholders or (5) Vanguard's stewardship policy. BlackRock and State Street have also expanded their voting choice programs in the past two years.

Potential Impact: Despite the expansion of voting choice programs, it appears that clients are still leaning on stewardship policies and a minority of clients currently participate in voting choice programs. Vanguard disclosed that 43% of its clients participating in voting choice during the 2024 proxy season selected Vanguard's stewardship policy. At BlackRock, approximately $679 billion of the $3.1 trillion eligible AUM participated in voting choice as of year-end 2024. For companies, the data suggests that staying aligned with stewardship team policies remains key to ensuring strong annual meeting results.

6. Institutional Investors and Proxy Advisors Diverge on Environmental and Social Issues

Institutional investor and proxy advisor approaches to environmental and social issues have continued to diverge, as underscored in the contrasting levels of support for environmental and social shareholder proposals. Whereas support among the largest institutional investors for such proposals has noticeably declined during the past three years, proxy advisors have continued to support environmental and social proposals: ISS recommended "FOR" 36% of such proposals last year compared to 42% in 2021. This divergence was further underscored by Glass Lewis's recent decision to retain its diversity, equity and inclusion policy even as the largest institutional investors pulled back their policies and companies faced pressure from recent executive orders.

Potential Impact: It remains to be seen whether ISS and/or Glass Lewis will look to re-align their policies with that of the largest institutional investors. In the meantime, companies will need to bear in mind that, even as portions of their investor base continue to vote in accordance with ISS or Glass Lewis recommendations on environmental and social proposals, their largest investors and regulators are approaching the same issues from a different lens today.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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