

“ISS Forecast for 2024 Proxy Season”

Thursday, January 18, 2024

Course Materials

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2 to 3 p.m. Eastern [archive and transcript to follow]

2023 was another record-breaking year for submitted shareholder proposals, surpassing the records set in 2021 and 2022. And, with the rise of anti-ESG proposals, companies faced more investors pushing for conflicting actions.

In one of our favorite annual programs, ISS's Marc Goldstein is joining us again to share insights with the corporate community. Marc will discuss what transpired in 2023 and what steps companies can take to prepare for 2024 issues. Davis Polk's Ning Chiu and SGP's Rob Main will join Marc to provide color commentary.

Joining us are:

- **Ning Chiu**, Partner, Davis Polk & Wardwell LLP
- **Marc Goldstein**, Managing Director & Head of U.S. Research, ISS
- **Rob Main**, COO & Managing Partner, Sustainable Governance Partners

This program will cover:

- 2023 U.S. Proxy Season Recap
- 2024 ISS Policy Updates
- Looking Ahead to the 2024 Season

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Course Outline/Notes

1. 2023 U.S. Proxy Season Recap
2. 2024 ISS Policy Updates
3. Looking Ahead to the 2024 Proxy Season

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2023 US PROXY SEASON TRENDS - Governance

Universal Proxy: Surge in Contests Feared by Issuers Fails to Materialize

Most companies amend their advance notice bylaws, but generally stay within the lines of what is acceptable to shareholders.

Exculpation of Officers: Widely Adopted but Not Universal (Yet)

Around 300 Delaware companies have proposed to amend their charters since Fall 2022. Nearly all have passed. We expect even more in 2024.

Super-Voting Preferred Shares: A Cheat Code to Overcome Low Turnout

More than 50 companies have used this technique to secure passage of a reverse split (sometimes more than once) or another charter amendment. But a recent change to DE law will make it easier to win approval of a reverse split without such extraordinary measures.

Zombie SPACs Unable to Complete Deals Seek Repeated Extensions

Most shareholders are opting for redemption, leaving little cash in the trust fund. Even agreed deals are not being consummated by deadline.

Governance Shareholder Proposals: Support Declines, But Not as Much as for E&S Proposals

Proposals seeking an independent board chair are most prevalent.



2023 US PROXY SEASON TRENDS – Exec Comp and E&S

Compensation: Say-on-Pay Failure Rate Declines Thanks to Fewer COVID-Related Adjustments

- Median pay levels declined in FY22, though they remained above any year other than FY21.
- Equity plan failure rate doubled to highest level in 10 years.
- Surge in shareholder proposals seeking ratification of severance arrangements.
- Clawback listing rules finalized

Environmental & Social: More Proposals on Ballots; Median Support Declines Again; Backlash in Full Swing

More lenient SEC meant fewer “no-action” requests were granted, but some investors balked at more prescriptive proposals. Political pressure on investors ramps up. Anti-ESG proposals increase but fail to gain traction with investors.

Environmental & Social: Most Common Proposal Topics are once again Climate, DEI, Political Spending, Human Rights.

Emerging topics include:

- Risks of new technologies (AI, algorithms)
- Just Transition reports
- Country-by-country tax transparency
- Reproductive rights & related data privacy
- Freedom of association
- Risks of doing business in China

2024 Policy Updates

An intentionally quiet year for updates

- **Shareholder Proposals on Compensation (Severance/Golden Parachutes):** Policy is updated to reflect a case-by-case approach to proposals seeking to require shareholder ratification of severance arrangements or payments, and clarify the factors considered, which include:
 - Terms of existing severance or CIC agreements;
 - Any existing limits on cash severance payouts, or policies requiring ratification of payments exceeding a certain level;
 - Any recent severance-related controversies; and
 - Whether the proposal is overly prescriptive, such as requiring shareholder approval of severance that does not exceed market norms.

Questions for the 2024 Proxy Season

Will 2024 be the pro-ESG versus anti-ESG election?

- **Executive Compensation:** 2022 saw a rare decline in median CEO pay, albeit to the 2nd-highest level ever recorded. Will high interest rates and recession fears in 2023 translate to a second year of decline? Or will pay bounce back and set another record high? Will investors be tolerant as long as the pay is “performance-based”?
- **Universal Proxy:** In 2023 there was no increase in the number of contested elections, and dissidents’ win rate barely increased. Does that mean UPC was much ado about nothing, or would there have been a surge in contests if not for the adoption of restrictive advance-notice bylaws? Did companies feel pressured to settle due to fears of losing a contest? Will there be a meaningful increase in contested elections in 2024?
- **Activism:** There were no proxy contests motivated by environmental or social concerns in 2023. However, Starbucks is set to have the first such contest of 2024. Is this a one-off, or the first use of a new tactic by the labor movement? Will climate activists progress from Vote No campaigns to nominating candidates of their own? Will the major asset managers ever be willing to support dissident nominees in such cases?
- **Politics:** Support for E&S proposals fell dramatically in 2023. Have investors decided that E&S risks were overstated, or are they running scared due to political pressure? Will attacks on Larry Fink and Bob Iger appeal to swing voters and sweep the GOP to victory?
- **AI:** It seems that everyone except VCs and tech executives is concerned about the misuse of AI. Will shareholder proposals on AI’s risks to jobs, privacy, human rights and intellectual property resonate with investors?
- **SPACs:** Will we finally see the end?