Investors are acting

Is your board prepared for 2022?

By Stephen L. Brown

The 2021 proxy season was remarkable for several reasons, but for boards, perhaps the most notable takeaway is shareholders' increasing willingness to act.

Investor voting behaviors are changing. Rather than wait for companies to engage on issues of strategic importance, investors are more inclined than ever before to use their votes to push boards to do so. The 2021 season saw numerous instances of shareholders voting against directors when they believed that companies were not responsive enough to critical issues such as climate risk, DE&I, and HCM.

Additionally, in the past, some boards and management teams complained that the policies and rationales of institutional investors were unknown or misaligned with the majority of other investors. This is not the case today; investor policies and intentions are explicit and unambiguous at large institutional investment firms, and, as this season's vote tallies prove, have significant support. Many institutional investors—including BlackRock, State Street Corp., and Vanguard Group—have issued direct guidance on their expectations related to a variety of ESG issues and board composition.

The shareholder proposals of 2021 and boards' responses to them were clearly reflective of the times. In addition to proposals on COVID- and workforce-related issues, environmental and climate issues continued to take on increasing prominence. The push toward better and more transparent DE&I efforts has broadened beyond a focus on boardroom gender diversity to include diversity of race, ethnicity, skill set, and experience as well as at all levels of an organization, including among senior management and the workforce in general. And while they don't garner as many headlines, a number of perennial governance proposals resurfaced; these frequently win majority support, but some reappear season after season as a signal that investors believe change is needed at the board level.

ESG issues are no longer issues considered by investors as strategic "nice to haves." Investors believe these invite important strategic questions and pose material risks to be considered. On these issues and more, it's important for boards to understand shareholder views—not only to avoid unpleasant surprises during proxy season, but also to foster productive engagement during the off-season.

During this proxy off-season, boards should do the following to prepare for next year:

Conduct a postmortem on the 2021 proxy season to analyze the issues that directly affected your companies, your peers, and your industries. Additionally, be aware of novel issues that surfaced this season. This assessment should be the basis for strategic discussions on how to address these issues in business operations, in engagement with investors, and in potential disclosures in the coming year.

Assess preparation and readiness to confront key shareholder issues during the 2022 proxy season. Run tabletop exercises based on real 2021 shareholder proposals to explore how the board would respond. Doing these exercises during the off-season gives you time to build robust response processes rather than making reactionary decisions when confronted with shareholder proposals.

Review with management their shareholder engagement plans for 2022, understanding with whom management will meet and the expected outcomes of those meetings. Don't assume such engagement plans are in place unless you actually see them.

Review the structures of your oversight of ESG and adjust if necessary. ESG concerns and assessing their impact on companies' financial and sustainability performance are here to stay. Recent shareholder actions demonstrate that investors want to understand where you are on this journey and that you are adequately responsive.

Determine if management has the appropriate talent and training to tackle issues important to shareholders. Additional training and education or outside expertise may be needed.

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