Takeaways from the 2024 proxy season

KPMG Board Insights Podcast transcript

Announcer: Hello, everyone. Thanks for joining us. This is the KPMG Board Insights podcast, brought to you by the KPMG Board Leadership Center. The KPMG Board Insights podcast features conversations with directors, luminaries, and business leaders exploring the emerging issues and pressing challenges facing boards today.

In this episode, BLC Senior Advisor Stephen Brown talks with Pamela Marcogliese, a partner with Freshfields, about trends and takeaways for boards from the recent proxy season.

Stephen Brown: Welcome to the podcast. I'm Stephen Brown, a senior advisor at the KPMG Board Leadership Center. I'm joined today by Pamela Marcogliese, a partner with the law firm Freshfields in New York. And we're going to talk about the proxy season, voting trends and outcomes, shareholder engagement, activism, and takeaways for boards. Pam, it is always a pleasure that you join me for this.

Pamela Marcogliese: Stephen, I always enjoy doing this with you.

SB: So the 2024 proxy season—I thought what we'd do is an overview, what we saw, what's new, the sentiments that are different. And then we'll end with some advice about what boards and management should be doing in what we call the off-proxy season to prepare for 2025. So, what did we see? What happened this spring in the proxy season?

PM: So, here is what I think is a piece of good news for companies, which is: I think we finally reached a level of relative stability. This is no longer the kind of proxy season where the trends are completely different, the outcomes are completely unexpected, people couldn't anticipate that X or Y could happen. I think that we are no longer there.

And I think part of the reason we're no longer there is that companies and investors have been at this a very long time. And by very long time, I guess it's been 7 or 8 or 9 years now, where they've been talking about E [environmental], maybe a little bit less on S [social] at this level. And so, I think both sides are very familiar with the issues.

And on the company side, companies have really been making—have really made—a lot of progress. And so, there's been a lot of disclosure. There's been a lot of engagement. There's been, most importantly, maybe, a lot of thought put into these issues. And so, I really think a lot of progress has been made. And I think that is why you are seeing some of the results that you are seeing.

SB: On that very point, sage advice you just gave there about a lot of progress companies have made, therefore, we're seeing the results. And the results are that your large institutional investors are not voting for some of these [ESG] shareholder proposals out there. It's not because they reject ESG. It's because they feel progress has been made. Therefore, we [institutional investors] can vote no. And I think that's something which some folks misinterpret—the vote nos from the large institutional investors on some of these issues.

PM: I think that's spot on. I think that when large institutional investors vote no, it's not because they reject E or S, or they no longer think it's important. I think it's because they think that whatever specific proposal is being put forward is not really accretive to the broader discussion, and that is because companies have already made so much progress and put out so much disclosure. So, we are no longer starting from a blank slate where every proposal moves the needle significantly. Now, it's every proposal is just marginal, in many cases. Now, obviously, we're talking gross generalizations, but that is largely where we are on many of these things. But it would be a mistake to take away from the passage rates that shareholders no longer care about these issues.

What we have seen in terms of the numbers, which may be helpful to illustrate this point, is that we continue to see a huge number of proposals being put forward. In fact, this year we saw a little bit of an uptick in terms of the numbers of the proposals that were put forward, but in terms of numbers of proposals that passed, those continue to be very low. In fact, this year they are a little lower than they were last year.

This year, so far, although proxy season is largely over, but so far, we've only seen three passing proposals: two on the E front, and one on the S front. And in terms of level of support, for the other proposals that didn't pass, they continue to range from exceedingly low to sometimes getting close to 50 percent. But in each of those cases, it winds up being very much circumstance and company specific. But by and large, the takeaway is these proposals continue to be put forward, and they continue to not really get a lot of support.

SB: But on the activism side, I should say, we did see something that we were waiting for the last couple of years since universal proxy became law. We saw Starbucks and SOC, Strategic Organizing [Center], labor union representative, with their proxy contest. They used universal proxy. Can we talk a little bit about that? Because I think that was pretty unique for 2024.

PM: That was pretty unique, and it was interesting that it was a labor union … The first piece is interesting, that it was labor, period, in this country. We think about other areas of the world where labor is extremely active. In this country, I think it's sort of interesting that this was used by labor, but I think it was really just—and this is what we always thought would happen with universal proxy—it can be a lever and a proxy for other things. And so, trying to leverage this was not necessarily because the shareholder really wanted to get board seats on the board, but really was angling for something else. And in this case, it was just a labor bargaining chip, but I think the use of it, and the use of it by labor, is definitely an interesting takeaway.

SB: In the past, we've talked about the proxy advisors opining on this. [In this case,] there was a discussion on [whether] the issues that they're [the activists] bringing up really the issues that you want to use a proxy contest for? They posed that [question] to the people who pay their bills, to the shareholder community.

PM: Right, exactly. I think that, in the larger context, if you look at it, the people putting forward the nominations really held a tiny amount of stock. Obviously, Starbucks is huge company. So, a tiny amount of stock. They were requesting, I believe, it was three board seats. And so, I think the question that came out of that was, is that really the right proportionality? Or is it, perhaps—have we lost sight a little bit of the relevant dynamics here, and is it the right approach for such a tiny shareholder to be demanding such a large percentage of the board? And, at the end of the day, I think, ISS, while it continued to confirm its commitment to shareholder rights, I think, expressed some amount of skepticism that the proportions there were the right ones.

SB: Getting to the part I want to talk about … what's different? And I think you've already talked about that, when we get to proxy season every year, there's not a lot that's different. We move in trends, maybe a 5- to 10-year trend. In the last year or so, it's really forced everyone involved in the proxy system to rethink a number of things and to sort of reset their feet. For one thing, we've always known, at least governance nerds or lawyers who deal with this, that you can use the US courts. And we actually saw that used, and sort of that issue being sort of pushed to almost a final resolution, and it got thrown out here. But can we talk about that?

PM: That's been an interesting development this proxy season. But to my mind, it's really just been a continuation of a conversation that's been going on for a long time. There has always been this push and pull to figure out, what is the right place for the shareholder voice and the shareholder proposal process, and therefore, the shareholder's ability to access the corporate ballot? Historically, the SEC's rule said that with $2,000 of stock, you can bring forward a shareholder proposal, and if it garners a decent amount of support, you can keep bringing it forward every year. And by decent amount of support, I by no means mean anywhere close to passing. So you can keep bringing it over and over and over again, and if you stop bringing that one, you can bring a different shareholder proposal every year.

The real question, and it's sort of a similar thing like the SOC, is, is that really the best process here? And the SEC, a few years ago, amended its rules to require a higher amount of stock that you had to own to bring a shareholder proposal. But you know, when you talk about sort of the mega caps, there's no amount that's really ever going to be material that can possibly make sense. And so, you've got small proponents that keep bringing these proposals that push forward their agenda, that don't receive a tremendous amount of support. They keep bringing them over and over and over again, and they continue to be distractions to management and cost money to deal with. And so, the resorting to the court system was just one more piece of that debate. Is this the right way to be? You know, the process piece is interesting, but to my mind, this is just continuing to figure out how to right-size the shareholder proposal process in the US.

SB: For the last few years, we've seen proponents—mom and pop, average Joe investor—look to business to solve some of the problems which we see in our society, versus going to your legislator in Congress, because they saw that as a broken process. In the same way, I think we can look back on the historical timeline, at this process. Corporations saying, we're not going to go to the SEC and wait for their decision through the no-action process. We're going to go, and we have a right to go, to court. We're going to go to court and let the courts sort of deal with this. So, it's a very interesting reversal, using the tools that are out there to try to get what you want.

The other thing that I think about, and has made us rethink, is that we're used to seeing so many ESG proposals—really the E and the S—coming from folks who could be categorized as left of center. Well, we saw E and S proposals from folks, proponents, who could be categorized right of center. So, we could talk a little bit about that.

PM: Yeah. So, we've definitely seen a continued uptick in the anti-ESG movement, certainly on the shareholder proposal front. These proposals, they've increased in number, but they continue to get very little actual support. That is coupled with a whole bunch of other trends as well, which is to say, there's been anti-ESG legislation, there's been campaigns by state attorney generals on the anti-ESG front. They have written letters alleging a variety of things. And so, companies now find themselves in an environment where the pro-ESG, let's call it—they understand it well, it's been going on for a while, but now it's coming sort of up against anti-ESG movement, and so managing the reputational considerations around this is what's pretty challenging.

SB: Absolutely. You know, if you stay around long enough in this space, like you and I have, you get to see the twists and turns. And one of those turns is that, during the Reagan era, many of the largest investors had to build systems to make sure that they complied and that they voted [their proxies]. And now, in the past couple of years, in response to what you've just said—pressures from Congress, pressure from corporates—they've built pass-through voting systems to allow the vote to pass through for the underlying investor to vote. So, talk a little bit about pass-through voting.

PM: So, pass-through voting is this idea that some of the largest institutional investors allow others in the chain to sort of express their views on how they would like their shares to be voted. And so, shares that may be owned by BlackRock or State Street or Vanguard are no longer voted as a monolithic bloc. And so, what will be interesting is to see how much that gets used, and what the ultimate impact of, on the voting that can create. So, whereas before you could talk to one person—whatever that person may be, the representative BlackRock or Vanguard or State Street—and get a sense of how a large bloc of shares might get voted, now that large bloc is probably not as large as it may appear, because others can provide direction as to how some of those shares can get voted. So that can be helpful or unhelpful, depending on which way you want the vote to go.

SB: That sort of thing with pass-through voting, which if you're sitting in the corporate secretary's office or general counsel's office at a company, and you're rooting for pass-through voting because … you're looking at the power of the big three—BlackRock, State Street, and Vanguard—but then you say, well, I know who those folks [members of the stewardship team] are, and I have a phone number of who to call at those three investors, if I need to. You don't have the phone numbers, or know who to call, or even want to call those who they're passing through to. So, it's a very interesting phenomenon we'll see will develop in the coming years. And there's so much we can talk about, but I think we should close with, if I'm management or a board member, what should we be doing to prepare during this time for 2025?

PM: Well, what I would say is to really keep focusing on this, on all of these issues. And, as I've said before, I think companies have made a tremendous amount of progress, which is wonderful. But, I think that it would be a mistake to become complacent, and to say, I've done enough, or I'm tired of this, I'm moving on to the next thing. And I also understand that sometimes it is hard to get a hold of shareholders, because they, too, have had many conversations with companies, and maybe there are no new issues for them to discuss. But I don't think that that means that companies should take their eye off this ball, because I think, as we've said, the issues continue to be material.

People do continue to care. There are reputational issues that can get caught in the middle of this if they are mismanaged. And so, what I would say is, keep on doing all the good work that companies have been doing, and just try to resist the complacency.

SB: I think you're right. I'll just add that I think, as with the previous years, but never more important, that there's a premium on communication.

So, Pam, thank you again for coming and spending time with us and talking about the postproxy season. It's always a pleasure to have you.

PM: Likewise. Thank you, Stephen.

Announcer: Thank you for listening to this episode of the KPMG Board Insights podcast. Be sure to visit the Board Leadership Center website at kpmg.com/blc for more resources and information for board members and business leaders, and subscribe to the series to be notified of new episodes.

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Contact us

kpmg.com/us/blc

T: 800-808-5764
E: us-kpmgmktblc@kpmg.com

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