PROXY MINI-SEASON DOESN'T MEAN MINI-CHALLENGES

Debbie Miller looks at how the less-discussed proxy mini-season compares with its big brother – and what that can mean for governance teams

'Shareholder engagement techniques and demands for companies that hold meetings in the mini-season differ from those that hold annual meetings during the main proxy season'

> 'We would expect to see fewer shareholder proposals in general, and probably fewer in the area of climate'
>
> Paula Loop, PwC Governance Insight Center

The main proxy season, which runs through the first half of the year, tends to grab most of the headlines, but the mini-season can also present its own challenges for companies and their governance professionals in terms of engagement. There can be differences, too, in emphasis among shareholder proposals, such as those focused on climate change, according to the professionals.

The main and mini-seasons involve different types and numbers of participants. For example, more than 3,000 companies hold annual meetings during the proxy main season, while a little more than 1,000 hold their AGMs during the second half of the year, Paula Loop, leader of PwC's Governance Insights Center, tells *Corporate Secretary*. In addition, more than half of proxy mini-season companies are micro-caps. As a result, retail shareholders tend to comprise a larger slice of their ownership – and hence voting population – than is the case during the main season. 'Of companies holding meetings during the last mini-season [in 2016], retail owners held 42 percent of shares, compared with 30 percent of shares for companies during the main 2017 season,' Loop says.

By contrast to the main proxy season, companies in the mini-season have a shorter window of time to meet with their investors, Gibson Dunn & Crutcher partner Lori Zyskowski tells *Corporate Secretary*. 'They cannot meet with them during the fall, when calendar-year companies are conducting off-season engagement, and institutional investors are extremely busy during the spring, which is the off-season for many mini-season companies,' she explains.

As a result, the shareholder engagement period occurs mainly during the summer part of the mini-season, from July through September. 'The benefit of this is that the voting results and themes of the main proxy season are already well understood,' Zyskowski adds.

Retail vs institutional

In general, retail shareowner voting participation rates are much lower than those of institutional holders. During the 2016 proxy mini-season, retail shareholders voted 28 percent of their shares while institutional investors voted 83 percent of theirs, Loop says. During the 2017 proxy

> ‘Shareholder proposals in the mini-season will focus on issues such as adopting or amending proxy access’
>
> Lori Zyskowski, Gibson Dunn & Crutcher

main season, retail holders voted 29 percent of their shares while institutional investors voted 91 percent of theirs. The overall voting rate during the 2016 mini-season was 60 percent – compared with 73 percent during the 2017 main season.

What's more, Loop says, retail shareholders during the mini-season are much more likely than institutional shareholders to vote with management. One explanation is that in terms of outreach, companies often focus on encouraging their retail holders to vote. This differs from outreach to institutional shareholders, 'largely because those shareholders have the time to meet with companies that are interested in doing so in advance of their annual meeting,' Loop says.

Similarly, logistics and time constraints mean 'shareholder engagement techniques and demands for companies that hold meetings in the mini-season differ from those that hold annual meetings during the main proxy season,' Zally Ahmadi, director of corporate governance and executive compensation at DF King, tells *Corporate Secretary*. 'Because the majority of companies hold their meetings during the main season, the mini-season is when you will see institutional investors and advisory firms extremely constrained by the amount of time they have to engage or choose to launch engagement campaigns.'

According to Zyskowski, companies that hold AGMs during the mini-season need to keep institutional investors' schedules in mind and try to get on to their calendars early. 'Given the compressed time frame these companies have to meet their investors, it is important to schedule the meetings during the summer,' she says. 'This is when investors may be taking some vacation time, so it is important to plan ahead.'

Climate change

Climate change has become an emerging theme among shareholder proposals. 'Key environmental proposals focused on climate change in Q1 and Q2 this year, with three of them actually garnering majority support this proxy season,' Ahmadi notes.

The decrease in federal funding for environmental initiatives coupled with President Donald Trump's withdrawal of the US from the Paris Climate Accord has created a renewed focus on environmentally targeted proposals, she adds.

Tips for the proxy mini-season

Paula Loop, leader of PwC's Governance Insights Center, recommends issuers take the following steps:

- ☐ Be proactive with the issues and don't wait until proxy season to get into them
- ☐ Understand what the shareholder mix is and think about what the potential issues are and which ones to address
- ☐ Be aware that mini-season companies are smaller and more focused on the retail vote and relations with management than main-season issuers.

Zally Ahmadi, director of corporate governance and executive compensation at DF King, outlines the following best practices:

- ☐ Remember that the mini-season is also known as the season for engagement. It's important to ensure the company's team of advisers – compensation consultants, solicitors and attorneys, among others – is formed and ready to help with the engagement roadshow when needed
- ☐ Have the right people on calls and in meetings. There has been a recent push to include directors in engagement meetings, but it is important to ensure that *all* speaking participants are knowledgeable and can keep a cool temperament
- ☐ Be prepared. Outlining a strategy in advance and having talking points prepared go a long way to ensuring a successful engagement season
- ☐ Educate the board and speakers on industry trends and developments, and be prepared to receive criticism from shareholders gracefully.

According to EY's *2017 Proxy Season Preview*, nearly one third of investors surveyed indicate that climate change should be a board priority this year, nearly double the number who did so in 2016. When investors were asked which topics they intended to focus on in 2017, climate change was the most commonly cited. But the mini-season is not predicted to follow the same pattern. 'Given the make-up of the mini-season companies, we would expect to see fewer shareholder proposals in general and probably fewer in the area of climate,' Loop says.

Zyskowski also predicts less emphasis on environmental and social issues during the 2017 mini-season. '[This] is more a function of the types of companies, on average, that hold meetings during the mini-season,' she says.

> ‘Given the compressed time frame these companies have to meet their investors, it is important to schedule the meetings during the summer’

Proxy access

Shareholder proposals during the mini-season will focus on issues such as adopting or amending proxy access, Zyskowski says. According to data she compiled from Institutional Shareholder Services, the 2016 mini-season included 47 shareholder proposals, of which four (8.5 percent) were about proxy access; in this year's mini-season, 14 (26.4 percent) of a total of 53 proposals are about proxy access.

'Proxy access continues to be a key area where shareholder pressure, either from potential shareholder proposals or actual shareholder proposals, has resulted in adoption by S&P 500 companies,' Loop notes. Half of all S&P 500 companies have adopted proxy access bylaws, according to PwC's *2016 Annual Corporate Directors Survey*.

'Although the spotlight on proxy access has diminished somewhat as the adoption of these provisions has become mainstream within the S&P 500, the average support level for a proposal requesting the adoption of proxy access remains above 50 percent,' Ahmadi says. 'A new development for the main season this year was the emergence of shareholder proposals requesting amendments to pre-existing proxy access terms. But a majority of the companies that received these proposals received no-action relief, and the ones that did make it to a vote have all failed.'

Social proposals

Board diversity and gender equality proposals, which were emerging issues in the 2017 main proxy season, are expected to be a focus during Q3 and Q4, too. 'Key social proposals in the 2017 main season primarily addressed diversity on the board and in the workplace as well as the gender pay gap,' Ahmadi says. 'As several institutional investors have pledged their increased willingness to support these types of proposals over the past year, we expect this trend to continue steadily into Q3 and Q4.'

Meanwhile, Ahmadi reports that the topic of virtual shareholder meetings arose during the main season, and she expects the trend to continue into the mini-season. The first half of 2017 saw an increase in virtual and hybrid annual meetings – to more than 175 – and a few investors submitted shareholder proposals seeking the reinstatement of physical annual meetings. 'We anticipate this spotlight to provide for increased debate going forward' into the 2017 mini-season and beyond, Ahmadi says.

BIOGRAPHY
Zally Ahmadi
D.F. King, an AST Company

As the Director of Corporate Governance & Executive Compensation for D.F. King, Zally oversees the strategic advisory team; she advises clients on topics such as investor outreach strategy, best practice and trends regarding corporate governance structures and disclosure, both quantitative and qualitative aspects of executive compensation programs, institutional investor/proxy advisory firm voting policies and regulatory updates.

Prior to joining D.F. King, Zally managed the North American Research department at Glass Lewis & Co., where she led research teams responsible for analyzing and engaging with over 6,500 North American companies. At Glass Lewis, Zally played a key role in the development of voting policy guidelines, aided in the creation and maintenance of models used to analyze executive compensation, led hundreds of engagement meetings with companies and institutional investors, and co-authored a variety of special reports capturing trends and developments in corporate governance.