

## A Brief Overview of

# TRENDS & DEVELOPMENTS OF THE 2018 PROXY SEASON

As proxy season wraps up, this is the time of year that many of us step back and take a moment to identify the key themes and continuing trends that have taken root over the last few months. Whether you've been busy reveling over a successful annual meeting, creating a game plan to achieve next year's goals, or are currently in the thick of the proxy solicitation period, here we've provided a brief overview of what happened over the past few months to keep you in the know.

### Election of Directors

Support for the election of directors remains high, with average support well into the 90th percentile. Of over 13,000 instances of a director being up for election this proxy season, we have discovered only 20 instances where a director received less than majority shareholder support. Shareholder concerns that have the sharpest teeth when it comes to support levels for directors are generally focused on two issues – attendance concerns when a director fails to attend a requisite number of board meetings, and accountability concerns when a director appears to be unresponsive to shareholder interests.

### Shareholder Proposals

Environmental & Social proposals have yet again taken the spotlight this year, with over two-thirds of proposals filed having fallen within this category. Institutional investors have renewed their focus and, in many cases, updated stances on environmental and social issues over the past year, and as such the 2018 proxy season has continued as a strong platform for many of these topics. Top themes (as well as key drivers) involve political and lobbying disclosure, workplace diversity/parity and climate change/sustainability reporting. As we also saw in 2017, support levels in certain instances tend to be relatively high for these types of proposals; for example, a preliminary analysis on climate change/sustainability proposals shows us that although average support level for this type of proposal is just below approximately 30%, we have counted at least six instances (out of a sample size of 40 proposals) where majority shareholder support was received, and at least six more where support levels were only a few percentage points shy of majority support.

With regard to governance proposals, proxy access continues to remain a dominant theme, despite a muted presence due to the fact that not only has the New York City Comptroller (formerly the lead proponent for proxy access) moved on to the next phase of the Boardroom Accountability Project, but also because nearly two-thirds of the S&P 500 have already adopted the provision. Proposals regarding the adoption or lowering the threshold for special meeting rights were also prevalent this year, with campaigns led by both John Chevedden and James McRitchie.

Lastly, new types of proposals that we've recorded have been filed subsequent to recent events that have taken the national spotlight. For example, following multiple mass shootings over the past year we've seen proposals filed during the 2018 proxy season at gun manufacturers and sporting goods stores that request disclosure regarding steps taken to improve gun safety as well as a proposal that has requested the ban of gun sales to anyone under the age of 21. In addition, following publicized investigations of "fake news" and election tampering, we've seen proposals filed at social media and internet companies that request reports on global content management controversies as well as cybersecurity efforts.

## Say-on-Pay and Executive Compensation

Support for say-on-pay remains high as well, with over 98% of proposals having received majority shareholder support in 2018, and average shareholder support hovering at just above 90%. Of the 29 companies that we have thus far recorded as having “failed” say-on-pay, it appears that high pay relative to peers combined with a lack of sufficient performance criteria tied to payouts seem to be driving shareholder discontent.

The recent U.S. tax reform eliminated the need for 162(m) proposals, as companies no longer could receive tax deductions for performance-based pay (in order to receive a tax deduction, companies were required to request shareholder approval for performance criteria and awards granted under equity plans every five years). As such, we saw fewer proposals placing equity plans on the ballot this year.

Lastly, tying elements of performance-based compensation to environmental and social criteria as well as reporting on gender pay equity were two topics that came to the forefront of executive compensation-related shareholder proposals, a continuation of two topics that we also saw in 2017.

## Virtual-Only Meetings

For 2018, we’ve recorded an approximate 30% increase over the previous year for virtual-only meetings, despite the fact that the Council of Institutional Investors has been vocally opposed to these types of annual meetings. Investors’ main concerns are the lack of transparency that may come along with the adoption of a virtual-only meeting, as companies may choose to screen certain questions that shareholders pose electronically. Although a small handful of companies have buckled under pressure from investors and will revert back to a traditional shareholder meeting, it appears that for many, the cost benefits and wider access outweigh the negatives.

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### LEARN MORE

For a full debrief of what happened during the proxy season, look out for D.F. King’s comprehensive 2018 Proxy Season Review coming out in the next few weeks, and please feel free to reach out and request a copy if you’re not currently on our distribution list.

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