NACD CHAPTER PROGRAM SUMMARY

NACD NEW ENGLAND CHAPTER

EVENT TITLE: The 2023 Proxy Season: What Happened?
EVENT DATE: 9/14/2023
EVENT TIME: 8:00 a.m. ET

PROGRAM SUMMARY:
The 2023 proxy season brought with it the introduction of the universal proxy, new issues for executive compensation, and a wave of shareholder proposals and activism. As a follow-up to NACDNE's January 2023 program on proxy demands and the risks facing boards and companies, this event focused on key takeaways and lessons learned from this past season.

Most prominently, the number of proposals increased in 2023. Drivers of the increase included a renewed focus on executive pay packages, an increase in environmental and social proposals, and the overall regulatory environment. New SEC pay-versus-performance disclosure policies, which consider total shareholder return as a measure of executive performance, brought increased shareholder focus. At the same time, a backlash against ESG led to a number of proposals seeking to undercut previous actions taken by companies in support of ESG principles. Additionally, the SEC limited the ways in which companies could exclude proposals.

But while the total number of proposals increased, overall support for them decreased. Data suggests that investors were more conservative in their voting, particularly with respect to proposals seen as overly "prescriptive," such as those calling for a material change in enterprise strategy or otherwise restraining the decision-making of the board and management team. Such proposals were often framed by opponents as being too costly or otherwise at odds with long-term shareholder value.

One lesson from the 2023 season is that "success" for activists and advocates is not necessarily measured by the passage or failure of a single proposal. Sometimes drawing investor attention to a particular issue is the first step of many. Boards should not assume that a measure defeated in one year will not take on a new form the next year.

When facing anti-ESG sentiment, boards should be able to identify a clear link between the policy in question, the overall business strategy, and the company's financial performance. Boards should also understand how their top shareholders view ESG. In the boardroom, "ESG" should really be "GES." With strong governance, the rest can often fall into place.

Director "overboarding," where an individual board member is seen as serving on too many boards to be able to contribute effectively to each of them, remained a hot-button issue in 2023. Institutional shareholders are increasingly skeptical of the value that such directors can provide. In response, boards should be able to speak to the individual skill set of each director and how it is relevant to the company.

Cultivating the perception that a board brings value to a company is growing in importance as financial reporting standards and proxy voting practices evolve and more and more disclosures are required. But beyond presenting well to the SEC, it's important for board members to remember they're presenting to their shareholders as well. Understand what your shareholders are looking for and how that aligns with the board's goals. Also, look to demonstrate that your company is seeking to meet the expectations of its shareholders, not just those of a regulatory body.

Boards need to consider how they are going to continuously improve their team. Whether that means an outside hire or internal development depends on the team and the company, but many boards are enlisting the help of diversity and cyber experts to address urgent shortcomings. Additionally, as proxy voting and disclosure requirements evolve in what is already a sharply polarized media landscape, boards should consider adding a communications savvy director, ideally one who is also telegenic.

Surprisingly, the universal proxy did not have its anticipated impact this year. Some had predicted a dramatic rise in the number of proxy fights. Others imagined shareholder groups would have much more leverage than in years past. In the end, there was more bark than bite, but proxy experts expect the new rule to have a greater impact next year as the SEC provides additional guidance and shareholder groups learn from this year's results.

Looking ahead to 2024 proxy season, the most critical considerations for board members revolve around investor engagement. How are you communicating the value of your individual directors and how is the board staying informed on the interests of shareholders? Directors should remain in a "proxy" mindset all year, not just the season. The filing and voting may happen all at once, but the considerations that go into the proxy process evolve every day.

KEY TAKEAWAYS:

- In 2023, the number of shareholder proposals increased due to disclosure policies, a backlash against ESG initiatives, and increased scrutiny of executive compensation.
- Overboarding remains a hot-button issue and the number of shareholder proposals targeting individual directors has continued to increase.
- Boards should communicate the value of individual directors and the relevance of their particular skill sets. Start by updating your board bios and skill matrices.
- While it might boil down to just a "season," the proper proxy mindset requires year-round focus on shareholder interests and emerging trends.

MODERATOR:

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