The 2021 proxy season in review

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The continuing COVID-19 pandemic has resulted in another disrupted meeting season, but corporate Canada is nonetheless settling into a new equilibrium of virtual shareholder meetings, increasing environmental, social and governance disclosure, and a reawakening of shareholder activism after a year of near dormancy.

Virtual meetings are mainstream

Lockdown measures implemented early in the 2020 proxy season saw many issuers pivot quickly to virtual meeting alternatives. A patchwork of legislative changes, governmental orders and courts willing to grant relief to facilitate virtual-only meetings partially addressed some of the legal limitations faced by some issuers.

This year, issuers had the benefit of that experience and additional time to plan so a normal cadence of proxy season returned. But it did so in a virtual environment once again. Prior to last year, only a handful of virtual meetings were held in Canada. This year, more than 420 of the 905 Canadian issuers that have filed proxy circulars from the start of February to the end of April have stated they will be holding that meeting virtually, while several others plan to hold their meeting telephonically or by webcast with limited or no ability for investors to vote virtually at the meeting.

Criticism of fully-virtual meetings continues from some institutional shareholders, including on the basis that it is more difficult to ask meaningful questions and receive answers during the meeting. Many issuers responded this year by providing improved virtual meeting disclosure – especially on the complicated process for appointing and registering proxyholders in the virtual meeting context – while others enhanced the ability of investors to ask questions in advance of the meeting, on teleconference lines during the meeting and, in some cases, by posting unaddressed questions of general interest with responses on the corporate website following the meeting.

Issuers with geographically dispersed investors have used the virtual format to reach a greater number of their investors. For this and other reasons, it is likely the format will remain important even when the current restrictions on large group gatherings are relaxed or removed.

A new focus on ESG

ESG disclosure in circulars increased substantially this year. This follows a long-term trend of investor and other stakeholder demands for disclosure, additional regulatory focus and director interest in communicating on these matters.

This stakeholder interest in ESG matters is reflected in the nature of shareholder proposals received by issuers in Canada this year. Over 65 shareholder proposals have been received by Canadian reporting issuers to date, of which 22 relate to social matters, including diversity and employee health and safety, 13 focus on environmental or climate change issues, 9 address corporate purpose and one proposed ESG measures in compensation. Many of the shareholder questions at annual meetings, especially those of Canadian financial institutions, have focused on environmental matters, including the financing of businesses connected with industries considered to be high-carbon emitters.

Consistent with this trend, an increasing number of issuers are voluntarily announcing commitments to achieve net-zero carbon emissions. New SEC rules regarding disclosure of material human capital measures or objectives related to the development, attraction, safety, engagement and retention of employees have also begun to influence Canadian disclosure practices.

Corporations Canada released the results of its review of compliance with new federal disclosure requirements on the representation of women, visible minorities, Indigenous peoples and persons with a disability on boards and in senior management, highlighting the need for better compliance with the requirement, as well as a need to improve the representation of currently underrepresented groups in leadership roles.

Renewed activism

There was little shareholder activism in 2020 as economic uncertainty and a view that activist overtures would be seen as opportunistic amid the scramble to address the extraordinary changes resulting from the global pandemic and its impacts. However, a growing sense of confidence in the economy is encouraging increased activist activity by dissatisfied shareholders. Dissidents have launched public solicitation efforts to replace directors or opposed transactions at five reporting issuers so far this season, while other issuers have negotiated a settlement with a potential activist before the activist began a solicitation campaign. Whether this represents a return to normal or the start of new wave of activity remains to be seen.

Proxy season 2021 has entered a 'new normal' with comfort relying on technology, a new sense of urgency on ESG, and the return of shareholder activism to normal levels, or possibly a new higher level of activity.

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