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KINGSDALE Advisors

2023 AGM CHECKLIST

A successful AGM requires year-round consultation, preparation, and planning. Companies that are unprepared may be surprised by recommendations from proxy advisors, new regulation changes and how their shareholders vote.

Now more than ever it is critical to have good governance and strong shareholder engagement throughout the year. This year's checklist poses the 10 key questions every company should ask ahead of their meeting.

1 Have you addressed the strict gender diversity requirements from proxy advisors?

ISS has made it clear that for S&P/TSX Composite Index companies, they will generally recommend WITHHOLD for the chair of the nominating committee if women make up less than 30% of the board. Glass Lewis has transitioned from a fixed numerical approach to a percentage-based approach and will generally recommend voting AGAINST the chair of the nominating committee if a board does not have at least 30% gender diverse directors. While 29.9% gender diversity for the 2023 AGM may seem close enough, it's important to note that it won't be good enough. Proxy advisors have made it clear that the expectation is 30% or above to avoid a withhold recommendation. Starting for AGMs in 2024, ISS will require S&P/TSX Composite Index companies to have at least one racially/ethnically diverse director. We strongly recommend that companies start planning for board refreshment now.

2 Is your executive compensation in line with your company's performance?

Glass Lewis now expects a long-term incentive grant to be at least 50% performance-based. While Glass Lewis will consistently raise concerns with executive pay programs that do not meet this criterion, it may refrain from issuing a negative recommendation on the say-on-pay (SOP) proposal in the absence of other significant issues with the program's design or operation. However, in cases where performance-based awards are significantly rolled back or eliminated from a company's long-term incentive plan, such decisions will generally be viewed negatively outside of exceptional circumstances and may lead to an AGAINST recommendation.

3 Have you shown accountability for climate-related issues?

ISS is extending its policy on climate board accountability globally in 2023. For companies that are on the current Climate Action 100+ Focus Group list, ISS will generally recommend AGAINST or WITHHOLD from the incumbent chair of the responsible committee (or other directors on a case-by-case basis) in cases where it determines that the company is not taking the minimum steps needed to understand, assess, and mitigate risks related to climate change to the company and the larger economy.
Glass Lewis will generally recommend opposing the election of the governance committee chair of S&P/TSX Composite companies that fail to provide explicit disclosure concerning the board's role in overseeing E&S issues. Glass Lewis will examine a company's proxy materials and governing documents (such as board committee charters) when evaluating a board's oversight of E&S matters. Ensure disclosure is comprehensive, and that your company gets credit for actions your board is already taking.

4 Is it time to break up with your auditor? (Your shareholders might think so)

What was once a sure vote in favour, a growing number of investors voted AGAINST company auditors in 2022. This stance reflects shareholder concerns over auditor tenure, tendering practices and independence. The shift in proxy voting dispositions is being led by institutional investment management and banking/ financial services firms (including pension funds, hedge funds and asset/wealth management). Geographic presence for firms leading

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this trend are based in North America and Europe. When fees for non-auditing services are greater than those for audit and audit-related fees, or are generally excessive, it may be viewed as compromising auditor independence. Institutional investors are generally supportive of the choice of auditors recommended by the audit committee, but they may vote AGAINST if the auditor's tenure with the company exceeds 15, 20 or 25 years (depending on the investor). Institutional investors also support the notion of an external auditor being put out to tender on a regular basis (i.e., every 10, 15 or 20 years). While neither ISS nor Glass Lewis has specific policies related to tenure or tender timelines for external auditors, they will recommend voting AGAINST on a case-by-case basis where they believe auditor independence has been compromised or significant audit issues have been identified.

5 Are your directors suited for your company's current situation and future challenges?

It's important for companies to continue refreshing their board and expanding its director search to maximize diversity and encompass job competencies in areas such as: technology, cyber security, sustainability, and multi-stakeholder governance and engagement. Companies should maintain a skills matrix as well as identify any directors who are at risk of being overboarded or long-tenured. Having long-tenured board members does not necessarily indicate a problem, but activists will target these directors particularly if their tenure is coupled with underperformance. If you do have long-tenured directors, are shareholders clear on why they are important and your broader approach to refreshment?

6 How robust are your succession plans?

While "The Great Resignation" was topped by a new trend called "Quiet Quitting," where employees disengage, the market has continued to see workforce challenges. These trends don't solely impact general employees; an increasing number of executives and board members are deciding that corporate responsibilities are no longer their top priorities. Turnover in key talent is disruptive to the business, and without robust succession plans, board members may be held accountable if the lack of effective leadership leads to underperformance. Furthermore, executive turnover has led to the payment of large retention or one-time awards, which have caused implications for SOP.

7 Are you prepared for an increase in shareholder proposals?

The number of shareholder proposals soared in Canada, more than doubling in 2022 from 2021. While there were increases in every category, environmental and social proposals topped the list in both Canada and the U.S. Do you know what types of shareholder proposals your peers have received and what proposals your shareholders have put forward at other companies? Have you thought about how you would respond to a proposal or negotiate with the proponent?

8 Is the voter turnout at your meeting declining?

As we head into the AGM season impacted by rising inflation, economic uncertainty and potential recession, fluctuating oil prices, continued supply chain issues, the Russia-Ukraine war, on-going COVID-19 and increased cybercrime, it may be easy to lose sight of voter turnout; however, a strong voter turnout is a sign of a healthy, well-governed company. When an activist hunts for a target, voter turnout is one of the first things they consider as a low turnout means their position can have a disproportionate impact on the outcome of the vote. In cyclical downturns, it's common for shareholder bases to turn from institutional to more heavily retail. An increased retail ownership will often lead to lower turnout and requires targeted engagement. Running a strategic AGM outreach and solicitation program will increase your shareholder visibility and turnout and provide management and the board with an opportunity to identify potential issues and address any vulnerabilities.

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9 Are you prepared for a cyber security incident?

Cyber threats and ransomware attacks are a persistent threat and worsening. Private companies and government agencies are increasingly reporting cyber breaches and cyber security incidents; is your board familiar with how this risk is managed within and how it will be disclosed to shareholders? Proxy advisors expect disclosures on how the board oversees and mitigates cyber and information security risks, including having the appropriate skillset at the board level and the frequency and comprehensiveness of reporting by senior management.

10 Is your defence playbook up-to-date and do you have the right fight team in your corner?

The "pause" is over as history tells us that activism booms following periods of uncertainty as was in 2022 - Canadian targets were subject to 35 proxy contests, the lowest since 2017. In 2022, activists also wrestled the win rate against management back in their favour and gained greater support from proxy advisors and institutional investors – a possible sign that they're building stronger and more compelling arguments.

Bonus question for CBCA incorporated companies

Are you aware of the CBCA changes?

In uncontested elections after August 31, 2022, the CBCA changes (the "Amendments") require the following from distributing corporations governed by the CBCA with respect to the election of directors:

- Forms of proxy will now need to have the option for shareholders to vote "FOR" or "AGAINST" (instead of "WITHHOLDING" shares from voting) each nominee in uncontested elections.
- Separate votes are now required for the election of each candidate to the board of directors (as opposed to slate or staggered voting).
- A majority-voting standard is required for uncontested elections, where each nominee must receive more votes "FOR" their election than "AGAINST" to be elected. The exceptions for a nominee that does not receive a majority of "FOR" votes to continue as director are limited.

Given the existing TSX requirements, the impact on CBCA companies listed on the TSX will be relatively limited, but company boards will no longer have the discretion to consider the resignation as they do under TSX requirements. However, the Amendments may have more significant impacts for issuers listed on other stock exchanges (TSXV, CSE), which do not have individual voting requirements for director elections.

The Amendments also establish a new deadline for shareholders to submit shareholder proposals – within the period between 90 and 150 days before the anniversary of the previous annual meeting of shareholders. The previous deadline was at least 90 days before the anniversary date of the notice of meeting for the previous annual meeting of shareholders.

Kingsdale Advisors is North America's leading strategic shareholder advisory firm, trusted by hundreds of management teams and boards for their annual meeting needs. For advice on your AGM, please contact:

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