NACD

2023

GOVERNANCE OUTLOOK

A Publication of NACD and its Partners

Broadridge Financial Solutions • Deloitte • FGS Global • Woodruff Sawyer • WTW

About This Report

In October 2022, NACD published its *Future of the American Board* report, a framework for governing into the future. The pace and intensity of change is accelerating quickly, and boards are understanding the urgency to adapt and position themselves now to lead in a more demanding, inclusive, and turbulent future.

NACD is providing directors and senior executives with a forward-looking view of business and governance risks that will require board focus and adaptation in 2023. The *2023 Governance Outlook* is designed as a collection of observations to help boards prioritize their points of focus in 2023 and increase their awareness of emerging issues through both detailed topical analysis and coverage of broader governance implications.

The *2023 Governance Outlook* begins with an article from NACD that highlights survey findings about trends and leading board priorities for 2023 and follows with insights and projections from five of NACD's partners—Broadridge Financial Solutions, Deloitte, FGS Global, Woodruff Sawyer, and WTW. The following topics are covered this year: human capital oversight, ESG oversight, third-party risk oversight, US Securities and Exchange Commission rulemaking, proxy season factors, and the D&O threat landscape.

NACD thanks its partners, who were instrumental in the formulation of this publication.

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SPECIAL ACKNOWLEDGEMENT

We would like to acknowledge these members of NACD's content development team for their contributions to this publication: Ghita Alderman, Lana Dargan, Rachel Dubbs, Darrin Hartzler, Alexandra Lajoux, and Katie Swafford.

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Director Perspective: Top Priorities of 2023

By Ted Sikora, NACD

If 2020 was the year of the COVID-19 pandemic and 2021 was the year of building toward recovery, 2022 offered little respite for directors overseeing companies amid a chaotic business environment. To gain insight into the key trends that will impact boards in 2023 and how directors plan to adapt, the National Association of Corporate Directors has once again conducted its annual Board Trends and Priorities Survey. This year's survey report includes insights from more than 300 directors, which detail what directors expect in the coming year, as well as the key improvement areas that they deem important.[1]

TOP TRENDS

Directors were asked to select the top five trends that they believe will have the greatest effect on their company over the next year. It's no surprise that inflation and the threat of an economic recession are top of mind. After several months of record-breaking inflation, the threat of a recession looms over the business landscape with 64 percent of respondents selecting it as ranking among their top concerns. As inflation persists despite a series of interest-rate hikes initiated by the Federal Reserve, pessimism has increased toward the prospects of the US economy. (See Figure 1.) In fact, only 29 percent of respondents believe that the United States' economy is heading for a "soft landing," that is, stemming inflation while avoiding a recession by mid-2023. Meanwhile, 65 percent anticipate a recession, and 6 percent anticipate a severe recession. (See Figure 2.)

[1] The NACD 2023 Board Trends and Priorities Survey was in the field from October 25th to November 10th, 2022.

As companies retool in preparation for a possible recessionary environment, the competition for talented individuals that can see them through will remain strong. Despite news headlines of sizable layoffs and hiring freezes in the technology sector, the labor market remains historically tight by traditional measures, with the ratio of unemployed persons to job openings at 0.5 as of September 2022.[2] More than half of respondents (59%) indicated that increased competition for talent is a top concern. (See Figure 1, below.)

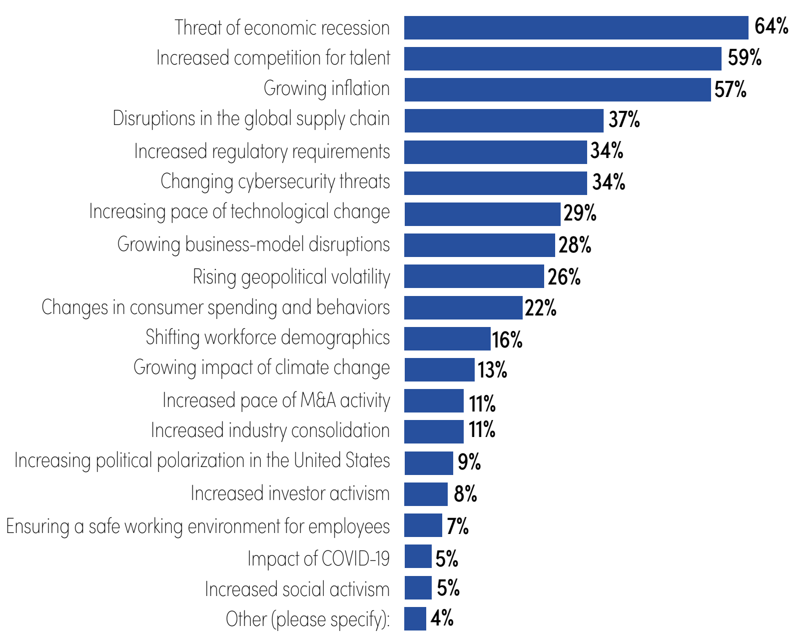
Disruptions to global supply chains originating during the pandemic have fueled inflation across 2022. The Russian invasion of Ukraine in February 2022 further amplified supply-chain challenges, and 37 percent of respondents expect supply-chain issues to have a great impact on their companies into the coming year. (See Figure 1, below.)

Notably, the impact of the COVID-19 pandemic and ensuring a safe working environment for employees are not top of mind for directors. While epidemiologists have yet to reach a consensus concerning whether the virus has become endemic, broader experience managing the virus, acclimatization to remote work, and confidence in the efficacy of vaccines and medications have decreased director concerns relative to other issues.

Collectively, these trends will affect how boards govern in the future, both in the long and the short term.

FIGURE 1

What five trends do you foresee having the greatest effect on your company over the next 12 months?

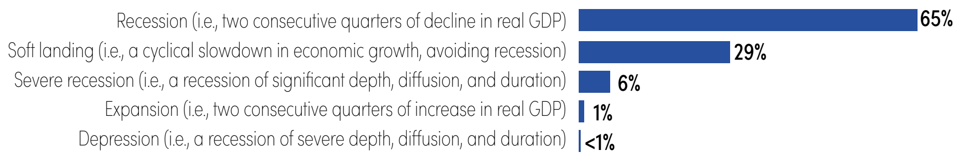


2023 NACD Trends and Priorities Survey, n=312

[2] US Bureau of Labor Statistics, *Graphics for Economic News Releases*, "Number of unemployed persons per job opening, seasonally adjusted."

FIGURE 2

Based on current economic conditions, in which of the following stages of the economic cycle do you believe the United States economy will be by the end of Q2 2023?



2023 NACD Trends and Priorities Survey, n=308

THE FUTURE OF BOARD GOVERNANCE

As discussed in NACD's *Future of the American Board* report, which was published in October 2022, "because governance is highly context dependent, the changing environment has implications for governance practices."[3] In light of the myriad of trends affecting companies, respondents agreed with the report's findings that the way boards operate in the future will need to adapt.

Some of these changes will occur as boards endeavor to provide guidance and oversight in a complex, rapidly changing world. More than half (56%) of respondents, for example, expect to see much deeper and more frequent engagement of US boards on strategy over the next three years, and 45 percent of respondents anticipate vastly increased time commitment to board service.

Other changes may be prompted and/or accelerated by external pressures, whether by stakeholders, regulators, or society more generally. For example, 85 percent of respondents feel that boards lacking diversity will become less acceptable over time. The independence of board leadership is another example, with 57 percent of respondents indicating that the practice of combining the roles of the board chair and the CEO will be increasingly less acceptable.

PRIORITIES FOR IMPROVEMENT

As trends and external pressures motivate changes to the way in which boards operate, boards will need to examine their performance and governance practices and prioritize areas for improvement. The following sections review key opportunities identified by directors in board-management relations, oversight issues, and board operations.

Board-Management Relations

Having the proper leader at the helm is increasingly critical and challenging in a time of vast and rapid change. Thirty-seven percent of respondents indicated that their board did not allocate sufficient meeting time to CEO succession planning over the past 12 months, and 32 percent deemed it "very important" that their board improve its practices with respect to CEO succession planning. (See Figure 3.) While CEO turnover in the Russell 3000 slowed during the course of the pandemic, it has increased across 2022.[4]

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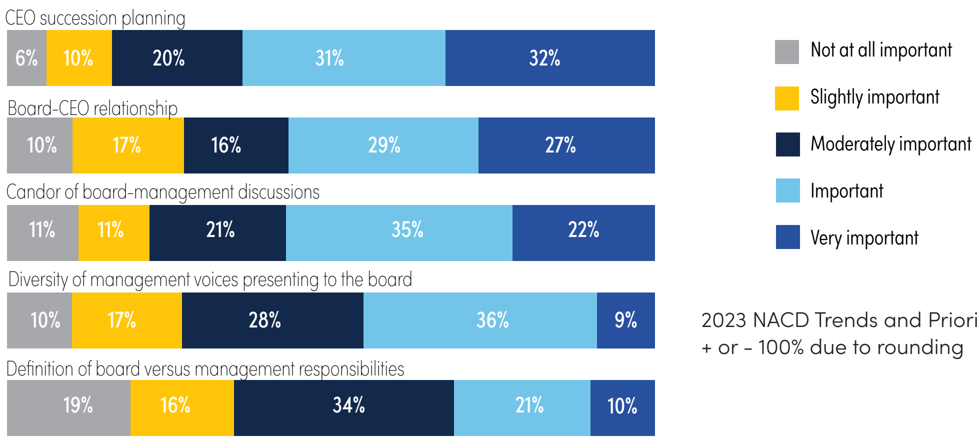
[3] NACD, *The Future of the American Board Report* (Arlington, VA: NACD, 2022), p. 10.

[4] Jena McGregor, "CEO Turnover Is Picking Up Again As The Pandemic Wanes—But Not For Poor Performance," posted on *Forbes CEO Next*.

FIGURE 3

How important are improvements for your board in the following areas over the next 12 months?



2023 NACD Trends and Priorities Survey, n=294-295
+ or - 100% due to rounding

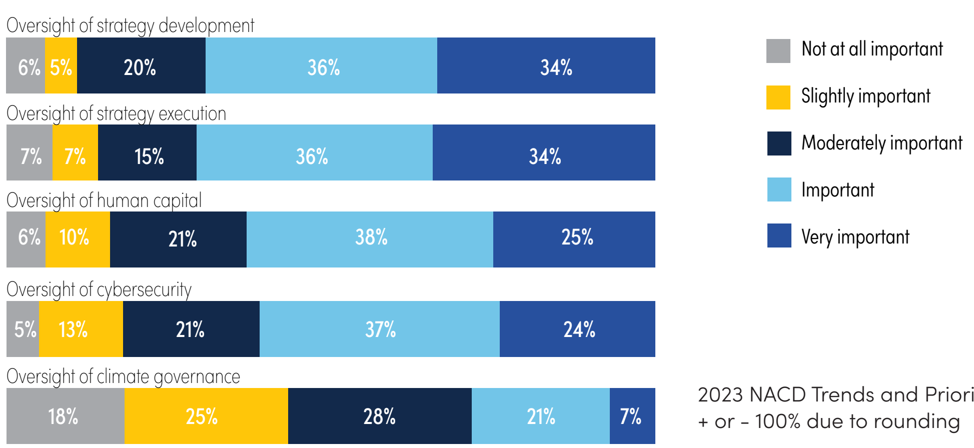
The mutual success of the CEO and the board is dependent on their ability to manage their relationship, aiming for a "constructive and healthy tension" as recommended by the *Future of the American Board* report.[5] This tension stems from the board's duties as overseer and sounding board. This is a delicate balance to strike, and 56 percent of respondents felt that the relationship between their board and their CEO is an important improvement area. (See Figure 3, above.)

Board Oversight

Given the expected increase of board engagement on strategy in the next three years, it is unsurprising that the oversight of company strategy remains a key improvement area for many boards. Seventy percent of respondents indicated that improvement in strategy development and execution was important or very important. (See Figure 4.)

FIGURE 4

How important are improvements for your board in the following areas over the next 12 months?



2023 NACD Trends and Priorities Survey, n=285-287
+ or - 100% due to rounding

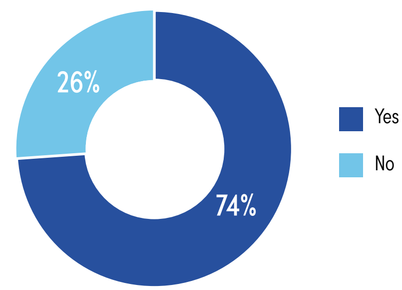
[5] NACD, *The Future of the American Board Report* (Arlington, VA: NACD, 2022), p. 32.

Yet, directors' oversight responsibilities are expanding, and directors increasingly see the value of having a diversity of experience. The *Future of the American Board* report recommends that, "the board should bring together a variety of skill sets, experiences, and viewpoints relevant to the company's business in an environment conducive to reaching consensus decisions after a full and vigorous discussion from diverse perspectives."[6] A majority (82%) of respondents indicated that diversity broadens board perspectives and expertise. Another 64 percent indicated that diversity improves a board's ability to identify such information/skill gaps in the first place.

While 74 percent of respondents indicate that their board's composition and expertise is suitable to support the shifting needs of the business over the next few years, when specific drivers of emerging risks are considered, many boards are less confident. (See Figure 5.) Approximately a third of respondents feel their board lacks the capacity and expertise to oversee areas such as cybersecurity (34%) or geopolitical risk (31%). (See Figure 6.)

FIGURE 5

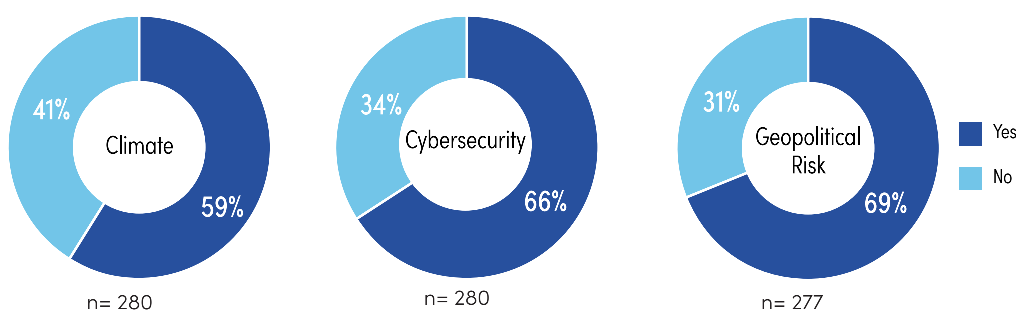
Does your board have the right composition to support the shifting needs of the business in the next few years?



2023 NACD Trends and Priorities Survey, n= 266

FIGURE 6

Does your board have sufficient capacity and expertise to oversee the following emerging drivers of risk?



2023 NACD Trends and Priorities Survey

This is also the case with climate oversight—41 percent of respondents see an opportunity to increase their boards' capacity and expertise to oversee climate issues. However, interestingly, only 28 percent of respondents felt that it was "important" or "very important" that their board improve its practices with respect to climate governance. (See Figure 6.) This sentiment varies by industry. For example, only 4 percent of respondents from the financial sector indicated that it was "very important" that their board improve oversight with respect to climate, and 20 percent said it was "not at all important." Meanwhile, among respondents from the energy sector, 24 percent said it was "very important" that their board improve in this area, compared to only 8 percent that felt it was "not at all important." This difference may stem from how immediately boards feel that climate issues will impact their strategy, as previous NACD surveys have found that directors primarily look three to five years out when planning for the long term.

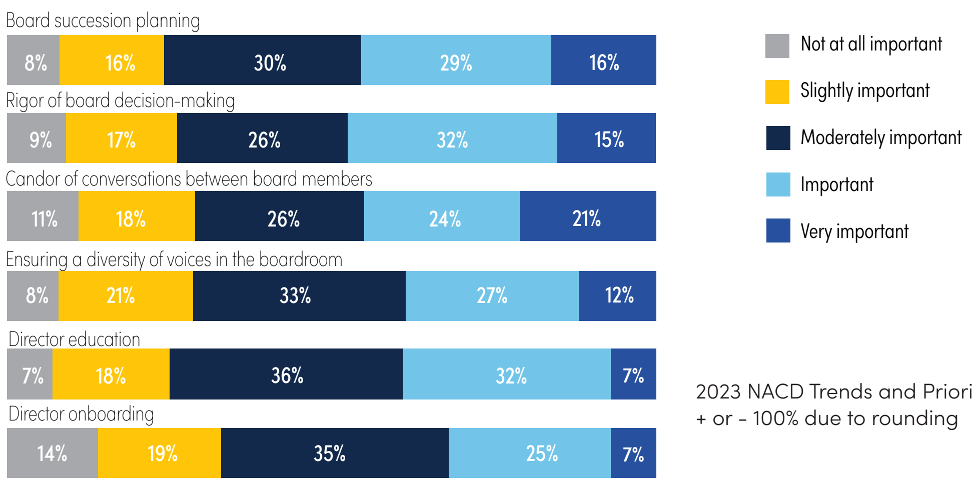
[6] NACD, *The Future of the American Board Report* (Arlington, VA: NACD, 2022), p. 49.

Board Operations

Directors are also looking to make improvements to the dynamics within the boardroom. About half of respondents indicated that it is "important" or "very important" that they improve the rigor of board decision making (47%) or the candor of board discussions (45%) over the next 12 months. (See Figure 7.)

FIGURE 7

How important are improvements for your board in the following areas over the next 12 months?



2023 NACD Trends and Priorities Survey, n=284-285
+ or - 100% due to rounding

It was noted above that improving board diversity may fill expertise gaps. Likewise, improvements to board inclusion practices may improve board dynamics. Overall, 76 percent of respondents indicated that effective inclusion practices create a richer dialogue in the boardroom and 61 percent indicated that these practices provide for higher-quality decision making on key governance issues. However, 42 percent of respondents felt that their board has limited time to discuss inclusion at the board level given other priorities.

Interestingly, onboarding was ranked last among board operational issues to improve. The onboarding process can give new directors an understanding of boardroom dynamics and unwritten rules of engagement among directors and between the board and management, setting them up to be high-performing directors.

CONCLUSION

Each year, specific key trends inspire long-term and short-term changes to corporate governance practices, which, in turn, require boards to improve and retool to adapt. A highly eventful 2022 portends more change to come in 2023, and boards must remain vigilant and continue to improve to keep pace with the changing world of governance.

Ted Sikora is NACD's Project Manager, Surveys and Business Analytics. He specializes in questionnaire design, data analysis, and data visualization, and is responsible for generating quantitative insights that serve to elevate board performance.

2023 Outlook: The Board's Role as Stewards of Human Capital

By John M. Bremen, Don Delves, and Becky Huddleston, WTW

As they enter 2023, directors observe that although they have moved steadily toward greater oversight of employee populations for several years, the trend is accelerating as demonstrated by the focus on human capital issues during NACD's 2022 Summit in October.

What will continue and what will change in the human capital space for 2023? Research and recent discussions with directors suggest the following:

- Continued talent shortages that likely will last well into the 2030s, most pronounced at entry and senior levels (representing both short- and long-term issues for boards)
- Continued high levels of turnover and disengagement by employees, leading to what some have called the "great resignation" and "quiet quitting," which manifest as relatively high turnover and reduced productivity in the middle ranks of many companies
- Continued widespread remote work—which affects productivity, engagement, retention, creativity, and risk—both positively and negatively
- Continued inflation in the prices of goods and labor, which may abate in 2023 but will remain an issue
- Potential global recession exacerbated by war in Europe and possibly Asia
- Continued supply chain disruptions and other lingering effects of the pandemic, talent shortages, and war
- Continued impact on the workforce of climate events, which continue to increase in frequency and disruption
- Continued pressure on key knowledge and technology jobs, as well as frontline roles

Research and recent discussions with directors suggest emerging governance trends for 2023 in human capital oversight and risk management, framed by elements of global stewardship. For businesses to thrive, they must grow, sustain profits, and create value over multiple economic cycles amid volatility and uncertainty. This requires the careful and responsible management of assets, liabilities, intangibles, and equity. Effective corporate stewards preserve, protect, and increase value over time.

For boards, this means maintaining oversight, reviewing and verifying the data that management provides, and making key assessments regarding long-term impact. For example, for 2023, many companies are expanding the remits of and renaming their compensation and/or nominating and governance committees to include broader human capital issues. Increasingly, they are focusing on the connections between human capital and the five elements of global stewardship: performance, protection, planet, people, and purpose.

FACTOR #1: PERFORMANCE

Well-documented correlation exists between sustainable human capital practices, long-term performance, and shareholder value. WTW's own research indicates companies are 93 percent more likely to report significantly outperforming their industry peers financially when they engage in a series of differentiated talent practices. For example, companies with transformative employee experiences are 2.7 times as likely to report higher productivity and 90 percent more likely to report lower annual employee turnover than their peers.

Examples of differentiating practices include focusing on wellbeing, listening to employees, aligning total rewards program with the needs of different talent groups (e.g., fair pay), offering flexible work and associated support (e.g., backup day care, reimbursement of costs of working from home), focusing on reskilling and talent redeployment, and embedding diversity, equity, and inclusion (DE&I) into human capital programs and strategies.

Looking forward, directors now are acting as stewards by asking questions and reviewing metrics that track the extent to which their company engages in practices that lead to healthy, engaged, hardworking, and productive leaders and employees. Examples include these:

- Productivity impact (e.g., efficiency, lost work/gap time, knowledge gain/loss)
- Supply chain impact (e.g., days required to fill orders, production/operational impact, distribution impact, unfilled/cancelled orders)
- Replacement cost impact (e.g., recruiting efficacy, inducement costs, new hire pay differentials, onboarding/training cost)
- Reputation impact (e.g., employment brand, external brand)
- Value creation/erosion impact (e.g., earnings/employee, TSR/employee, revenues/employee, earnings/employee cost)

FACTOR #2: PROTECTION

As stewards, directors now have higher involvement in effective risk management. Talent is at the center of multiple low-frequency, high-impact events arising nearly simultaneously, including cyberattacks, a global pandemic, financial shocks, spiking inflation, a series of "hundred-year" weather events, social and political disruptions, supply-chain imbalances, and labor shortages.

Examples of talent-related risks and metrics that directors increasingly are monitoring and taking steps to mitigate as they enter 2023 include these:

- Talent availability and pipeline (e.g., workforce gaps over the next 12/36/60 months; talent pipeline effectiveness; training/reskilling requirements; partnerships with universities/vocational programs)
- Productivity/supply chain/reputation impact (e.g., actions taken to address risks cited under "performance" in short-/long-term)
- Liability impact (e.g., potential risks and liabilities from employee relations issues and potential legal claims; discrimination/harassment/employee relations claims mitigation; accidents/injuries/other safety-related claims mitigation; building a culture of trust and safety)
- Environmental, social, and governance (ESG) impact: addressing climate risks (e.g., climate transition risks, protecting employees from severe climate events); addressing social risks (e.g., DE&I; employee wellbeing- including physical, emotional, financial, and social factors; fair pay; equitable total rewards); addressing governance adherence across people-related factors

FACTOR #3: PEOPLE

Directors report that people-related stewardship already has become more prevalent, and anticipate this trend increasing further in 2023. Many directors already view board responsibility and oversight to include these:

- Setting the tone from the top, including overall strategic direction and purpose
- Defining company values and acceptable behaviors, as well as leadership trust and credibility
- Addressing areas related to DE&I
- Reviewing and setting strategy on compensation, succession, and culture

Increasingly directors also are considering broader governance in areas such as talent availability, employee benefits, wellbeing, engagement, purpose, dignity, and sustainability. Data support connections between culture, reduced risk, and positive business outcomes.

Boards increasingly are focusing on employee wellbeing in light of data showing a connection with productivity, as well as the hard- and soft-dollar costs and associated risks. For example, research shows 30 percent of US workers are struggling financially, 43 percent are having difficulty meeting basic needs, and 62 percent feel burned out from work.[1] Eighty-six percent of employers are making it a top priority to address stress, burnout, anxiety, and depression, and to reduce presenteeism among their workforces.

Examples of people metrics that directors increasingly monitor as they enter 2023 include these metrics:

- Employee engagement: Engagement survey scores; Net Promoter Score for employees; turnover by level, experience level, gender, and other demographics

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[1] Data from WTW's 2022 Global Benefits Attitudes Survey. The survey was in the field December 2021 and January 2022 and respondents included 9,658 employees of large and midsize private companies in the United States in a range of industries.

- **Leadership trust and integrity**: Third-party trust indices (measure employee trust)
- **Employee wellbeing**: Components of physical, emotional, financial, and social wellbeing
- **DE&I**: Diversity by level, pipeline inclusion, selection inclusion, project inclusion
- **Workplace dignity**: Employee completion rate of codes of conduct/harassment/compliance and ethics training, correlation between dignity and engagement, employee listening strategies/psychological safety ratings, reported incidents, reported claims, adverse media mentions

Beyond their traditional focus on executive compensation and pay equity, directors also increasingly are considering a more holistic view of company "total rewards" (which generally include pay, benefits, careers, and wellbeing). The following represent examples of board oversight in these areas:

- Compensation (e.g., pay clarity, incentive differentiation, incentive metric alignment with goals, incentive cost and sharing ratios, pay competitiveness, pay growth, pay fairness)
- Benefits (e.g., access, quality, value, inclusion, fairness, alignment with purpose, flexibility, choice, outcomes, fiduciary risk)
- Career (e.g., percent of workforce full-time, part-time, contractors, and other categories today and in three, five, and 10 years; workforce availability during same periods; hiring effectiveness; succession planning; flexible work alignment and access; training and learning access and effectiveness; retraining vs. turnover/separation/hire/contactor costs; reskilling access and effectiveness)
- Wellbeing (e.g., percent of employees covered by medical care and behavioral health care, total cost of ill-being, absenteeism, presenteeism, wellbeing program participation, chronic care management, productivity, employee health and safety, paid time off usage, stress barometers, resilience training, emotional health indices, retirement readiness by age, financial literacy indices, retirement plan contribution levels, percent of employees living below the poverty level, percent of employees with second or third jobs, DE&I measures, leadership trust, workplace dignity measures)

FACTOR #4: PLANET

Today's directors understand that quantifying, assessing, and actively managing the significant risks to employees from climate change and other environmental challenges is essential to long-term corporate sustainability and value creation. They also understand climate efforts are key to engagement for some employees.

Climate change and the transition to a net-zero economy pose new challenges for leaders as the frequency and concurrence of climate events increase and the demands for climate transition goals grow. Examples include physical, liability, and emotional risks to their employees and their property arising from extreme weather events. Effective directors understand the impact of these risks to people and operations and take steps to mitigate them through both pre-event planning and post-event relief. Because people are critical enablers of both sustainability and risk management efforts, stewards focus on people-oriented interventions to help achieve climate goals.

Stewards also create a culture supported by programs for employees to support company commitments around climate. They tackle climate risks through adaptability, incorporate information as it becomes available, and act decisively when sudden events happen—all while managing long-term strategies to achieve climate transition goals.

Recent research by WTW's Global Executive Compensation Analysis Team indicates 69 percent of S&P 500 corporations incorporate ESG metrics into their incentive plans. The prevalence of environmental metrics among the S&P 500 has nearly doubled year over year, moving from 13 percent in 2021 to 25 percent in 2022. Environmental metrics most commonly include emissions, followed by goals related to sustainability and a reduction in the use of natural resources.[2]

FACTOR #5: PURPOSE

Effective directors understand the importance of stewarding the purpose of their companies. They know purpose has the power to motivate employees in unique ways. A Kumanu Harris poll in December 2021 reports employees are two times more likely to stay at a purpose-driven organization and four times more likely to be more engaged at work.[3] Effective leaders emphasize company purpose, vision, and values, and help employees to forge connections to individual purpose and appreciation for how their contributions impact the company and its performance. As stewards, they understand and promote its link to driving growth and long-term shareholder value. The board can help by selecting a CEO and other leaders who will drive and communicate the company's purpose and strategy, as well as by ensuring that leadership development is a priority with leaders equipped to effectively manage change and set the tone from the top.

Increasingly, directors are connecting and communicating purpose as part of broader governance in areas with questions such as these:

- How does our company purpose relate to employee engagement?
- How do we support employees in connecting their individual purposes to our corporate purpose?
- How do efforts around wellbeing, DE&I, dignity, sustainability, climate, and geopolitical actions support our purpose?

Effective stewards see no dichotomy between purpose and profits and understand they are intertwined; the result is good for human capital, good for performance, and leads to superior financial returns.

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[2] Data provided by WTW's Global Executive Compensation Analysis Team for this article, from their analysis of S&P 500 proxies in October and November 2022.

[3] Data provided by Kumanu.

BOARD OVERSIGHT QUESTIONS

Below is a sample of relevant questions for directors to ask management and/or themselves to effectively provide stewardship on human capital in 2023 and beyond:

1. What is the current board governance structure to oversee human capital, and how does it need to change?
2. Which committee(s) should be responsible for human capital governance and through what process?
3. What expertise is required on the board and/or through independent external advisors to fulfill oversight responsibilities and to effectively govern this array of critical issues?
4. What responsibilities and touchpoints are required with the Chief Human Resources Officer (CHRO) and their team and how should information be shared, presented, verified, and reviewed?


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Board Governance Structures and ESG

Avenues Boards May Consider for Managing Expanding Responsibilities

By Lee Ballin, Maureen Bujno, and Kristen Sullivan, Deloitte & Touche LLP

Companies are facing increasing pressure to manage a growing range of risks as a result of rapidly evolving environmental, social, and governance (ESG) issues. Climate-related factors have gained a great deal of attention among ESG matters, but the scope of ESG is much broader, including social aspects of a company's relationships with its stakeholders and a growing demand for effective governance and transparency.

As disruptive forces accelerate change and elevate expectations, many companies are facing challenges in protecting and promoting a sense of trust among their stakeholders, safeguarding their brands and reputations, and fostering business resilience. The increasing volume and complexity of challenges are causing an increase in the number and variety of issues landing on corporate board agendas.

How might boards adapt their governance structures to provide effective oversight in such a rapidly changing environmental and social landscape? What kinds of changes might boards make in the coming year?

KEY PROJECTIONS

ESG as a business driver. Geopolitical factors will remain prominent in ESG discussions in 2023, with a focus on climate change and decarbonization becoming increasingly front and center in political dialogue. The outcome of US midterm elections, for example, has shifted the balance of power in Congress in a way that could affect public policy, although the exact nature and significance of the effect is difficult to predict.

Despite shifts in the political environment, investor and corporate actions related to decarbonization and clean energy are not expected to change course, and the disruptive effects of these commitments and actions are expected to accelerate. One important reason for this expectation is the trajectory of change that is being driven by the financial services sector.

The Federal Reserve is expected to launch a pilot climate scenario analysis exercise with the six largest banks in the United States that is meant to improve measurement and management of climate-related financial risks, especially how climate-related financial risks may manifest and differ from historic experience. This initiative, among other factors, is expected to rapidly accelerate the role of financial services in driving an increased focus on climate-related financial risks.

Beyond financial services, corporate stakeholders such as vendors, credit raters, proxy advisory firms, and investors are increasing their calls for action. As an example, major credit rating agencies have developed methodologies for integrating ESG considerations into their credit analyses, and a credit trends report in 2022 indicated that ESG factors influence nearly one in four potential downgrades.

As another example, the Government Services Administration (GSA) has formed a panel to advise the GSA on driving regulatory, policy, and process changes required to increase climate and sustainability considerations within federal acquisition. Changes in procurement requirements are expected to unfold from this process for vendors that want to do business with the GSA, which says it oversees approximately $75 billion in annual contracts.

Beyond existing climate and cybersecurity proposals, the SEC is expected to take further action on issues such as human capital management and board diversity.

ESG as a regulatory imperative. In the United States, the US Securities and Exchange Commission's (SEC's) proposals for new disclosure requirements on climate and cybersecurity are expected to drive new processes and controls for providing information to investors. While it is not yet clear whether regulations may be finalized or effective in 2023, the continued regulatory activity is expected to help accelerate focus and action regarding transparency and reliability of information that is provided to investors. The regulatory attention is also helping to drive greater focus on the quality and reliability of information that management depends on for making strategic decisions and developing targets and actions.

Beyond existing climate and cybersecurity proposals, the SEC is expected to take further action on issues such as human capital management and board diversity. An analysis of 2022 proxy proposals indicates Russell 3000 companies saw an increase in shareholder calls for action on human capital management, and a group of institutional investors is urging the SEC to require companies to provide more disclosure regarding the gender, race, and ethnicity of employees across job categories.

Regulations are also developing in many other countries, including the European Union's Sustainable Finance Disclosure Regulation and Corporate Sustainability Reporting Directive. In addition, multiple voluntary ESG reporting standards and frameworks are rapidly converging under the IFRS (International Financial Reporting Standards) Foundation to help shape the International Sustainability Standards Board.

Regulatory activity intensifies the need for companies to implement formalized governance structures and disciplined processes, which boards are required to oversee. At the board level, this is expected to drive a need for reconsideration of how risks are managed across board governance and committee structures:

- What risks/topics are on the board's agenda?
- Where does responsibility for each topic sit with respect to the board, committees, and management?

- What information on each risk or topic is presented to the full board or committee? In what form is the information presented, and how frequently is the topic being brought to a committee or the full board for discussion?

Possible adaptations. As a focus on ESG risks, opportunities, and performance intensifies across the marketplace, ESG is becoming increasingly integrated into the business and strategy, and this trend is expected to accelerate. Broadening the evaluation of materiality to consider the external impact on stakeholders as well as the changing environmental and market condition's impact on the company can be a helpful tool to balance stakeholder expectations. This is important for meeting increasing stakeholder expectations and strategic ambitions as well as for promoting resilience. Companies should consider defined, disciplined approaches using established infrastructure for determining climate-related objectives and targets, identifying and understanding risk considerations, performing scenario analysis to inform choices and risk responses, and determining reporting and monitoring activities.

At the core of integrating ESG into the business is governance, and governance begins with the board.

At the core of integrating ESG into the business is governance, and governance begins with the board. Some corporate boards have adhered to a wait-and-see approach before taking action that multiple stakeholder groups are increasingly demanding, but the risk stemming from board inaction is escalating. Investors increasingly associate a lack of disclosure with the absence of any type of meaningful transition plan, and many investors are allocating capital accordingly.

Based on original research into filings of S&P 500 companies dating back to 2012, it is evident that some boards are already making shifts. Data show that boards are expanding their committee structures in an effort to distribute board oversight responsibilities across committees in new ways. For example, the analysis finds nearly 80 different ways that companies have renamed or extended the name of their compensation committees, suggesting additional oversight responsibilities beyond the traditional remit of executive compensation. The pattern is similar for nominating and governance committees. As boards seek to address their expanding agendas within their governance structures, several shifts are possible:

- **BOARDS AND COMMITTEES** Boards may more intentionally consider each of their key enterprise risks within the broad category of evolving ESG topics and identify who owns each risk at the board and C-suite levels, including the full board or a board committee and which C-suite leaders. This shift could include consideration for whether the board needs to expand a committee's mandate or establish one or more new committees to effectively oversee a growing range and number of issues.

  As an example, human capital is an area commonly managed by a human resources process, but the issues associated with human capital management have evolved to present much more extended consequences for many companies in the current environment. As such, it is increasingly elevated to boardroom discussion.

  Boards may be considering questions such as whether human capital management should be overseen by the entire board or whether a board committee mandate should be expanded to include human capital, such as the compensation committee. Boards may also consider who in management is responsible for human capital and whether that function or person is sufficiently elevated in the organization to enable adequate interaction with the board.

As boards revisit how risks are overseen, it may be important to provide oversight that is holistic, or sufficiently distributed so that it does not become siloed either at the board or management level.

- **BOARD COMPOSITION** Boards may revisit their composition and consider whether they have an appropriate range of skills and experiences across existing members. This could include adding new members to further distribute the workloads, especially if the SEC requires disclosure regarding whether boards have experts on specific topics, such as cybersecurity or climate change. Boards may need to be thoughtful with this approach to guard against overreliance on subject-specific experts.
- **BOARD MEETINGS** Boards may consider ways to make their meeting time more efficient and effective. This could include revisiting the frequency and length of their meetings, perhaps with a mix of in-person and virtual meetings to increase meeting time without increasing travel time requirements.

  Boards may also increase their use of consent agendas for more routine matters that require less discussion, to make more time available for more challenging topics. Boards may work with management on presentation styles, asking for less focus on slides and more focus on dialogue, to allow more time in meetings for discussion.
- **INFORMATION AND REPORTING** Boards may also increase their expectations of management to provide more data. This could include elevated expectations for the types of data provided, data sources, and data quality. Some boards may increase their expectations of management to obtain independent assurance with respect to information that is shared publicly and relied on internally for strategic decisions and actions.

MAJOR BOARD IMPLICATIONS

ESG risk is business risk. It is evolving rapidly and increasingly rising to boardroom discussion because of its close tie to strategy, especially as stakeholder expectations evolve to become regulatory requirements.

Boards already have a responsibility to oversee strategy and enterprise risk management (ERM), and strategy and opportunity are tightly linked to enhanced ERM practices around climate and broader ESG risks. Boards may need to reconsider how their governance structures enable them to fulfill these critical oversight responsibilities.

Integration of ESG considerations across the enterprise, including at the board level, is important to enable companies to identify and respond to rapidly emerging and evolving risks. The scope of ESG is sufficiently broad that a siloed or bolted-on treatment of ESG as a stand-alone risk or initiative is rarely adequate to enable companies to achieve their missions or growth objectives in today's environment.

Boards have an important role in helping drive a culture that responds to the growing demand for action on ESG-related matters and embraces the evolving risk landscape in a way that identifies and seizes upon opportunities. Many companies may accelerate their adoption of processes or practices that increasingly integrate ESG into the business, such as with performance metrics or compensation incentives that help drive behavior.

Boards also have a unique opportunity to help increase confidence in their companies' sustainability journey and ESG-related data. Governance and transparency demonstrated through the use of rigorous processes and controls, including assurance, can help boards build trust with stakeholders across the enterprise.

BOARD OVERSIGHT QUESTIONS

1. To what extent is ESG integrated into business processes across the enterprise, and where could the company benefit from improved integration?
2. How does consideration for ESG risk align within the existing board governance structure?
3. How does the board's governance structure enable not only a comprehensive understanding of risk but also an ability to identify and act on opportunities that are emerging as a result of the growing focus on ESG?
4. What risks are most critical, and where does responsibility for each risk area sit within the board, its committees, and management? Building on an organization's materiality assessment (if available), how are ESG risks evaluated for integration into ERM?
5. Does the board need to shift responsibilities for oversight of these risk areas to provide proper coverage at the board level without creating gaps or silos?
6. Does the board need new committees or new members to effectively manage the scope of issues on the agenda?
7. Does the board need to reconsider the length, frequency, or format of meetings to manage its responsibilities effectively?
8. How can assurance of ESG data deliver trust in the marketplace and enhance the board's confidence as it relates to its sustainability efforts?

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Third-Party Risk Oversight

Growing Engagement, Action Expected at the Board Level

By Dan Kinsella and Adam Thomas, Deloitte & Touche LLP

In many companies, boards of directors and C-suite leaders have seen firsthand how rapidly risks related to third parties can threaten their own company's ability to deliver on its mission and strategy. Some companies have also experienced how significantly the missteps of third parties—as well as fourth parties, fifth parties, and sixth parties in a third-party ecosystem—can tarnish the company's brand and reputation.

As an example of how third-party breakdowns can affect companies, consider which entity is typically the focal point when a supply chain failure leads to outages, cancellations, or other disruptions. Is it the third parties whose failures led to production or service interruptions? Or is it the entity doing business with end users who are left empty handed?

Although pandemic-era supply chain issues have filled the news headlines, supply chain challenges are not new. What is new is the increasing frequency of adverse events that disrupt supply chains, combined with the scope of risk that exists—often undetected—in increasingly dispersed supply chain ecosystems that are often highly interconnected and interdependent.

In many organizations, corporate directors and C-suite leaders are still working to understand the breadth, depth, and significance of their company's relationships with third parties and other business partners, even though it has become an important risk area with possibly far-reaching consequences.

As boards become more engaged with understanding their dependencies on vendors and other third parties, what measures can they take to oversee third-party risk with greater confidence and efficacy? Several possibilities are on the horizon—both actions companies are likely to take with increasing frequency and actions boards can task management with considering (if they are not already on management's radar).

KEY PROJECTIONS

Managing third-party resilience. Due to the impacts of COVID-19-related supply chain challenges, many organizations have elevated their focus on their third-party networks, the strategic impact of third-party failures, and the importance of improving resilience in third-party ecosystems.

According to Deloitte Global's 2022 global third-party risk management (TPRM) survey, 60 percent of respondents say resilience and business continuity planning is a strength in an organization, but only 36 percent indicate they have high or very high global supply chain contingency management capability, and 21 percent report lower or very low capability.[1]

Third-party risk includes not just those entities where a company has direct contractual relationships but also fourth, fifth, sixth, or even more extended participants in a supply chain ecosystem. A growing number of companies have developed reliance on such entities to meet strategic objectives, not just to achieve a cost reduction or other short-term objective. Awareness is also growing about the importance of managing a broad variety of partners beyond suppliers whose activities represent risk: joint venture or alliance partners, subsidiaries, affiliates, retailers, distributors, service providers, agents, brokers, and franchisees.

Companies increasingly recognize how interconnected and interdependent they have become with these entities, which presents an opportunity for companies to perform analysis on financial and operational metrics to help spotlight third parties that may be better positioned to help the company achieve its objectives. This might include vendors of goods and services, but it could also include sales agents or franchisees, for example, who should be targeted for growth opportunities. These types of third parties are often overlooked.

Companies are expected to demonstrate an increased strategic alignment between sourcing, business, and risk management objectives, which can drive decisions, governance, and operating models.

Interconnectedness also helps companies to identify where a breakdown may be accelerated or exacerbated by real-time technologies. Consider, for example, how quickly real-time access across supplier networks can multiply errors or allow a cybercriminal to access systems and data.

This focus on resilience is expected to continue to intensify in the coming year, as a newer spectrum of risks across a growing number of domains—geopolitical; geographic or supplier concentration; export controls; and sanctions—continues to develop. Companies are expected to demonstrate an increased strategic alignment between sourcing, business, and risk management objectives, which can drive decisions, governance, and operating models.

Integrated TPRM. To help provide a more efficient and effective approach to TPRM, some organizations are generally expected to prioritize the integration of contract and legal management systems with TPRM to develop a broader approach to managing complex risks.

Data from the TPRM survey indicate 70 percent of respondents want to drive a more integrated approach to increase efficiency by avoiding duplication across functional teams and exploiting synergies across TPRM processes. The survey further indicates that approximately two-thirds of

[1] Deloitte, *Emerging Stronger: The Rise of Sustainable and Resilient Supply Chains* (New York, NY: Deloitte Touche Tohmatsu Ltd., 2022), p. 13.

participating TPRM teams already recognize that the scope of their work is broadening into related functional areas, such as contract and legal management (63%), business continuity and resilience management (51%), and third-party performance management (51%).

Survey responses suggest varied organizational priorities for widening the scope of TPRM: improved contract and performance management, business continuity and resilience, and improved management of relationships, financial performance, and data. Despite intentions, only 23 percent of respondents indicate their organizations have been able to make significant progress in integration, which suggests companies may want to consider prioritizing further integration in the coming year.

Opportunities for integrated TPRM are expected to continue to increase for companies that have made the necessary investments. Transformation is more likely in organizations that expand their focus beyond narrow cost-savings objectives to consider more broadly the possibility of profitable growth using a customer-centric approach. Improved integration is also more likely where companies adopt more accurate forecasting techniques and improved visibility into the lowest tiers of their extended enterprises.

Many companies are recognizing the challenges of historic, reactive approaches to risk identification and response, increasingly taking steps to becomemore proactive and responsive at greater speed.

Boards can have an important role in promoting a more integrated approach to TPRM by asking probing questions of management regarding its understanding of risk in third-party relationships that exist in the lower tiers of the extended enterprise.

Increased move to real-time or near-time identification of risks and mitigation responses across supply chains. Companies are expected to increasingly move from point-in-time risk management toward approaches that are more real time, near time, or continual. Many companies are recognizing the challenges of historic, reactive approaches to risk identification and response, increasingly taking steps to become more proactive and responsive at greater speed.

Digital transformation is an important foundation for achieving such a shift. With increased use of more advanced digital technology, continual monitoring can become a substitute for point-in-time assessments to leverage real-time data feeds and analytical capabilities that provide improved, more actionable insights regarding threats and vulnerabilities.

Technology can also enable more forward-looking indications of risk instead of relying on historic information that provides lagging indications of where risk may be accelerating or increasing. Dashboards can present data on key risk indicators as well as anomalies that merit further intervention, which can be undertaken more rapidly. Companies can increase their focus on improving not only their gathering of risk data but also their interpretation of data and their responses.

Understanding environmental, social, and governance (ESG) risks. Awareness and actions are expected to grow incrementally regarding the ESG risks that exist within third-party networks. As an example, evolving regulatory requirements with respect to Scope 1, 2, and 3 carbon emissions may drive an increased focus in this area. In another area of ESG, diversity, equity, and inclusion, or DE&I, is an important topic where many companies are increasing their focus on relationships with third parties as they seek to increase their relationships with diverse suppliers and as stakeholders ask questions about where and how goods and services are sourced.

Organizations are expected to place an increased focus on the quality of internal and external data used for managing and reporting ESG factors related to their extended enterprise of third parties. According to Deloitte's TPRM survey, there's room for growth in this area; only 49 percent of respondents indicated their companies have formal mechanisms in place to monitor internal and external changes to relevant ESG-related risk information, and only 16 percent indicated the quality of their internal data is high or very high.[2]

The complexity of defining, identifying, and reporting on ESG risk is growing as companies seek increased understanding of their third-party relationships and how they may affect ESG strategy. Many companies are recognizing that high-quality internal and external data is key to understanding and managing ESG risks in complex supply chain ecosystems. An integrated, broad view of the extended enterprise is a clear prerequisite to identifying data-related needs and addressing ESG considerations across enterprise activity.

MAJOR BOARD IMPLICATIONS

As recent trends and elevated risk levels have shone a spotlight on the scope and depth of third-party risk in many companies, the board and C-suite are generally expected to increase their engagement on TPRM, which may drive increased investment in a quest for transformational change. Boards can hold C-suite leaders accountable for demonstrating a laser focus on managing identified risks compared with a check-the-box program, with a clear operating model that defines process owners, controls, and accountability, as through goals and compensation.

In response to the challenges that are driving third-party risk, boards may consider several ways they can increase their level of understanding and engagement on the scope of risk and opportunity. Board actions may include the following:

- Boards may devote more space and time on their agendas to third-party risk, engaging with C-suite leaders on key risks, management and mitigation strategies, and plans for developing a more integrated approach to TPRM.
- Board members may consider more carefully where responsibility for oversight of these critical areas resides within the board and its committee structure as well as among management.
- Boards may task C-suite leaders with providing an improved quality of information about the third-party ecosystem providing goods and services that are core and noncore to the company's strategy and execution.
- Boards may require more frequent or recurring risk reporting based on the risk profile of critical business partners.
- Boards may hold management accountable for setting and meeting targets for improving TPRM while more closely monitoring this activity.
- Boards may increase investment in extended enterprise digital platforms that provide more real-time insights into evolving and emerging third-party risks to enable more proactive, near-time responses to mitigate risks. Boards can encourage C-suite leaders to consider multiyear investments in an integrated technology architecture and automation across

[2] Deloitte, *Emerging Stronger: The Rise of Sustainable and Resilient Supply Chains* (New York, NY: Deloitte Touche Tohmatsu Ltd., 2022), p. 10.

sourcing and risk management platforms. Such investment could lead to increased focus on customer characteristics and experience and improve network analysis across third parties, services, and risk categories.

? BOARD OVERSIGHT QUESTIONS

1. Where does oversight responsibility for third-party risk reside within the board and its committee structure? Where does responsibility reside within management?
2. What information is the board receiving from management with respect to third-party risk? With what levels of quality, frequency, and relevance is the information presented?
3. To what extent does information presented by management enable a well-informed TPRM strategy, and how can the information be improved?
4. What are the key risks the company faces stemming from third parties? What are the key risks from more extended suppliers, such as fourth, fifth, or sixth parties?
5. To what extent are siloed processes exacerbating the company's approach to TPRM, and how can TPRM be more broadly integrated?
6. What tools does the company use to measure and manage TPRM, and how effective are they? How are third-party risks escalated? How effectively does escalation trigger mitigation responses, and how effective are mitigation responses?
7. What investments could the company consider to improve its approach to TPRM and integrate it across the enterprise?
8. What skill sets does the board have to advise management on third-party risk and opportunity?

Dan Kinsella is the Americas extended-enterprise and third-party assurance leader for Deloitte & Touche LLP and serves as managing partner of Deloitte's Omaha office. Combining business and technology experience to help clients create and enhance their extended enterprise through cost and revenue recovery services, Kinsella specializes in creating efficient exchange of risk information synergies in the marketplace. He leads Advisory Service Delivery Transformation, helping clients' efforts in shared services and outsourcing environment improvements.

Adam Thomas, a principal with Deloitte & Touche LLP, is the Extended Enterprise offering leader for the Cyber & Strategic Risk portfolio of Deloitte Risk & Financial Advisory. He has more than 20 years of experience in the field of risk management, with a focus on helping to design and implement third-party, technology risk management, and cybersecurity programs for complex, regulated global financial services firms. He has assisted with many significant third-party risk program transformations in response to various risk and compliance-related concerns, and he led the development of Deloitte's program for managing its third-party risk as well as several third-party risk utilities focused on the financial services industry.

SEC Rulemaking Likely to Drive Significant Changes for Companies and Boards

By Erik Hotmire and Liz Zale, FGS Global, and Steven Balet, Strategic Governance Advisors

Today, there is a great confluence of pressures facing board directors in the arena of US Securities and Exchange Commission (SEC) regulation. The current SEC leadership is especially active on rulemaking and is signaling fundamental policy shifts from historical approaches on many important topics that companies cannot afford to ignore. At the same time, stakeholder advocacy and activism have increased. Environmental, social, and governance (ESG) voting programs at large institutions are changing rapidly and have been driving more attention to ESG proposals. Diverging views of shareholders and other stakeholders on these issues are exacerbated by a politicized business climate. Boards should anticipate that many of the areas of focus for SEC rulemaking will also be represented as shareholder proposals in the 2023 proxy season and beyond.

Under SEC Chair Gary Gensler, about 50 **proposed rules** and a few rules that have already been finalized could reshape key aspects of how corporations participate in capital markets. This high volume of rulemaking activity hasn't occurred since the period following the 2008 financial crisis and the Great Recession. We highlight examples of SEC rulemaking currently underway on share repurchase, cybersecurity risk, and climate to explore how this could require meaningful change in disclosure and how boards conduct oversight of these topics, and anticipate additional compliance costs, litigation risk, and increased time pressure for boards.

KEY PROJECTIONS

- Boards should expect that Chair Gensler and the majority of the commission will forge ahead to finalize rulemaking on many topics between 2023 and 2024, including climate, corporate board diversity, SPACs, executive compensation, and cryptocurrency regulation. While there could be a shift in leadership resulting from the 2024 presidential election, for now, direction is stable. Although two current commissioners (one Republican and one Democrat) are replacement candidates who have short terms—one expiring in 2023 and one in 2024—they are likely to be reappointed or replaced with commissioners who share their views. As a reminder, SEC rules allow each proposal to become a final regulation with the support of a simple majority: the chair plus two commissioners. Split votes often form along party lines, with the chair and two allied commissioners comprising that simple majority.
- Although much review and internal deliberation of the voluminous comment submissions on the most far-reaching proposed rules has taken place among the three Democrats and two Republicans on the commission, the progressive (and aggressive) posture of some proposed rules signifies a certain confidence by Chair Gensler in the ability to reach the three-vote majority threshold on all or most of the rules, which will remake the modern disclosure regime.
- Legal challenges may arise against some of the SEC's rules once they become final, but a litigation-only strategy against the main Wall Street regulator is risky at best, regardless of whether it is initiated by investors, companies, trade associations, or other organizations. Even with the strongest arguments in front of the most favorable court, it would be impossible to know how a certain rule may be impacted through court challenge. Boards must begin to prepare for many rules to become new policy, considering appropriate governance, compliance, technology, personnel, and outside support.

Boards must begin to prepare for many rules to become new policy, considering appropriate governance, compliance, technology, personnel, and outside support.

- While some commentators speculate that the economic downturn and a potential recession might slow rulemaking, the SEC staff workload to process this high volume of proposed rules alone may impact timing. The most likely educated-guess scenario is that the rules Chair Gensler sees as most important to his legacy—for a lasting impact on the capital markets—will be finalized earlier in the process.

Highlights of Certain Recently Proposed Rules and Potential Implications for Boards

- **Share repurchase:** Proposed rules would require companies to disclose share repurchase activity the following day, which is an unprecedented level of disclosure for any capital markets activity. Daily disclosure of corporate repurchase activity could contribute to significant market volatility by generating immediate shareholder and market response and could also increase risk of shareholder litigation around repurchase activity and timing. There has been significant pushback in public comments on this proposal. We expect continued active engagement by business trade organizations on this issue, and extensive legal challenges if the rules are approved. There are also new tax implications surrounding buybacks that some observers believe could impact SEC consideration and the timeline for finalizing this proposal. The Inflation Reduction Act of 2022 includes a new, nondeductible, 1 percent tax on the fair market value of stock repurchases beginning in 2023 for all companies with public float of more than $1 million.

- **Cybersecurity:** Proposed rules would require current reporting of material cybersecurity incidents to be disclosed within four business days of materiality determination; would also require any material changes, additions, or updates to be stated within the subsequent 10-Q or 10-K reports; and require disclosure of policies and procedures to identify and manage cybersecurity risks and threats, including the role of the board and management in cybersecurity governance and cybersecurity expertise of directors, if any. We expect this will expand the involvement of the board in cyber-risk oversight and will result in a greater number and scope of cybersecurity incident disclosures. This expanded disclosure will also increase the likelihood of cyber-related shareholder litigation in addition to other legal risks from a cyber incident, and may create further pressures on cost and availability of cyber insurance.
- **Climate:** The SEC's proposed rule on climate disclosure largely aligns with the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD) to improve and increase reporting of climate-related financial information. The proposed rule has been hotly debated and there are predictions of serious legal challenges. Ongoing efforts to align ESG-related disclosure frameworks across accounting standards put additional focus on disclosure. At the same time, companies have experienced a significant increase in ESG-related shareholder proposals. According to a report from Proxy Impact, the Sustainable Investments Institute and As You Sow, the proxy period from January through June 2022 saw a total ESG proposal count equal to last year's period, but with a record-breaking 282 votes and 34 majority votes backing shareholder proposals seeking ESG disclosure and action from US companies. ESG-linked investing and pressure on companies to earn their social "license to operate" and show progress on issues such as climate change and diversity continue, despite the recent backlash to and politicization of ESG by certain investors and elected officials.

How SEC Rulemaking May Contribute to More Shareholder Proposals

In this time of regulatory transition, the SEC has indicated it will likely allow more annual shareholder proposals to proceed rather than provide no-action relief. There is also a pending rule to clarify standards around exclusion and resubmission. We expect this will result in a record number of ESG proposals in the 2023 proxy season. However, with more proposals allowed to go forward, we expect to see even more prescriptive proposals that investors are less likely to support, a reality that surfaced in 2022. We also anticipate that companies are more likely to see activists put forth dissident candidates who support proposals relating to social issues or ESG more broadly and could benefit from greater visibility for dissident candidates resulting from the recent finalized rule enshrining universal proxy access.

An example of shareholder proposals now influencing SEC rulemaking is the disclosure of EE0-1 reports—a confidential submission of workforce demographic data to the Equal Employment Opportunity Commission that companies must make annually. According to Insightia, in the last three years, there have been 35 shareholder proposals requesting public disclosure of EEO-1 diversity reports. Twelve of these proposals passed, with support across all 35 reaching an average of 43 percent.

- Investors didn't wait for new regulation to inform their voting policies: State Street Global Advisors (SSGA) announced that from 2022 onward, they will vote against board members at S&P 500 and FTSE 100 companies that do not publicly disclose their EEO-1 data. BlackRock and Vanguard have also expressed support for these disclosures and willingness to vote for such shareholder proposals.
- Then the matter was pushed into the political and regulatory arena. In November 2021, an investor group led by Boston Trust Walden submitted a letter urging the SEC to require companies to publicly disclose their EEO-1 reports. Six months later in May 2022, Congresswoman Maxine Waters (D-CA), chair of the House Financial Services Committee and Senator Sherrod Brown (D-OH), chair of the Senate Banking, Housing, and Urban Affairs Committee, sent a letter to the SEC urging them to require "standardized data of race, ethnicity, gender, sexual orientation, and disability status." SEC Chair Gary Gensler has since publicly stated that the agency is considering rulemaking on additional corporate workforce disclosures.

The push for board diversity provides another example. While the SEC is considering proposing rule amendments to enhance corporate disclosures on diversity of board members and nominees, NASDAQ's 2021 SEC-approved listing requirement on diverse board members (Rule 5605(f)) was earlier preceded by investors and organizations advocating directly with companies and submitting proposals to diversify board membership by underrepresented groups.

Investors view SEC rulemaking as a potential validation of their concerns, and we expect them to be even more opportunistic in raising awareness and putting forth proposals on these issues already in the spotlight, including ESG.

MAJOR BOARD IMPLICATIONS

- **Share repurchase**: The current proposed rule could lead to greater share price volatility driven by market responses to disclosure, which has implications for share price performance, shareholder value creation, and equity-driven management performance targets and compensation. It could also help empower activist investors and shareholder litigation. Boards may need to consider whether share repurchase authorizations should have more specificity around timing; whether processes for systemic and opportunistic share repurchase should be further reviewed and overseen by the audit committee; and whether the company's risk management and mitigation strategies sufficiently account for potential risk arising from this disclosure.
- **Cybersecurity:** A near real-time assessment of materiality can be extremely difficult to make in the throes of a cyber incident and could lead to a lower threshold for disclosing incidents, which may negatively affect the company's valuation and risk profile and potentially increase costs for cybersecurity insurance and even D&O insurance. As part of their growing role in cybersecurity governance, boards may need greater visibility into the assessment and decision-making regarding materiality and disclosures. They should also be prepared to discuss and demonstrate policies and procedures in place for the board and C-suite to determine how and why an incident was deemed material. The ongoing demand for cybersecurity expertise on boards will increase with required disclosures of that expertise and could also drive greater board involvement in cyber situations.

- **Climate**: Many companies across sectors have made climate commitments that will need to be met. As reporting requirements change, filings provide a public measuring stick for investors and interest groups on corporate climate action. Boards will want greater visibility and confidence in how the company is communicating its values, initiatives, and progress toward meeting its goals—timed around filings, earnings, annual ESG and sustainability reports, etc. —and the need for board members to directly engage with stakeholders who are following climate action closely will continue to increase. While many boards have added ESG to the responsibilities of the nominating and governance committee, climate should be a full-board issue, with the driving forces of stakeholder interest in disclosures, ESG standards rationalization and regulation, and the need for climate-risk mitigation creating a complex interplay that will require the oversight and perspective of every director.

For these and other areas of proposed rules, companies will be pressed to make the case on what value each individual board member brings to these important topics and should expect challenges to individual directors based on investor perceptions of their relevance and contributions to the board. This increases the importance of effective positioning of directors in marketing and shareholder engagement efforts prior to and including in proxy materials. It also speaks to companies' active engagement of shareholders, including retail investors on the value of directors (individually and collectively), and may require an increase in expense and activity to drive voting.

Companies will be pressed to make the case on what value each individual board member brings to these important topics and should expect challenges to individual directors based on investor perceptions of their relevance and contributions to the board.

We hold that every board must anticipate significant potential changes to be implemented for 2023 and 2024. Given the governance, business strategy, legal, and reputational impact of many of these proposed regulations, boards should prepare for a more comprehensive regulatory review and change process that spans from clarifying committee authority and responsibility for key SEC rulemaking areas to full-board oversight of the collection of rule-driven changes and resulting dependencies or conflicts. This may require a charge from the general counsel to the chair to incorporate additional and frequent committee and full-board regulatory reviews into meeting agendas, incremental to the board's current regulatory reviews. The board should also conduct oversight and receive updates from the executive team on how the company is engaging key stakeholders on their areas of concern as rulemaking progresses.

BOARD OVERSIGHT QUESTIONS

1. Within key areas of SEC rulemaking, does management have a clear assessment of the potential impact to the company's strategy and risk framework? What adjustments should be made, if any, to the strategic plan to anticipate likely outcomes and best position the company from a regulatory standpoint?
2. Should the company's position be represented in rulemaking feedback/commentary processes?
3. How will the company address new requirements in areas where the board and management have already taken a leading position? Should you continue to lead?
4. What are the implications of specific SEC rules from a compliance standpoint? Will compliance and other affected teams have the appropriate direction, resources, and capacity to address these changes?
5. How should the board engage and support management on making decisions that will impact the company's reputation on certain reporting areas that receive attention from stakeholders on multiple sides (e.g., conflicting investor perspectives on ESG strategies)?
6. What is the company doing to better inform shareholders about the contributions and value driven by directors and to better support the company's nominees, particularly with regard to board-specific disclosures such as cybersecurity expertise and board diversity?

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Liz Zale is a partner and FGS Global's co-leader of the corporate reputation and leadership practice. She advises clients on corporate reputation and purpose and advancing strategic ESG and DE&I goals, creating best-in-class investor relations, planning successful executive transitions, managing through activism and other governance situations, and navigating crisis situations. Zale was named to the NACD Directorship 100 "Governance Professionals and Institutions" in 2021, for the fourth time.

Steve Balet is a partner of Strategic Governance Advisors, a company of FGS Global. He advises boards of directors and corporate leaders on a range of ESG issues. His experience counseling public companies and hedge funds on transactions, proxy contests, shareholder proposals, and other corporate governance matters spans more than two decades.

Factors That Will Impact Proxy Season 2023

What Directors and Management Should Expect

By Dorothy J. Flynn and Chuck Callan, Broadridge Financial Solutions

Choppy market valuations, more engaged shareholders, and new regulations will create new challenges for corporate governance in the upcoming proxy season. Companies and boards should anticipate pressure from stakeholders regarding director elections and say on pay, high numbers of shareholder proposals on environmental and social matters, and added disclosure in proxy statements.

Broadridge's analysis shows that in 2022 the most directors over the past five years failed to attain majority support, there was a decline in shareholder support for say on pay, and there were more shareholder proposals than at any time over the preceding five years. Directors and management should expect the following factors to weigh on the upcoming 2023 proxy season:

1. **Investment Democratization:** An influx of new investors is expanding the shareholder base, and they are communicating among themselves. Many of them will be engaged on proxy matters. Others will come off the sidelines because new technologies are making it easier for their voices to be heard.
2. **Advancing Environmental, Social, and Governance (ESG) Issues:** Investors are demanding more information and action, and many companies are proactively providing it, not just in proxy statements but throughout the year.
3. **Changes in Say on Pay and Clawbacks:** "Pay vs. Performance" rules as well as pending stock exchange rules on clawbacks are adding to the disclosures that companies and boards need to make on executive compensation. These rules provide another opportunity to demonstrate alignment between management and shareholders.

4. **Uncertainty about Board Leadership:** Market downturns can presage a decline in shareholder support, and new US Securities and Exchange (SEC) rules for universal proxy make it easier for some activists to add their nominees to company ballots.
5. **Pass-Through Voting:** Some of the largest fund companies are passing votes to their underlying investors while others are taking retail shareholder "sentiment" into account in voting decisions. Nevertheless, guidelines from proxy advisers will continue to sway large numbers of votes.

INVESTMENT DEMOCRATIZATION

Broadridge's analysis shows that, as a group, retail shareholders owned 31 percent of the "street-name" shares of the "average" company in 2022, up from 30 percent in 2021. And in some cases, they are joining forces in chat rooms to act on proxy matters. Some companies and boards *are going to where their investors are* to provide information and monitor sentiment. Such information can include business strategies, product innovations, and efforts to improve diversity or reduce the company's carbon footprint. Retail investors differ from institutional investors in important ways—traditionally, they have been more supportive of director recommendations; when not supportive, many vote with their feet, unlike passive institutional investors who must own shares in an index.

From 2016 through 2020, approximately 70 percent of retail shares each year were not voted.[1] Some companies, governance experts, dissidents, and others are of the mind that engaging retail owners to vote ensures that all voices are heard on important proxy matters. By reaching out to their retail shareholders, issuers can communicate more about themselves and learn more about their shareowners.

Companies and boards have a range of tools and strategies to engage with all shareholders, not just the largest institutional investors and proxy advisers. They can leverage digital platforms to communicate, for example, with investors who own more than a certain number of shares. These platforms include "investor mailboxes" that are integrated into brokerage firms' client-facing websites. Some companies are also providing investors with executive summaries of proxy statements to facilitate voting interest and participation.

Many companies will see greater importance in engaging with the growing ranks of retail shareholders due to new rules and the ease of using new technologies. SEC rules for universal proxy ballots require companies to put dissident nominees on their ballots when opposition solicitors meet requirements for notification and solicitation, and pass-through voting technologies will begin to factor retail sentiment into the votes of fund managers.

ADVANCING ESG

Our analysis shows that the number of ESG-related shareholder proposals in 2022 increased by 25 percent over 2021, driven by record numbers of *environmental* and *social* proposals. While *governance* proposals (such as voting rights issues) represent a plurality of all ESG proposals, the number of environmental and social proposals increased to 142 in 2022 from 133 in 2021 and comprised over half of all ESG proposals.

As the number of environmental and social proposals grew in 2022, there was a marked decline in shareholder support for some of these measures. Overall, average support for environmental and social proposals decreased to 30 percent on average this proxy season from 37 percent the prior season.

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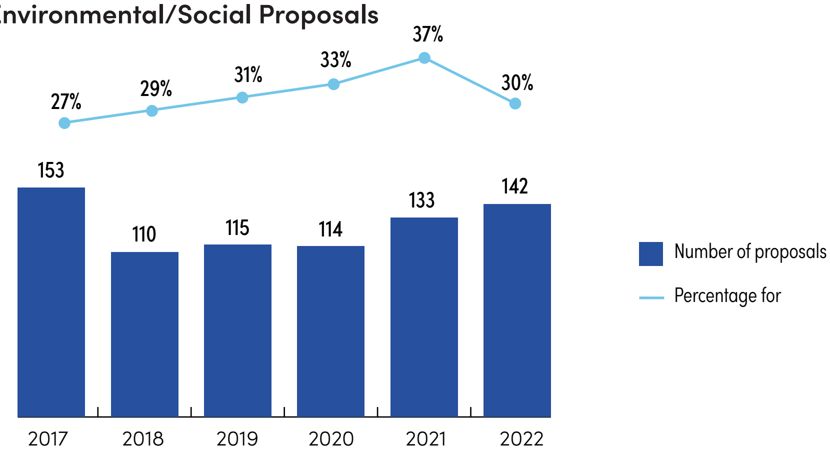
[1] NACD, *2021 Governance Outlook: Projections on Emerging Board Matters* (Arlington, VA: NACD, 2020), p. 17.

Some observers have suggested that the expanding reach of these proposals might have cooled support among proxy advisors and large institutions, leading to a year-over-year decline in support.[2]

Companies and boards should expect shareholders and regulators to make new demands in the future. Stepped up climate reporting disclosures are on the docket for future rulemaking at the SEC. Some companies are proactively providing their shareholders and the investing public with additional decision-useful information on ESG. While many large companies are now releasing annual sustainability reports, going forward, the trend will be toward greater disclosure on targets and metrics.

FIGURE 1

Environmental/Social Proposals



Source: *ProxyPulse*, a Broadridge and PwC Initiative, 2023 Edition. Used with permission.

CHANGES IN SAY ON PAY AND CLAWBACKS

Support levels for say-on-pay votes fell to 86 percent on average in 2022—the lowest in five years. Looking ahead, new disclosure requirements on executive compensation will add a new variable to corporate say-on-pay votes in 2023.

In August 2022, the SEC adopted new "Pay Versus Performance" rules requiring companies to disclose the relationship between executive compensation and financial performance on proxies and in information statements. These rules are in effect for the 2023 proxy season. They require companies to provide new details on the compensation paid to the CEO and other named executive officers, to expand upon information about the performance measures used to determine executive compensation, and to provide greater explanation of the relationship between financial performance and executive compensation.

It's unclear how these changes will impact shareholder support for say-on-pay proposals. Many companies have begun to gather the required five years of historical data on pay versus performance, including detailed breakdowns of awarded compensation in terms of cash, benefits, stock, and deferred compensation. Some companies and boards are preparing to respond to shareholder questions by readying simple and compelling explanations of their compensation strategies, structures, and payouts.

UNCERTAINTY ABOUT BOARD LEADERSHIP

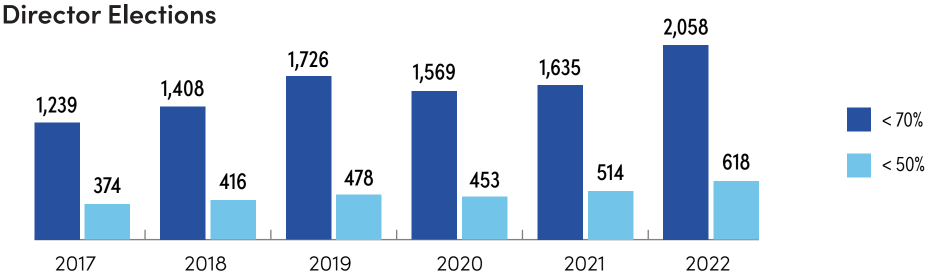
There has generally been a direct correlation between declining market valuations and declining levels of support for directors and say-on-pay proposals. Broadridge's analysis shows that in the 2022 proxy season, a record number of directors (618) failed to attain majority support, an increase of 104 from the prior year when market valuations were higher. Our analysis also shows that large numbers of directors

[2] Sustainable Governance Partners, "The 2022 Proxy Season: Forces Collide," posted on sgpgovernance.com on July 28, 2022.

failed to surpass the 70 percent support threshold that is closely watched by proxy advisers and some governance advocates. That could trigger recommendations to vote against these directors, as well as chairs of the nominating or compensation committees in some cases, this coming season.

FIGURE 2

Director Elections



Source: *ProxyPulse*, a Broadridge and PwC Initiative, 2023 Edition. Used with permission.

In 2023, companies must comply with the SEC's universal proxy rules for contested solicitations by putting dissident director nominees on company ballots when those dissidents solicit at least two-thirds of the votable shares. The rules, which went into effect in August 2022, make it easier for proxy voters to pick and choose directors from an expanded slate.

The rules may also cause some companies and boards to engage earlier and more often with their shareholders—institutional and retail alike—to make sure they have the information they need on how the company is handling challenging economic conditions, human capital management, climate disclosures, and the like. In many cases, that will also mean shoring up descriptions of board nominees and explanations of why they are nominated.

PASS-THROUGH VOTING

Some of the largest fund companies are looking to pass votes to their underlying investors; others are taking retail sentiment into account in voting decisions. Legislators are also getting involved. In May 2022, several US senators introduced the INvestor Democracy is EXpected Act, or the INDEX Act, which would *require* certain fund companies to vote proxies in accordance with the wishes and instructions of their underlying fund investors.

New technologies are making it easier for asset managers to implement pass-through voting without the need for new regulations. In 2022, BlackRock began providing their investor accounts with voting choice options. Schwab announced in October that it will use a new proxy polling solution to gather additional input on their investors' voting preferences on key proxy issues.

These changes could ultimately amplify the voices of retail investors and get more of them engaged in corporate governance.

BOARD OVERSIGHT QUESTIONS

The 2023 proxy season has the potential to raise the stakes on corporate governance due to economic pressure on company share prices, new rules governing the proxy process, and technology innovations that are expanding participation in corporate governance. To ensure their companies are prepared, boards and directors should be asking the following questions:

1. Are we prepared for the new rules and disclosures on pay versus performance and (in 2023) clawbacks?
2. How will we respond if investors use the universal proxy rules to put director candidates on the slate?
3. What additional information and metrics are our shareholders asking for regarding ESG reporting?
4. Are we prepared to effectively educate our newer retail shareholders as well as our base of long-term retail shareholders?
5. Are we effectively monitoring and using social media for investor relations' purposes (beyond marketing and customer service)?

Dorothy J. Flynn, President, Corporate Issuer Solutions, Broadridge Financial Solutions. Flynn joined Broadridge in 2017 and is responsible for all solutions provided to our corporate issuer clients. She leads a team of international associates and is part of the Governance and Communications business. Prior to joining Broadridge, Flynn held leadership positions in investor relations and human resources at The Walt Disney Company. Prior to Disney, Flynn was CEO of The Keane Organization and Chief Operating Officer of The Richardson Company. She is the Chairperson of the Board of Directors for Uplift, The Center For Grieving Children and is on the Board of Directors of Truly You Events.

Chuck Callan, Senior Vice President, Regulatory and Corporate Affairs, Broadridge Financial Solutions. Callan joined Broadridge Financial Solutions in 2004. He is responsible for government relations, regulatory affairs, policy analysis, and several of the firm's digital communications initiatives. He leads the firm's analyses of the costs and benefits of disclosure regulations and of investor behavior. He works with interested parties to identify how technology can improve retail investor participation and reduce costs. His analyses are frequently utilized by regulators, institutional investors, corporate issuers, investment companies, the media, and trade associations.

Directors and Officers Liability Threat and Insurance 2023 Outlook

By Lenin Lopez, Esq., Woodruff Sawyer

The business environment in 2022 can be best summed up in one word: volatile. Challenges presented by the macroeconomy, inflation, higher interest rates, global conflict, increased regulation, litigation...this list goes on and makes for a difficult operating environment for directors, officers, and the companies they serve. This theme of volatility is expected to continue in 2023, as will the threat of litigation against each director and officer (D&O). In these volatile times, how should directors assess risk when purchasing D&O liability insurance?

HERE ARE 10 KEY ISSUES TO CONSIDER IN 2023

1. OVERALL RATE OF SECURITIES CLASS ACTION SUITS CONTINUES TO DIMINISH: Directors and officers face the possibility that—even if they diligently discharge their duties—their shareholders and other parties, including regulators, can sue them. Recognizing that risk, most companies purchase D&O insurance to protect their directors and officers. As has been widely reported, including by Woodruff Sawyer, the market for D&O insurance softened in 2021 and that trend continued in 2022. An important driver of this drop in demand has been the continued decline in the overall rate of securities class action lawsuits, which have trended downward for three years in a row. This is a continuation of the decline that has been seen since filings peaked in 2019.[1] The hope is that this trend will continue in 2023.

[1] Woodruff Sawyer, *D&O Looking Ahead Guide: D&O Considerations for 2023* (San Francisco, CA: Woodruff Sawyer, 2022), p. 7.

2. SETTLEMENTS ARE GETTING MORE EXPENSIVE AND TAKING LONGER: While a continued decline in the overall rate of securities litigation is great news, the bad news is that settlements are getting more expensive. There were 48 class action settlements reached in the first half of 2022 for an aggregate amount of $1.4 billion.[2] One-third of them settled for over $20 million—an unusually high percentage.[3] By contrast, in the previous five years, an average of 27 percent of cases settled for over $20 million.[4]

As of July 1, 2022, there were 476 unresolved cases—this number has historically been in the mid to low 300s.[5] Carriers are concerned about these long-running cases, and Woodruff Sawyer expects that the D&O insurance market will take this into account when setting premiums.

3. UNDERWRITERS GENERALLY VIEW RISK INCREASING: Woodruff Sawyer conducts an annual survey of underwriters at leading insurance carriers to ask questions regarding their views of the world, including their current appetite for risk.

4. ECONOMIC UNCERTAINTY IS CONTINUING: The economy continues to be a focus for directors as they plan for 2023, and rightly so. Capital markets are in turmoil, inflation continues to gradually rise, and businesses everywhere are bracing for a recession.

This economic environment makes planning and forecasting particularly challenging, which has translated into several public companies withdrawing or revising guidance. Meanwhile, investors and plaintiffs' attorneys are dissecting company-issued documents to see if their forward-looking statements could be considered misleading. This can still be a litigation risk despite near-universal use of the common boilerplate disclaimer required for protection under the Private Securities Litigation Reform Act of 1995. Proactive companies will continue to kick the tires on every disclosure they make, but with more attention than ever to following the steps required to get the most out of the forward-looking statement safe harbor available to them.

5. SPECIAL PURPOSE ACQUISITION COMPANIES (SPACS): PLAINTIFFS ARE EAGERLY PURSUING THESE CASES: Between the sheer volume of cases being brought against companies that recently went public through a de-SPAC transaction and proposed rules that the US Securities and Exchange Commission (SEC) is working to finalize, it hasn't been a great time to be a SPAC, and this will likely be the case in 2023. Additionally, the trend of "short reports" being published on newly de-SPAC'd companies—and the willingness of courts to take these reports seriously—is adding fuel to this fire.

The SEC's proposed rules go a long way to imposing on SPACs all the same restrictions and disclosure responsibilities associated with classic IPOs. While not final, they have had a chilling effect on the SPAC world. The SEC reopened the comment period for these proposed rules as well as a few others, including the cybersecurity and climate related proposed rules discussed below, due to a technological error. Consensus is that reopening the comment periods will delay finalizing these rules.

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[2] Woodruff Sawyer, *D&O Looking Ahead Guide: D&O Considerations for 2023* (San Francisco, CA: Woodruff Sawyer, 2022), p. 8.

[3] Ibid., p. 14.

[4] Ibid.

[5] Woodruff Sawyer, *D&O Looking Ahead Guide: D&O Considerations for 2023* (San Francisco, CA: Woodruff Sawyer, 2022), p. 15.

6. PROPOSED CYBERSECURITY AND CLIMATE DISCLOSURE RULES RAISE THE BAR: The SEC issued guidance in 2018 on its views about public companies' disclosure obligations under existing law with respect to cybersecurity risk and incidents. In finding that disclosures after that guidance remained inconsistent, may not be timely, and could be difficult to locate, the SEC opted to propose new rules that are prescriptive.

There is no doubt that the final rules will include a requirement to make expedited disclosure of material cyberbreaches. In addition, the SEC wants to see substantially more disclosure about cyber-risk governance at both the management and board level.

Additionally, investor focus on environmental, social, and governance (ESG) issues is not going away, and the SEC has waded into the *E* by proposing climate risk disclosure rules. Smart boards will ask management how the company is preparing to comply with the proposed rules. Most companies will have to engage in some level of additional work, which may call for additional headcount, engagement with external advisors, and in some cases bringing on a new director with climate expertise.

This extra regulatory burden may be particularly onerous when corporate resources are limited. The SEC will not consider this to be a mitigating factor, and for those not able to appropriately comply with the new disclosure requirements, their exposure to securities class action suits may increase.

If the final climate disclosure rules are adopted in 2022, the rules would apply to most filers beginning with their annual reports for fiscal year 2023. However, given that the SEC's self-imposed deadline of October 2022 has passed, that the comment period has been reopened, significant industry pushback, and what are sure to be legal changes, final rules aren't likely until early 2023, at earliest.

7. POST-DOBBS EMPLOYEE HEALTH BENEFITS: The Supreme Court's decision in Dobbs v. Jackson Women's Health Organization (Dobbs) that effectively overturned Roe v. Wade created chaos in the world of employee benefits. Many employers are struggling to determine to what extent they can still offer benefits that include abortion services, recognizing that many related services (such as certain recommended procedures in the case of miscarriage, among others) are now being denied due to the Dobbs decision. Some employers are also having to decide whether to attempt to offer abortion and related services notwithstanding local rules and regulations—including the potential for criminal or civil liability. The regulatory landscape is fraught and unclear. Woodruff Sawyer published FAQs on the topic to help employers think through these issues.

Boards and management should expect to continue to grapple with these issues in 2023.

This is also a place where social media may end up being less than constructive. Now is a good time for companies to review and refresh their corporate social media policy.

8. INTERNATIONAL INSURANCE PLACEMENTS WILL CONTINUE TO BE CHALLENGING: This year has been marked by an increase in geopolitical tensions and a reminder that international relationships are fragile. This will continue to be a concern in 2023. Obtaining insurance in a region amid conflict, like Ukraine, will continue to be challenging. In the case of sanctioned regions, like Russia, existing insurance policies may or may not respond to claims.

Companies with international subsidiaries should take placing international D&O insurance policies seriously. If conflict flares in a region where business is conducted, having existing insurance can buy some time if insurance carriers determine that they want to exit a particular geography, as seen in Russia.

9. HEIGHTENED FOCUS ON ENFORCING ECONOMIC AND TRADE SANCTIONS: The Department of Justice has signaled that it is intensifying its commitment to economic and trade sanctions enforcement. In June, US Deputy Attorney General Lisa Monaco called sanctions "the new FCPA." The Foreign Corrupt Practices Act (FCPA) generally prohibits companies and their employees and representatives from the payment of bribes to foreign officials to assist in obtaining or retaining business. Economic and trade sanctions generally restrict or prohibit dealings with foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the United States. The magnitude of US sanctions related to Russia put a spotlight on how swift and powerful a tool sanctions can be. To date, civil penalties associated with sanctions in 2022 totaled close to $40 million, compared to $20.9 million in 2021, and $23.6 million in 2020. As civil penalties associated with these sanctions are made public by the US Department of the Treasury, they can catch the eye of shareholders and plaintiff's attorneys who may make a sanctions violation and associated civil penalties the subject of a derivative action. These actions could very well include independent directors as named defendants.

While most companies, especially those with international footprints, prioritize sanctions compliance as a key element of their compliance program, directors should confirm that their program reflects the level of sanctions risk that their companies face. This is important because these sanctions are enforced on a strict liability basis. This means that, in many cases, a company may be held liable for sanctions violations even without having knowledge or reason to know it was engaging in such a violation.

10. D&O INSURANCE CAPTIVES APPROVED IN DELAWARE: The Delaware Legislature passed legislation designed to make captive insurance a viable alternative to traditional D&O insurance. This should spell relief for some companies, especially those with strong balance sheets. A captive is a licensed insurance company that provides insurance for designated risks to its corporate parent company. Companies like financing retained risk with captives because of potential benefits, including increased control over the cost of insurance, insulation from market volatility, access to reinsurance markets, and tax efficiency.

Consequently, D&O insurance captives can be an attractive solution for those large companies whose rates remain extremely high and that have substantial cash balances they are willing to segregate into a captive. This new development and subsequent adoption of captive insurance by companies should factor, over time, into the further decline in D&O insurance costs.

QUESTIONS TO CONSIDER

While the market for D&O insurance has eased, all isn't rosy in the D&O marketplace, which is why it is critical to have a knowledgeable and trusted D&O insurance broker to help you navigate it.

As you prepare for your renewal, keep these questions top of mind:

1. What is happening in the D&O insurance market, both generally and in terms of similarly situated companies? Having a broker that has strong relationships with insurance carriers is paramount. However, you shouldn't settle for anecdotal evidence and should ask for historical trends and a market outlook.
2. What is the litigation landscape and the likelihood of being sued, including associated costs? Data reigns supreme, and your broker should provide you with multiple scenarios based on historical data to leverage when deciding size and scope of your coverage.
3. Are there any steps that we should consider taking to reduce our insurance risk profile? Examples include enhancing cybersecurity controls, developing emergency response plans to respond to material hazards, and broadening board talent/expertise. Working with a broker that understands your business, financials, and risks and has a pulse on the D&O insurance market can pay dividends in proactively working with you to help mitigate risk and help to reduce premiums. You should also ensure that your management team is relaying to your broker any improvements the company has made since your last renewal to get credit for those actions.

Lenin Lopez, Esq. serves as Corporate Securities Attorney at Woodward Sawyer. Lopez brings deep experience in providing legal counsel to public company boards and executive management, helping them to navigate a range of legal and business matters including corporate governance, securities law compliance, capital markets transactions, executive compensation, and other general corporate matters.

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