KINGSDALE Advisors 20 YEARS

2023 Proxy Season Review:
Change is Here

Welcome to the 2023 Proxy Season Review

We have titled this year's review “Change Is Here”. Over the last few years, we have highlighted the rapid pace of evolving governance standards that corporate leaders needed to pay attention to and stay ahead of, particularly as the market entered a period of uncertainty in the wake of the COVID-19 pandemic and compounded by increasing geopolitical instability. Investors are adopting their own, often stricter policies for standard AGM resolutions, impacting voting results across the board; routine votes on directors and auditors are falling fast; activist theses go beyond the financial to target environmental, social and governance (ESG) vulnerabilities; and new voting platforms and choices are giving retail shareholders a meaningful voice and say in the outcome of elections.

A significant development was the decentralization of voting policies among major asset managers, exemplified by the "Big Three" (BlackRock, State Street Global Advisors and Vanguard). The introduction of “pass-through voting" in 2022 has shifted voting power from asset managers to their underlying holders. It offers clients of asset managers the ability to choose from a menu of governance policies or to draft their own.

In 2023, we saw three distinct themes emerge:

1. **Routine meetings are anything but, with increased opposition to even the most basic proposals**

2. **Activism is on the rise and is sector- and market cap-agnostic, with more fights being mounted by non-traditional activists**

3. **Activists are tipping the balance by utilizing technology and speed to more effectively reach your investors**

As boards and management begin to plan for 2024, they will need to take these trends into account to ensure they come through proxy season unscathed. We expect changes in institutional voting behaviour and the opacity caused by the de-centralization of voting will create a difficult situation for boards – specifically their ability to not only *identify* a negative vote but also understand *why* the vote was cast that way.

As an aside, this year’s edition is special for us, as it marks Kingsdale Advisors’ 20th anniversary. From modest beginnings in 2003 to the opening of our New York and Calgary offices, we have grown to become the leading North American advisor to public company boards and management on all corporate governance, transaction and investor campaign-related issues.

We will continue to build on this legacy by introducing innovative services designed to equip leaders to face the ever-changing landscape of corporate governance and investor activism. To the corporate leaders across North America that have placed their trust in Kingsdale – thank you.

Wes Hall
Executive Chairman and Founder

Ian Robertson
Chief Executive Officer

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Excellence is Earned

We thank our 2023 clients for trusting Kingsdale to advise them on high-stakes corporate governance matters and assist them in mobilizing their investor bases to achieve their desired outcomes.

Kingsdale Advisors: We Take Your Success Personally

#1 PROXY SOLICITOR, CANADA
(COMPANY SIDE)

TOP 5 PROXY SOLICITOR GLOBALLY
(COMPANY AND ACTIVISTS - COMBINED)

#1 ENERGY SECTOR & MATERIALS SECTOR
(COMPANY SIDE)

TOP 10 PROXY SOLICITOR, U.S.
(COMPANY SIDE)

TOP 10 PROXY SOLICITOR
$1B+ TARGETS ONLY
(COMPANY SIDE)

At Kingsdale, we understand the pressures you face and your demand for excellence in the most difficult situations. We care as much about your results as your experience in the most challenging circumstances. We exist to bring simplicity to a complex system and take work and worry off your plate.

Being the best in our field means reliably delivering the results you need, no matter the challenge. Our unparalleled track record of success and leading market share are built on our best-in-class expertise and culture of exceptional client service.

We offer full-service solutions and design breakthrough strategies for the most complex challenges. We deliver superior execution, and provide senior, hands-on investor interaction, in a way others simply can't. Our services include:

- Strategic Investor Engagement
- Investor Outreach Campaigns
- Defensive Advisory
- Governance Advisory and Analytics
- Corporate and Strategic Communications
- Digital Communications
- Capital Markets Confidence Program

- M&A
- IPO Services
- Information Agent
- Escrow
- Debt-Related Services – Consent Solicitations, Debt Tenders, Balance Sheet Restructuring
- Depositary Agent
- Asset Reclamation & Escheatment Services
- Investor Surveys
- Retail Investor Engagement
- Odd-Lot Campaigns

Omnichannel Platforms:

- Toll-free hotline with inbound/outbound agent
- Inbound/outbound text, including text blast
- Inbound/outbound email, including email
- Live chat with specialist
- Robo or direct voicemail messaging
- Custom landing page and digital resources

Digital Solutions:

- QuickVote
- Dedicated campaign website (built-in or standalone webpage)
- How-to-vote video
- Click-to-vote function
- Digital advertising
- Website performance analytics
- Social media campaigns
- QR code

Data from Bloomberg Global Activism Market Review 2023 (H1)

Routine Meetings are Anything But

The Ramifications of Pass-Through Voting

Historically, institutional investors in North America outsourced the analysis and process of proxy voting decision making to proxy advisory firms such as Institutional Shareholder Services Inc. (“ISS”) and Glass, Lewis & Co. LLC (“GL”). As we have seen, institutional investors are now:

1	Staffing their own internal stewardship teams,
2	Developing in-house proxy voting policies that differ from the proxy advisors across a variety of areas, including executive compensation, director overboarding, diversity and independence, auditor independence, and a range of environmental and social issues,
3	Engaging directly with companies to convey their governance-related concerns,
4	Increasingly regarding proxy advisor reports as just another data point in their evaluation, and
5	Voting based on their own standards and priorities.

Rise of pass-through voting

Over the past year, another shift has emerged: the decentralization of voting among major asset managers, exemplified by the "Big Three" (BlackRock, State Street Global Advisors and Vanguard). More recently, Charles Schwab has been polling retail investors in three of their funds to gauge investor interest in having a say in the direction of voting process.

The introduction of pass-through voting in 2022 started the shift in voting power from asset managers to their underlying clients. These clients include institutions like sovereign funds, endowment funds, church investment funds, corporate investment funds and family office funds, which operate much differently and, from what we’ve discovered, in some cases may have a stricter view of corporate governance standards.

What does this mean?

While disclosed positions by the large institutions are visible, just how much is voted according to their policies versus passed through from their clients can differ. This can lead boards to ask why only a part of the fund’s position is supportive of the board or why certain or all directors are not supported, as underlying clients may be crafting and applying their own policies.

KINGSDALE TAKEAWAY

Engagement with institutions that use pass-through voting must start earlier to diagnose how much is passed through to clients and attempt to determine what methodology they are using.

While ensuring that your company has best practices in place for governance to align support, companies need to remember that engagement doesn’t on its own necessarily translate into support.

The underlying client may choose to vote based on their stricter internal policies and, as a result may choose to vote against the resolution or potentially not vote at all. Knowing this information ahead of time will help inform your path to victory and help focus on the investors you need on side for your resolutions.

Retail Pass-Through Voting at Select Asset Managers

A significant development across North America was the decentralization of voting policies among major asset managers, exemplified by the "Big Three" (BlackRock, State Street Global Advisors and Vanguard). It should be noted that although Exchange-Traded Funds (ETFs) have been seen as passive investors, they have historically voted in alignment with predetermined policies from ISS, Glass Lewis or their own custom standards. Now we are witnessing a split in ETF vote behaviour, with some shares continuing to be voted in alignment with these policies while other votes are now being dictated by the policy preferences of the underlying investor. We continue to monitor this evolving trend in real time, aggregating vote data to identify patterns and better understand the source and rationale for votes against management. Note that this should not be confused with ETF vote behaviour in contested situations where, for some, guidelines restrict their vote participation.

BlackRock

Nearly two years ago, BlackRock launched Voting Choice, making proxy voting more accessible for eligible institutional clients serving more than 100 million people globally. Currently, this includes over 650 pooled investment funds, including equity index funds and Systematic Active Equity investment funds. In addition, institutional clients in separately managed accounts continue to be eligible for BlackRock Voting Choice regardless of their investment strategies[1].

BlackRock is enhancing proxy voting options for retail investors within its largest exchange-traded fund, the BlackRock iShares Core S&P 500 ETF. This proposed expansion of BlackRock Voting Choice is subject to iShares Board approval and, if approved, is expected to be in effect for the 2024 proxy voting season.

Vanguard

As part of Vanguard's five-month proxy voting choice pilot program (February–June 2023), retail investors in three of its selected equity funds were given more choices and more power to vote on various matters at shareholder meetings, with options to direct how their index funds vote and engage more directly in the proxy season process. Vanguard is offering their funds the opportunity to choose from four options when it comes to voting: vote with management, advice from a third-party advisor, authorize Vanguard to vote on their behalf, and abstain. The feedback will provide Vanguard with information on how to evolve their program and gain insights as to the desired degree of investor involvement in the proxy voting process.

State Street

State Street's proxy voting choice program, launched on December 13, 2022, allowed 49% of investors more power on how they may vote in their index equity fund. In May 2023, State Street expanded its program to 82% of investors, including those owning US ETFs and US mutual funds. The long-term goal set for the end of 2024 is to include all eligible funds managed by the firm in the proxy voting program and allow investors to choose among various voting policies offered by ISS.

Charles Schwab

Schwab launched a pilot proxy polling solution in October of 2022 involving three funds, two ETFs and one index fund. Schwab is looking to gain a shareholder perspective on a plethora of proxy topics which include environmental, social and governance practices, to name a few. Schwab is sending a poll to existing shareholders and then to new shareholders monthly to capture their feedback. The data collected from the polling results will help Schwab Asset Management tailor their policies and actions with regards to proxy voting.

1- https://www.blackrock.com/corporate/literature/publication/voting-choice-faqs.pdf

Retail Shareholders Cannot Be Ignored in a Digital Era

The rise of pass-through voting--where voting power is shifting from asset managers to their underlying clients–opens up questions around how to reach your investors.

Historically, proxy voting power and outcome have predominantly been under the control of institutional investors, who wield substantial voting influence due to their significant shareholdings. With this dynamic swing in institutional voting, retail can no longer be an afterthought or ignored.

Why is this important?

As support levels start to fall, however incrementally year to year, we need to develop more methodical and strategic approaches to engagement with retail shareholders, to drive up turnout and translate that into support for management.

The acceleration of technology from analog to digital communication and voting offers a plethora of digital channels for companies to explore and use to their advantage. We have seen over the course of the year that technology is advancing, whether in social interaction or in industry-specific areas, and the evolution of proxy voting is not immune to this.

Traditional platforms for voting have been very one-dimensional: receive your proxy materials, enter your control number and cast your vote. (Or more typically, throw it away because your time is precious.) Now, with information available at your fingertips, retail shareholders can make more informed decisions.

Retail investors are also talking to each other more readily by way of online communities. Investors can use a variety of channels to communicate, share information, exchange ideas and, more importantly, align with a purpose.

What does this mean?

Ultimately, it could be the difference between making up support lost due to pass-through voting, or between a director failing with less than 50% or passing with 50.1% or more. Optics make all the difference. No one will talk about the battle, only the final result – and that is all that matters.

KINGSDALE TAKEAWAY

Companies that have not already done so need to change their investor engagement strategies heading into 2024:

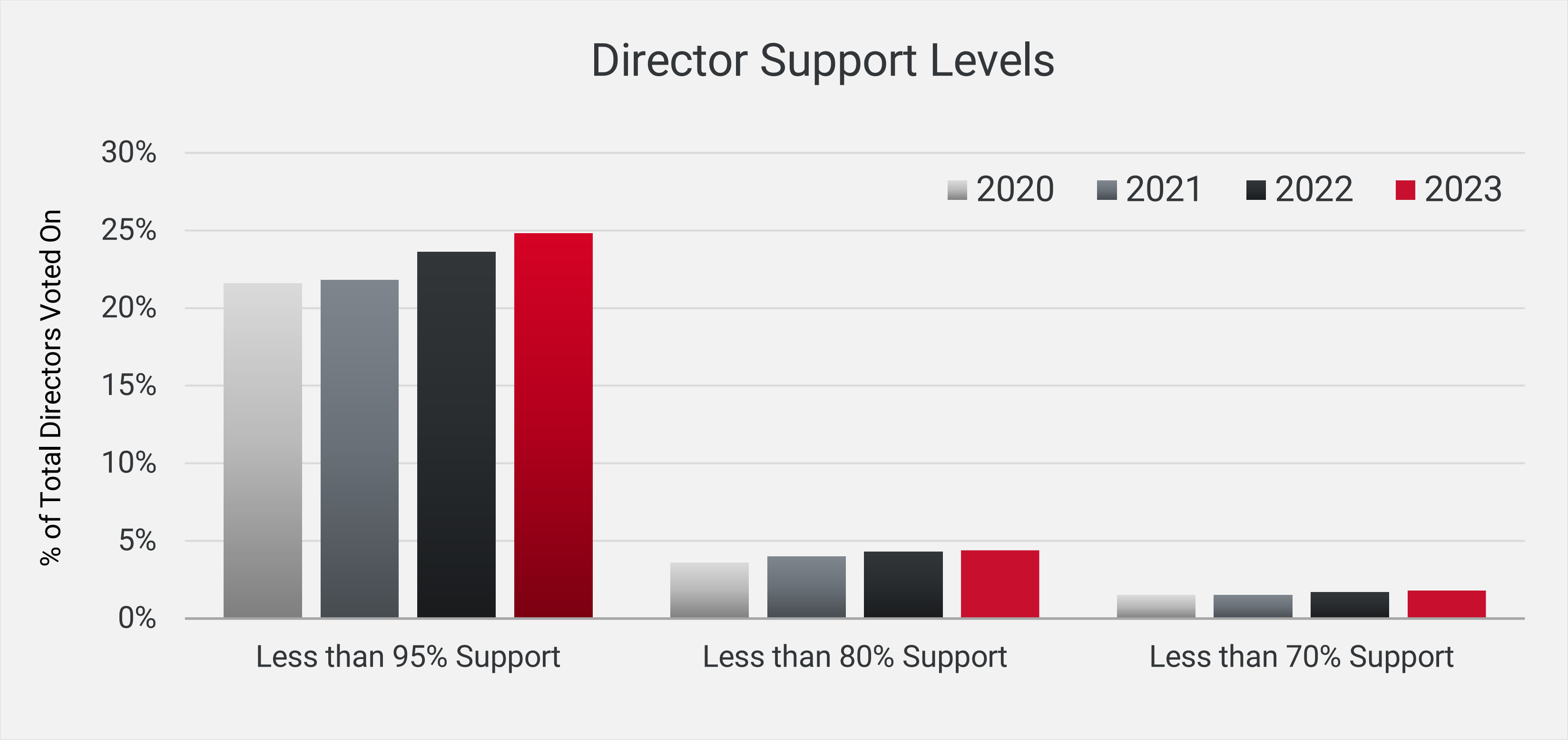
Do not assume that retail shareholders will give management the benefit of the doubt and support, as has been conventional wisdom.

Abandon the antiquated idea that retail votes won't matter or impact support levels, by identifying your shareholder base and vote impact.

While voter apathy exists, rapidly advancing technology will continue to make information, opposition organization and voting more accessible.

You need to create a strategic investor campaign plan that utilizes digital tools to reach your investors where they are, including providing options to engage and self-identify. This will give you a reach and level of engagement that is necessary to maintain support levels, and will be even more important should opposition emerge.

Individual Directors Are Increasingly Being Targeted



The 2023 proxy season saw the continuation of an increasing trend in AGMs across all sectors – individual directors are being targeted and support levels are dropping. We were curios to see if this was a uniquely Canadian phenomenon. It's not. The chart to the left shows that % of directors voted on at North American companies and demonstrates decreased support is happening across the board. In 2023, the percentages of directors receiving less than 95%, 80% and 70% support all continued to climb.

A key driver is institutional investors developing and adopting customized and more restrictive in-house proxy voting policies. These include policies around director overboarding or tenure, independence concerns, environmental commitment, impact or performance, and board diversity, specifically around gender and, to a lesser extent but emerging, diversity beyond gender.

KINGSDALE TAKEAWAY

Companies need to change their mindset in order to take a year-round approach to investor engagement. You will need to engage more thoroughly not only with your top holders but also the majority of your largest investors.

Engagement will give you better visibility to any issues that may be percolating and more runway to solve issues, gauge sentiment, and be ready for questions, comments or concerns.

Whether or not the concerns raised are valid, building and aligning your stakeholders will take time and effort. The results in the long term will be mutually beneficial.

Companies should also look inward and perform an internal vulnerability assessment on their proposed board for 2024 and, in addition to protecting the current board, build a strategic approach to refreshment, ensuring a strong pipeline of qualified candidates.

Think Your Auditor Appointment is a Formality? Your Investors Don't

Until recently, absent major accounting issues, boards were able to bank on 99% support for their auditor appointment. In the last two years, the number of Canadian companies that have received less than 90% investor support for their auditor ratification resolutions has exploded. Investors have begun to make the assertion that long tenure for auditors equates to a loss of independence.

In the 2023 proxy season, 38 companies on the S&P/TSX Composite Index received less than 90% support from their investors for auditor ratification. ISS supported all 38 auditor ratification resolutions that received less than 90% shareholder support, while GL supported all but one of them. This offers further evidence of the changing landscape, as institutional investors are adopting their own in-house voting policies to promote more frequent audit firm rotation and putting audit contracts out to tender.

When it comes to auditors, this type of thinking from investors ignores the reality that North American jurisdictions have very strong regulatory frameworks that govern auditor independence. In Canada, there is another practical reality: the population is concentrated in a few major cities. For companies not located in these major urban centres, that means there is limited choice – or no choice at all – when it comes to auditors.

Proxy Season	Companies in the S&P/TSX Composite Index with Less than 90% Investor Support for Auditor Ratification
2021	**7**
2022	**23**
2023	**38**

The median tenure of the external auditors at the 38 companies receiving less than 90% support in 2023 is 30 years, which is increasingly being considered excessive by investors.

Big Four Accounting Firms	Issuers That Received Less than 90% Support for Their Audit or Ratification in 2023 (Canada)
Deloitte	**10**
EY	**10**
KPMG	**9**
PWC	**9**

KINGSDALE TAKEAWAY

We expect the decrease in support for auditors will continue in 2024. The problem is that changing your auditor is not like replacing the oil in your car. Many businesses have complex structures. Audit firms build up relationships to understand these complexities.

In our view, auditor independence is about people (the engagement practice and audit partners in front of you and your audit committee, CEO and CFO); it is not about the name on the door.

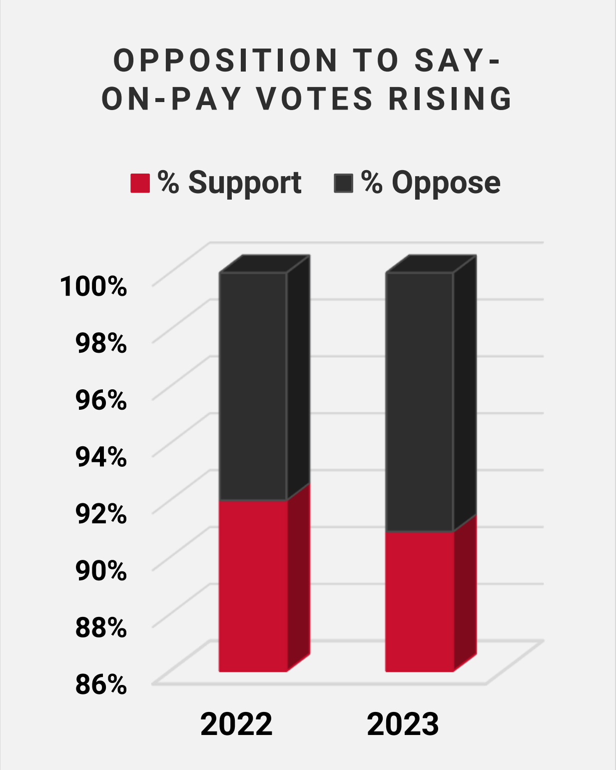
Auditor independence is well regulated and, provided you maintain adequate audit committee refreshment, both sides are dealt with. Forcing auditor rotation would introduce significant audit risk as an unintended consequence. As you prepare for your 2024 Annual Meeting, you need a plan to talk to your investors about your auditor selection. Be prepared to explain the regulatory framework and how your board operates within that framework.

Investors Demanding More Scrutiny from Compensation Committees

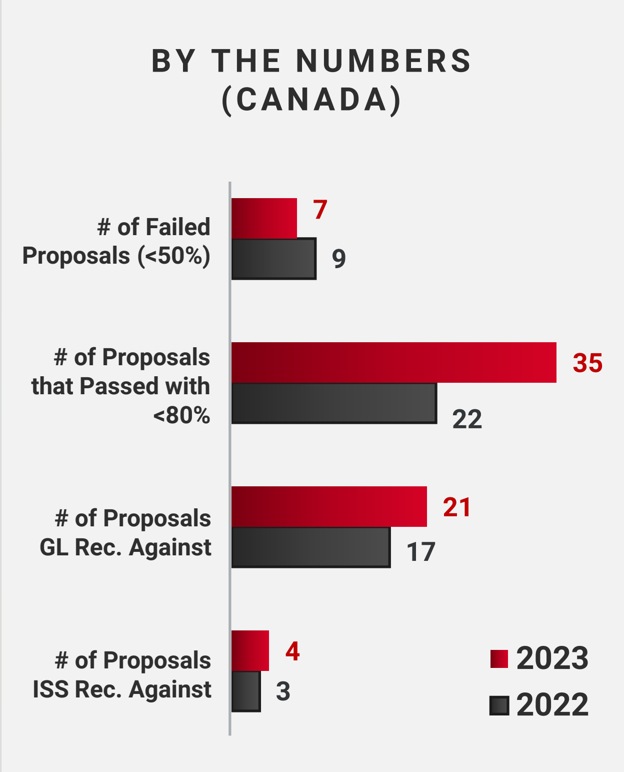
The 2023 proxy season saw an increase in opposition to Say-on-Pay proposals in Canada. Average investor support decreased to 90.9% from 92%, which is the lowest since 2019.
The opposition in some cases was prompted by poor results in ISS and GL's pay-for-performance models. The proxy advisors use these models to determine whether, in their view, there is a misalignment between executive pay and company performance. In the case of GL, recommendations were not just driven by pay-for-performance quantitative analysis, but also factored in compensation design.

In addition to the proxy advisors and the typically high turnout of institutional investors, retail investors are increasingly taking notice and putting their collective weight behind their ballots. However, unlike the proxy advisors, retail investors are less likely to consider peer groups and will look at more rudimentary metrics such as the performance of the stock over the past year and other per-share measures. In short, the evaluation we frequently see by retail is: *"Should this person be rewarded for what I have experienced this year?"*

In line with this thinking, we've also seen cases over the past year where individual directors (such as compensation committee chairs) were targeted by investors because of their perceived failure to align compensation with company performance.



Notes: Includes companies under ISS' Canada policy



KINGSDALE TAKEAWAY

The days of being able to explain away unpopular compensation decisions to investors are over. Companies need to engage corporate governance experts to help them predict the likely support of both the proxy advisors and institutional investors. Institutional investors are forming their own views on executive compensation and have views on overall compensation program design, setting of target objectives, financial performance measures beyond simplistic TSR and how all this should be disclosed.

Directors should also take note that this is not just confined to Say-on-Pay votes but also has the potential to create reputational risk at an individual director level for compensation committee members. Investors expect their board to take ownership of management compensation decisions and are prepared to pass a verdict if they don't.

Investor Interest in ESG is Here to Stay

During the 2023 proxy season in Canada, there were 52 shareholder proposals that were opposed by management. This is compared to 2022 where there were 69 proposals that were opposed by management. Yet average investor support for these 2023 shareholder proposals increased, demonstrating that, despite reports to the contrary, ESG needs to remain on the radar for public companies. Here is how they broke down in 2023 in comparison to 2022:

Canada Proposal Category	# of Shareholder Proposals Opposed by Management in 2023	Average % Shareholder Support in 2023	# of Shareholder Proposals Opposed by Management in 2022	Average % Shareholder Support in 2022
Environmental	25	15.2%	18	16.2%
Social	13	17.8%	29	6.0%
Governance	14	11.9%	22	10.4%

Notable among those that have been subject to shareholder proposals are the banking and energy sectors, specifically environmental shareholder proposals which are up year-over-year and centre around those companies' investments in traditional energy and environmental performance.

KINGSDALE TAKEAWAY

Investor interest in ESG is here to stay – and scrutiny is going further into all corners of a business. Companies should carefully evaluate their disclosures, detailing how their ESG initiatives drive long-term sustainable shareholder value. Every shareholder base is different, so it is critical that companies understand who their shareholders are, the specifics of their voting policies and how best to engage with those shareholders to ensure that the company's ESG strategies are aligned with shareholder sentiment.

We expect the focus will move from what promises are being made to what promises have been kept, especially on environmental and social targets.

Activism is On The Rise and is Sector-Agnostic

2023 Proxy Season Timeframe:

July 1, 2022 – June 30, 2023

Data sources for this report from Kingsdale Advisors and supplemented by other sources, including non-public and public sources such as press releases, proprietary and public industry databases and news publications. Some numbers may not sum to 100% due to rounding. Data current as of September 2023, unless otherwise stated.

What Counts as a Proxy Contest?

We consider the fight to be on if a shareholder publicly targets a company by:

- Making its activist intent known through a news story, a press release, a 13D or an early warning report;
- Requisitioning a shareholder meeting;
- Announcing an intention to nominate alternate directors;
- Soliciting alternative proxies;
- Conducting a "Vote No" campaign on either the election of directors or M&A transactions; or
- Announcing an intention to launch a hostile bid.

This is regardless of whether a vote or the hostile bid takes place.

What Counts as a Win?

For Activists:

Achieving all or most of their objectives or successfully blocking a transaction. If an activist receives any of its asks, this is considered a partial win.

Withhold/"Vote No" Board Campaigns:

An activist is deemed to win a Withhold/"Vote No" Board campaign when any of the directors the activist is seeking to be removed receive less than majority shareholder support.

For Management:

An activist's requests do not go through.

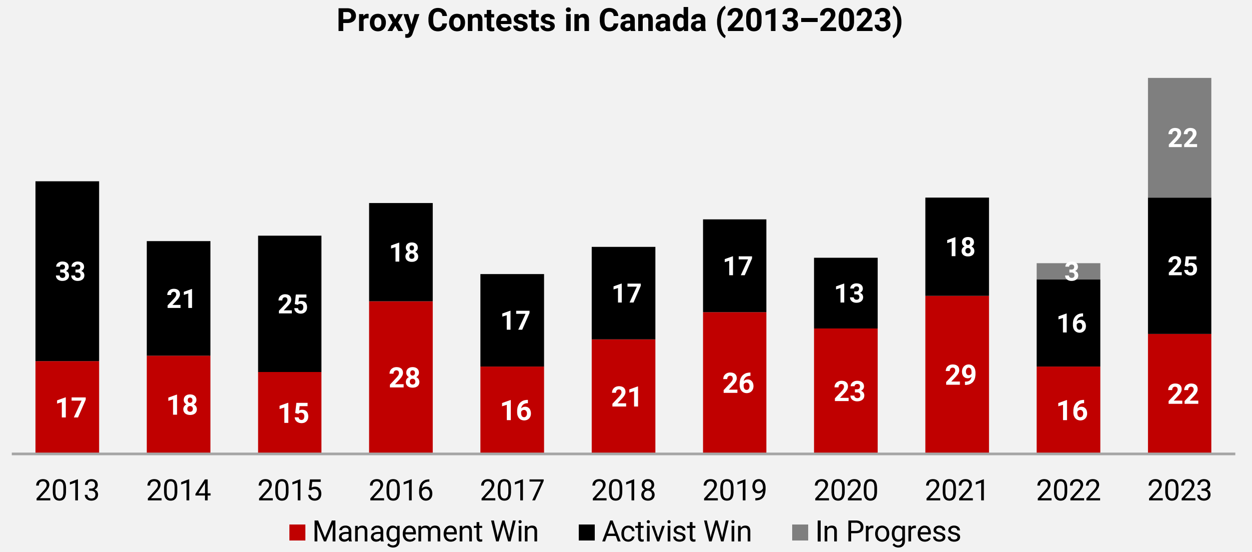
Hostile Bids:

If the target's board successfully fends off the bid or increases the value of the offer and reaches a friendly deal, we consider that a win for management (and shareholders).

Friendly Transactions:

An activist wins if they successfully block the transaction.

Record Year for Proxy Contests in Canada



*Three "In Progress" campaigns from the 2022 proxy season are 13D filings where the activist has not publicly commented since that securities filing.

During the 2023 proxy season, Canadian companies found themselves in the crosshairs of a record-breaking 69 shareholder activist campaigns, marking an unprecedented high for the market and a dramatic 97% increase over last year. In addition to the noteworthy increase, the 2023 proxy season also marked the first time since 2017 that activists have outpaced management in victories.

As anticipated in our last proxy season review, significant economic disruptions laid the groundwork for a surge in activism in 2023. Companies that had effectively been placed on probation during the COVID recovery faced mounting pressure to enhance their performance, and activists capitalized on that momentum, seeking board changes.

In 2023, there were notable instances where activists swarmed the same target company. Unlike a traditional wolfpack approach, where like-minded activists rally behind a lead, a swarm is different activists with their own agendas targeting the same company, often unbeknown to one another.

KINGSDALE TAKEAWAY

Robust increases both in instances of activism and in victories for activists should put companies on notice. With uncertainty expected to continue into 2024, this upcoming proxy season should see similar trends in activism.

The 2023 proxy season demonstrated that activists have an increased level of preparedness when launching campaigns and are expanding their ability to reach investors (through direct contact and digital platforms). Activist views on a board's performance are no longer limited to stock price as activists are also looking at issues related to E&S such as human capital management, worker safety, sustainability, and performance against climate targets.

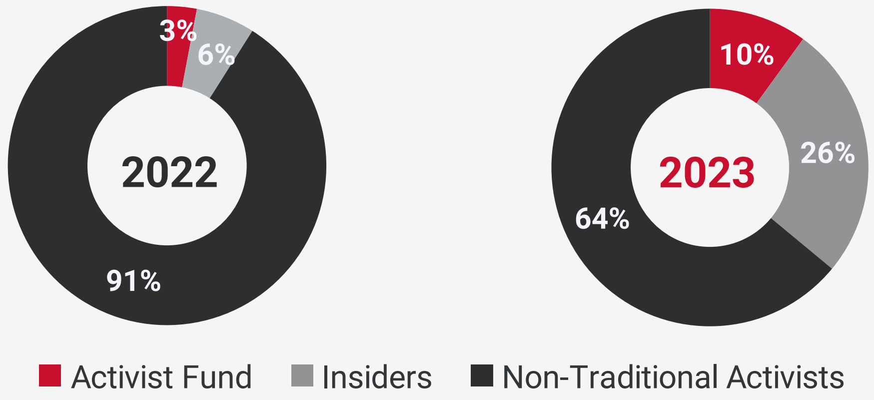
Activist investors have built credibility with retail shareholders, further buoyed in cases where companies have had repeated poor performance, making it easier for activists to sell that they are like-minded and there is a need for a fresh approach.

2023 offered a key lesson for boards and management – there is no longer an offseason when it comes to engagement. You need to be taking advantage of every opportunity to communicate with your investors and have a story to tell, because activists are telling theirs.

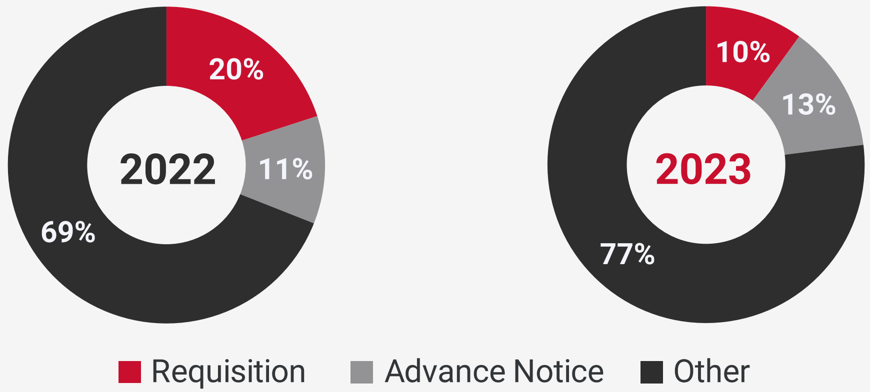
Didn't Feel Like a Record Year for Activism – Here's Why

Very Few Moved Through All Phases of a Campaign, Including to a Vote*

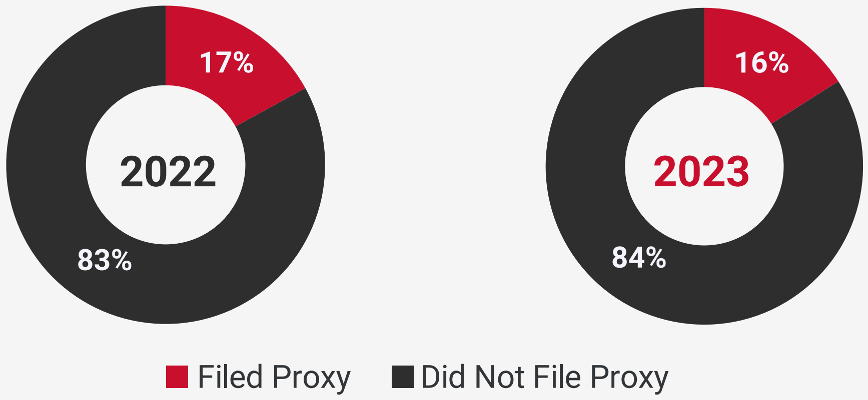
In 2023, 7 (10%) campaigns were initiated by activist funds compared with 1 (3%) in 2022.



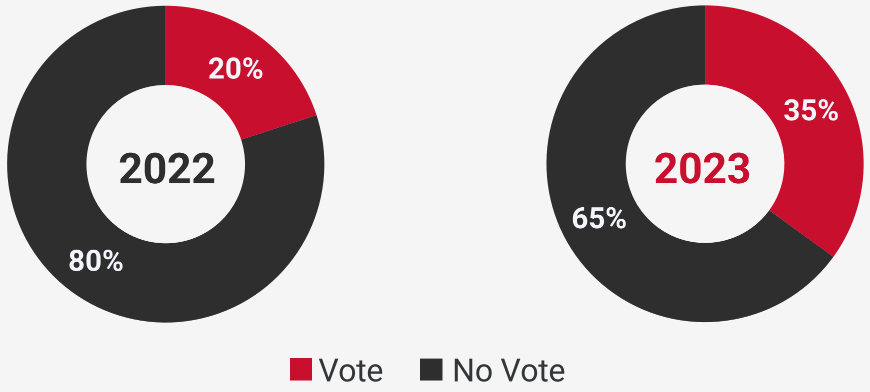
Just 7 (10%) campaigns included a meeting requisition, while 9 (13%) campaigns utilized advance notice in 2023. Compared to 7 (20%) requisitions and 4 (11%) with advance notice in 2022.



In only 11 (16%) campaigns, activists actually filed proxy materials in 2023, compared to 6 (17%) in 2022.

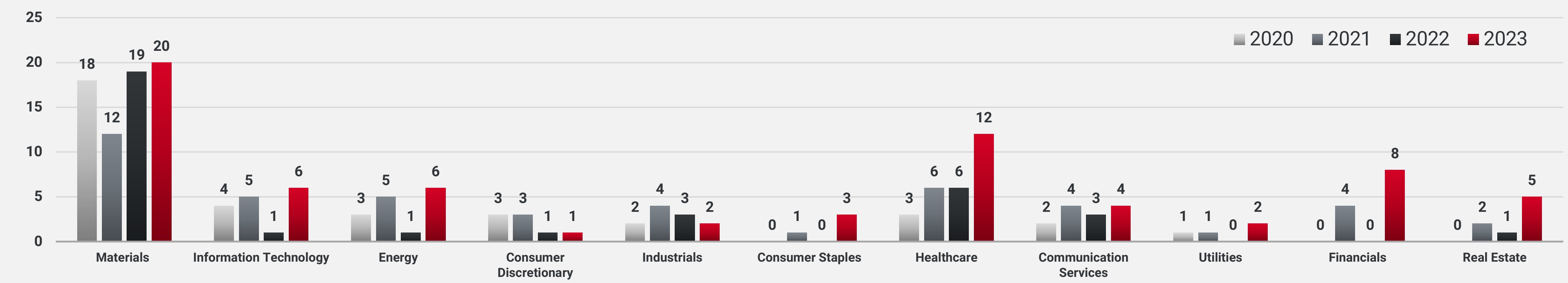


24 (35%) contests went to a vote in 2023, compared to 7 (20%) in 2022.



*Total campaigns: 2023: 69. 2022: 35.

Most Targeted Sectors in Canada



Data Source: ISS Corporate Solutions and Kingsdale Advisors.

In the 2023 proxy season, though the Materials sector maintained its status as the top sector for activism, other sectors such as Healthcare, Financials and Real Estate saw sharp increases in instances of activism. While Real Estate and Financials exhibit the trends we would normally see associated with activism (i.e., share price dislocated from true value as the sector recovers from a down period in the wake of the COVID-19 pandemic), the increases in instances of activism across the board suggest that while activists have always been sector-agnostic, no sectors are immune, even those that have been performing well. Missed or unexplored opportunities and relative underperformance can make anyone a target.

Historically, we have seen only about a third of activist situations become public. That is because more sophisticated activists understand the benefit of keeping things quiet and reaching a settlement behind closed doors. This year, the large number of smaller, first-time activists in companies meant that more situations became public after companies failed to engage early enough or were unaware an activist was coming.

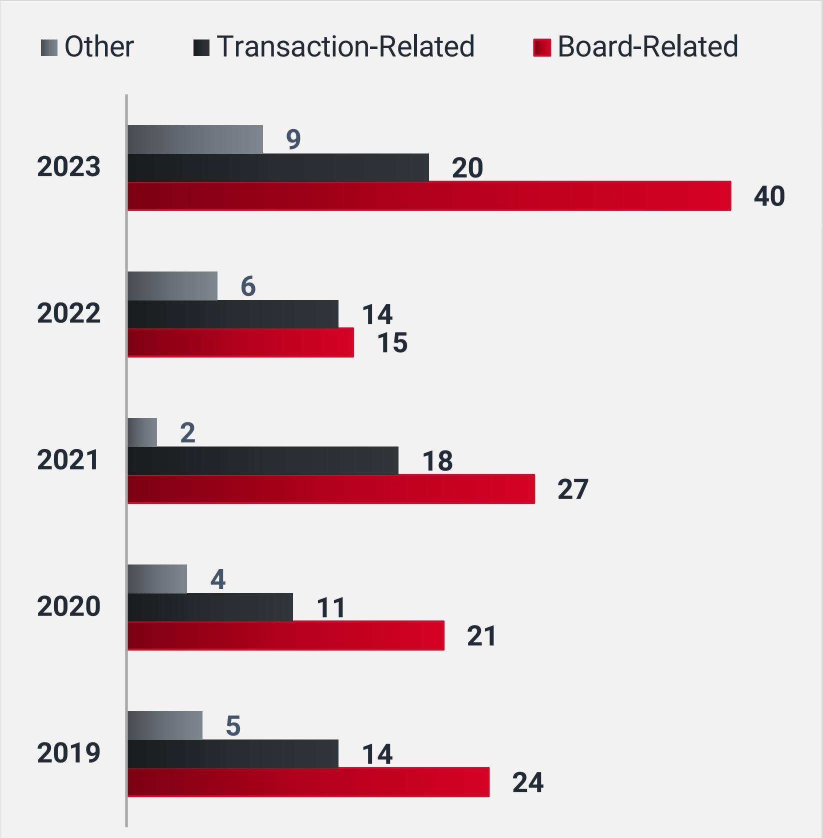
KINGSDALE TAKEAWAY

Regardless of sector, companies need to get their defences in place and have a response plan. Just because your company or sector hasn't faced activism in the past doesn't mean you won't be on the radar come 2024.

Moreover, just because you do not see a brand-name activist on your shareholder list does not mean you won't have an activist problem with former insiders and long-term holders adopting activist tactics.

Activists are demonstrating that they are more prepared to go to public fights. You need to prepare your engagement and communications strategies for 2024 now in order to ensure you are prepared if you become a target. If you have an activist response plan, bench test it.

The Surge in Activism Applies to Both Deals and Board Votes



The 2023 proxy season saw various activist demands, including changes to capital allocation, changes to boards and management, a reduction in operational expenses, shifts in business focus, ESG-related issues, and requests for spin-offs or sales of specific business divisions. We expect this surge in activism to continue as we head into 2024 with economic forecasts indicating the recovery might still be slow.

As can be seen in the chart to the left, the instances of transaction-related activism increased, while as a proportion of activism instances they decreased. This is not unexpected given the impact uncertainty has had in the M&A market. The overall increase in transaction-related activism indicates that as the economy recovers and transaction volume increases, we can expect to see activists taking advantage of more opportunities in this area. However, it is not just opportunists you need to be cognizant of, as more long-term investors are adopting activist tactics such as opposing an announced deal in order to attempt to secure a bump in price knowing that the worst outcome for them is keeping the premium already announced.

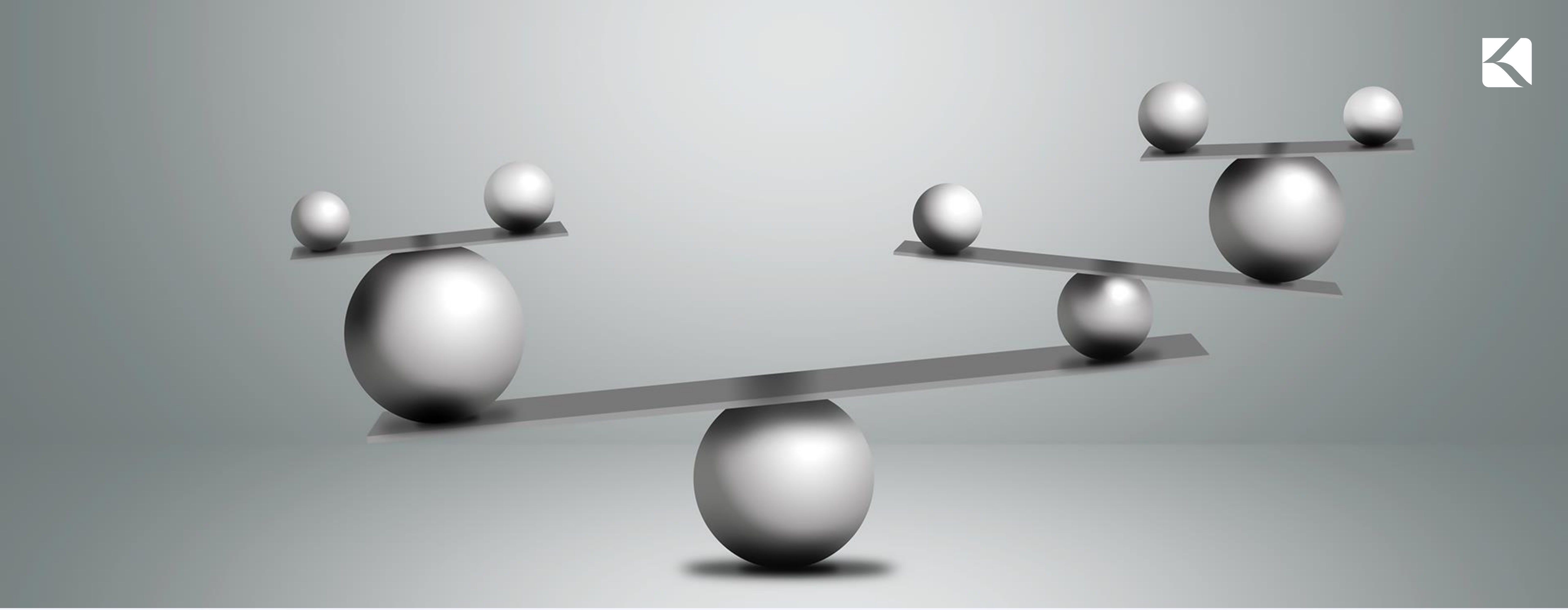
When it comes to board-related activism, as we enter the post-pandemic period, investors are increasingly showing they are less forgiving for lagging recoveries. In 2023, investors no longer gave companies the benefit of the doubt for performance issues. That trend is expected to continue in 2024 if boards look to shift blame to macro trends beyond their control.

__"Board-related" activism__ includes situations whereby an activist has put forward a slate of competing directors or initiated a Withhold/"Vote No" campaign on management's director nominees.
__"Transaction-related" activism__ includes situations whereby an activist is opposing a friendly deal or takeover/hostile bid, or has called for a target company to conduct a strategic review or sale with no board-related component.
__"Other"__ includes situations whereby an activist files a Schedule 13D regulatory form or seeks for the target company to buy back shares.

KINGSDALE TAKEAWAY

Companies need to be honest with themselves about whether they may be a target and a great way to get that work started is by conducting an internal vulnerability analysis from the shareholders' point of view.

When companies are contemplating a transaction, it is critical they have a strong narrative for the move, especially answering the question "Why now?" and applying more rigour at the front end to de-risk a related vote by understanding factors that are rarely considered pre-announcement such as: "How many investors have supported deal-related opposition in the past?" This is where Kingsdale comes in.



Activists Are Tipping The Balance By More Effectively Reaching Your Investors

Whose Side Are They On?

Top 100 Global Investment Managers' Voting Records

2023 Proxy Season

Investment Managers	Total Number of Meetings	Voted with Management (%)	Voted with Activist (%)	Voted All Activist (%)
Top 10	150	46.00%	**54.00%**	12.67%
Top 25	311	47.59%	**52.41%**	9.65%
Top 50	438	45.89%	**54.11%**	9.59%
Top 100	567	43.03%	**56.97%**	9.88%

2019–2023*

Investment Managers	Total Number of Meetings	Voted with Management (%)	Voted with Activist (%)	Voted All Activist (%)
Top 10	606	59.90%	40.10%	12.71%
Top 25	1,311	58.35%	41.65%	12.05%
Top 50	2,264	55.26%	44.74%	12.50%
Top 100	3,528	54.14%	45.86%	12.36%

*January 1, 2019 – June 30, 2023

KINGSDALE TAKEAWAY

During the recent proxy season, the top 100 global fund managers supported activists, at least partially, approximately 57% of the time.

This marks a significant increase of over 17% compared to last year and surpassed 50% for the first time in recent years. It overturns the assumption that large institutional investors automatically side with management, and they are now more than ever open to supporting activists' agendas.

When coupled with the data from the next slide, which outlines how proxy advisors are increasingly open to supporting activists, it is becoming clear that "activism" no longer carries the negative connotation it once did and more investors, even long-term ones, view activism as a lever to improve a firm's operations, governance and profits. Another factor contributing to this shift is that institutional shareholders are becoming less reliant on proxy advisors and adopting customized (and often more comprehensive) in-house proxy voting policies.

Whose Side Are They On?

Institutional Shareholder Services Inc. ("ISS") and Glass, Lewis & Co. ("GL") demonstrated stronger support towards management this year. In cases where there is public shareholder opposition, the recommendations of the proxy advisors become increasingly unpredictable. It is recommended to engage experts in this area to ensure your disclosure meets annually evolving ISS and GL guidelines.

Proxy Advisors: ISS and GL Recommendations in Proxy Contests in Canada

	ISS		GL	
Proxy Year	ISS Rec. Mgmt	ISS Rec. Activist	GL Rec. Mgmt	GL Rec. Activist
2023	75%	25%	64%	36%
2022	67%	33%	50%	50%
2021	87%	13%	70%	30%

Proxy Advisors: ISS and GL Recommendations in Transactions in Canada

	ISS		GL	
Proxy Year	ISS Rec. Mgmt	ISS Rec. Activist	GL Rec. Mgmt	GL Rec. Activist
2023	50%	50%	57%	43%
2022	40%	60%	100%	0%
2021	50%	50%	50%	50%

Settlements vs. Votes

Portion of Board Contests that Led to Votes vs. Settlements

Canada

	VOTE	SETTLEMENT
2023	52%	48%
2022	62%	38%
2021	58%	42%
2020	65%	35%
2019	75%	25%

KINGSDALE TAKEAWAY

In the calendar year 2023, nearly half of board contests in Canada were settled, the highest percentage in the past five years. Settlements continue to be the preferred and most efficient method used by boards to resolve a proxy contest and the least disruptive method to protect the brand reputation and business, especially in a year marked with geopolitical and economic instabilities.

The key here is to know when to settle and when to take a contest the distance. Activists have begun to take advantage of a board's willingness to settle, which lowers the stakes of failure for the activist (i.e., the cost of mailing a circular) and can actually serve to incent activism. Before settling, companies need to demonstrate they have a plan if the contest goes the distance and a key part of this is taking control of the narrative and being aggressive from the outset. Companies should also weight quick settlements versus long-term strategies and engage in a conversation with activists before any decisions are made.

How Are Key Regulatory Changes Playing Out?

CBCA Changes: Clear the Way for "Vote No" Campaigns

Recent amendments to the *Canadian Business Corporations Act* (CBCA), effective August 31, 2022, brought with them some changes to the director election process.

For CBCA-incorporated companies, in an uncontested election, where the number of nominees equals the number of positions to be elected at the meeting, the amendments require the following with respect to the election of directors:

- Voting Against: Forms of proxy will now need to have the option for shareholders to vote "for" or "against" (instead of "withhold" shares from voting) each nominee in uncontested elections.
- Annual Elections and Separate Vote for Each Director Candidate: Separate votes are now required for the election of each candidate to the board of directors (as opposed to slate or staggered voting).
- Majority Voting: A majority-voting standard is required for uncontested elections, where each nominee must receive more votes "for" their election than "against" to be elected. The exceptions that allow a nominee that does not receive a majority of "for" votes to continue as director are limited. These include if that person is required for the corporation to meet its obligations under the CBCA around residency or independence requirements.

Given the existing requirements for TSX- and NEO-listed companies, the impact on CBCA companies listed on those exchanges will be relatively limited, but company boards will no longer have the discretion to consider the resignation as they do under TSX requirements.

The amendments may have more significant impacts for issuers listed on other stock exchanges (TSXV, CSE), which do not have individual voting requirements for director elections.

The amendments also establish a new deadline for investors to submit shareholder proposals for CBCA companies, the net result of which allows shareholder proposals to be submitted closer to the date of an annual meeting of shareholders.

KINGSDALE TAKEAWAY

In 2023, there was one campaign conducted under the new CBCA rules in addition to six withhold campaigns. These seven "Vote No" campaigns represent a sharp increase in comparison with recent years. A "Vote No" campaign represents a low-cost option for investors wanting to demonstrate their displeasure with a board. The changes to the CBCA brought more awareness to this option and companies need to be vigilant as there are presently no mechanisms requiring an activist to make a "Vote No" campaign public.

We expect these types of tactics will continue to threaten to throw boardrooms into chaos in the upcoming proxy season, but unlike a traditional contest, the activist's ability to control change is more narrow in scope. Boards will still retain control over who joins the board once a board member leaves, and as activists continue to use these tactics, boards would be wise to have a strong pipeline of qualified individuals just in case.

Diversity-How Will You Be Evaluated?

As per the Canada Business Corporations Act (CBCA), companies must disclose information on the diversity of their board of directors and senior management teams to:

- Shareholders
- Corporations Canada

At the minimum, companies need to report information on the representation of the four following groups: women, Indigenous people, people with disabilities and visible minorities, or explain why they have not adopted targets for the designated groups. While the targets are not defined by the CBCA, companies must disclose:

- if they have a written policy around the identification and nomination of directors from the designated groups
- how the board or nominating committee considers diversity in identifying and nominating candidates for election or re-election for board and senior management
- whether the corporation has targets for representation on the board and among senior management for each of the designated groups and, if so, progress in achieving those targets
- the number and percentage of directors from each of the designated groups on the board and senior management
- whether the corporation has adopted term limits or other mechanisms for board renewal.

Canadian Securities Administrators'(CSA) Proposed Amendments on Diversity

CSA sought comments on proposed amendments to Corporate Governance Disclosure (Form 58-101F1) of National Instrument 58-101 – Disclosure of Corporate Governance Practices (NI 58-101) pertaining to board nominations, board renewal and diversity, as well as ancillary amendments in 2023. Kingsdale is in favour of an approach that focuses on mandating disclosure regarding historically underrepresented "designated groups":

- This approach is in line with the growing expectations of shareholders
- Diversity will be amongst the areas of increasing focus in activist campaigns and shareholder proposals
- The standardized tabular format contributes to comparability of diversity reporting
- Without standardized reporting requirements, issuers may adopt inconsistent and fragmented approaches to diversity disclosure, possibly in an effort to overstate their performance in this area and hinder effective comparisons between companies

KINGSDALE TAKEAWAY

Our expectation is that the pressure and focus we have seen on Say-on-Pay votes may soon be replaced by a Say-on-Diversity movement. This could come in many forms, such as standalone proposals or by more clearly integrating diversity targets into compensation metrics.

Failure to deliver on gender diversity and other forms of diversity beyond gender can also leave open an avenue for activist attacks, and activists know they can leverage a lack of diversity in a campaign to create a groundswell of support. Companies need to have a strategic board composition and nomination process that takes diversity into account.

Looking Ahead

2024 Brings a Lot of Uncertainty. Control the Variables You Can

Given that current economic forecasts are tempered by recession fears, inflationary pressures and geopolitical instability, we expect another busy season of activism in 2024. Activists of all sorts will look to be opportunistic and sector-agnostic, adding credence to the idea that routine meetings have become anything but routine. We anticipate ongoing decline in director support and Say-on-Pay due to higher investor expectations, decrease in support for auditors, more investor scrutiny on overall compensation programs and delta in ISS and GL recommendations, more scrutiny for ESG disclosures, and a stronger focus on Say-on-Diversity. Cybersecurity and artificial intelligence are on the radar of boards and management in 2024. Companies that are underperforming against their peers will not be able to use global macro trends as justification, and are going to be called out by activists.

But while activists tipped the balance in their favour for the first time since 2017, there are reasons for companies to feel confident as the 2024 proxy season gets underway. The reality is that activists win when companies stop listening to their investors. Companies that take steps now to ensure they are engaging meaningfully with their investors and putting their defences in place can position themselves for victory even if an activist does emerge.

Kingsdale Advisors can help companies prepare for the 2024 proxy season:

Shareholder Engagement & Management

- Set up meetings with your top holders
- Better understand your shareholder base through surveys
- Stock surveillance to be prepared for potential activists
- Better understand the key corporate governance policies that influence or dictate the proxy voting decisions of your top institutional investors and solicit their votes
- Engage with your retail shareholders and improve the turnout of your meeting
- Craft a compelling story and strengthen your engagement strategy with shareholders and other key stakeholder groups, such as the proxy advisors and media

Governance

- Identify and mitigate the vulnerabilities of your board of directors to thwart a potential activist threat
- Evaluate your executive compensation plan like your investors and the proxy advisors do and improve your Say-on-Pay voting results
- Assess your corporate governance practices, identify areas of concern, and recommend ways to enhance your disclosure or change your practices

Transaction-Related

- Solicit shareholder votes for your transaction and draft your disclosure in a way that gains the support of your shareholders and the proxy advisors
- De-risk potential acquisitions and activist actions well in advance of launching a campaign

KINGSDALE Advisors

Directors' Education

No company is immune. No sector is secure. Investor behaviour has been changing.

Delivering insights and solutions to the biggest issues that impact your board.

Have you considered changes in:

- Shareholder vote dynamic and implications for vote planning
- New diversity rules
- Evolving role of ISS and Glass Lewis and their decreasing influence
- Devolution of voting authority as the result of policy changes at BlackRock, Vanguard and State Street
- Investor interest in ESG
- AI governance
- Regulatory development and voting trends?

Companies that take steps now to ensure they are engaging meaningfully with their investors and putting their defences in place can position themselves for victory even if an activist does emerge.

Book a customized board education session today and disclose in your next circular:

MeetTheTeam@kingsdaleadvisors.com

Diversity • Cybersecurity • Regulatory Developments • Mergers & Acquisitions • Activism • Executive Compensation
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