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TOP GOVERNANCE & STEWARDSHIP ISSUES IN 2024

Annual Global Outlook

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Key Takeaways

- **Activism and M&A:**
  - **U.S. activists had a busy year in 2023, but the number of contests that ultimately went all the way to a vote declined to 23 compared to 34 in 2022. Activist activity is expected to remain significant in 2024.** Universal Proxy Card (UPC) adoption in the U.S. had a muted impact on the 2023 proxy season, though concern over the potential impact of UPCs led some companies to take a more defensive stance, including by using advance notice provisions to invalidate dissident nominees. However, the largest contests of the UPC era so far are expected in 2024.
  - **Across Europe, the number of proxy contests for board seats in 2023 decreased** to 25 from an all-time high of 29 in 2022**.**
  - **In Canada, there was an increase in the number of proxy contests** at Canadian companies in 2023, with seven contests that got to a shareholder vote compared to four in 2022.
  - **For 2024, the M&A environment**, subdued overall by regulatory concerns and higher financing costs in 2023, **is starting to show signs of picking up** in 2024.
- **SPACs:**
  - **Many remaining U.S. SPACs turn 'zombie'.** Regulatory pressures and overall negative market sentiment have caused SPACs to be a less attractive option for private companies to reach the capital market. Hundreds of SPACs remain searching for a merger partner, with some repeatedly requesting shareholder approval to extend the maximum length of time to complete a transaction. High levels of redemptions of shares held by public investors mean that most remaining SPAC shares are held by the sponsor, and leave little money in the trust account for use by the post-merger company.
  - **In Europe, the few remaining SPACs** have found it difficult to find merger partners, with many requesting extensions or opting for liquidation.
- **Diversity:**
  - **Efforts to boost gender diversity levels in boardrooms and C-suites are continuing to register steady progress.** The European Directive on gender diversity on boards was approved by the European Parliament in November 2022 and EU listed companies are now expected by June 2026 to have either at least 40 percent of their non-executive directors or at least 33 percent of all director positions (including both executive and non-executive directors) from "members of the underrepresented sex". This regulatory development is expected to continue to increase gender diversity on European boards and C-suites through 2024 and beyond. In the U.S., just over 98 percent of the Russell 3000 and 100 percent of the S&P 500 now have at least one female director.
  - **Reported racial and ethnic board diversity continues to increase in the U.S.** According to ISS data, as of the start of 2024, only two S&P 500 companies did not have at least one board member from a minority background. Across the Russell 3000 Index, only 12 percent of companies lacked this level of diversity, an improvement from approximately 14 percent at the start of 2023. Many investors and other observers will closely monitor whether these diversity increases continue their upward trajectory in 2024 or level off.
- **Compensation and Say on Pay:**
  - **Fewer U.S. companies will need to demonstrate responsiveness to 2023 low say-on-pay support.** In the U.S., the percentage of companies with failed say-on-pay votes decreased from 3.2% in 2022 to 2% in 2023, representing the lowest say-on-pay failure rate since 2017. While fewer companies

will therefore need to demonstrate robust engagement and potential changes following a low (passing) vote result, there were still some high profile failed votes during 2023, which will warrant a closer look this year.

- **In Europe,** 2024 is a remuneration policy cycle year where many European companies will resubmit their remuneration policies for shareholder approval as required under SRD II.
- **In Asia,** where executive compensation practices are often disclosed poorly and therefore cannot be assessed fully by shareholders, some limited improvements in disclosure are expected that may have a positive impact in 2024 and beyond.
- **2023 U.S. SEC ruling now requires companies to adopt and disclose a clawback policy for the recoupment of erroneously awarded incentive compensation**. Final clawback listing standards proposed by the NYSE and Nasdaq were approved by the SEC in 2023, and covered companies had until December 1, 2023, to adopt a compliant clawback policy for the recoupment of erroneously awarded incentive compensation. In addition, the 2024 proxy season will be the second year that companies are subject to the SEC's pay versus performance disclosure requirements.
- **Following a significant 2023 spike in compensation-related shareholder proposals in the U.S., severance arrangements are expected to continue to be a focus for shareholder proponents.** A sudden spike in U.S. compensation-related shareholder proposals in 2023 came after a previous steady decline in these proposals since the introduction of say-on-pay. There was a wave of proposals in 2023 requesting companies seek shareholder approval of severance arrangements, and given that several of these received majority support it is expected that this topic will remain a focus into 2024.

- **Environmental & Social (E&S) topics**
  - **The number of E&S-related shareholder proposals filed in the U.S. reached an all-time high in 2023, and that trend is expected to hold in 2024.** In 2023 in the U.S. there were a record number of 643 E&S-related proposals filed. The high number of filings coupled with the SEC's rule change that has made it more difficult for companies to omit shareholder proposals, resulted in a record number of E&S proposals getting on ballot. The volume of proposals in 2024 is expected to be largely on par with the high watermark recorded in 2023.
  - **However, support for E&S-related shareholder proposals in the U.S. dipped for the second consecutive year in 2023.** Overall U.S. vote results in 2023 showed that E&S shareholder proposals received 16 percent median shareholder support in 2023, down from 22 percent in 2022 and 29 percent in 2021. While in 2022 there were 37 majority supported E&S-related proposals in the U.S, that figure decreased to 8 majority-supported proposals in 2023, despite the fact that more proposals were voted on. It remains to be seen whether the 2023 declining support levels for E&S shareholder proposals will continue in 2024.
  - **Climate change , DEI and political spending are expected to continue to be the most numerous E&S-related shareholder proposal topics in 2024.** Globally, the number of climate-related voting items has significantly increased since 2021 compared to the prior 2016-2020 period, reaching over 300 in 2023. Most are shareholder proposals as the number of management-provided "say-on-climate" proposals went down in 2023 after a high in 2022. In the U.S., climate change, diversity, equity and inclusion (DEI) and political spending appear so far to be the dominant topics of E&S shareholder proposal filings for 2024.
  - **So-called "Anti-ESG" shareholder proposals continue to be filed in higher numbers in the U.S.** These are diverse in nature, but the proposals are generally skeptical or critical of the value and legitimacy of some of the concepts that broadly pertain to climate risks or corporate social responsibility, and often aim to use traditional shareholder proposal language to advance causes that may resonate more with shareholders that have a critical stance towards "ESG".

  - **Rapid technology development, the rise of misinformation, and the ubiquitous nature of social media continue to generate concern among some shareholder proponents about fairness, censorship and about what can be believed.** Technology firms are likely to continue to receive high levels of shareholder proposals because they are at the heart of rapid changes in communications technology and Artificial Intelligence (AI) that have raised questions of potential employment disruption, violation of privacy, fair use of copyright, damage done by misinformation and disinformation, and censorship, among others.

- **Officer Exculpation:**

  - **Delaware companies continue to amend their charters to limit the liability of executives.** Although shareholders have in most cases voted in favor of officer exculpation proposals, nearly one in five such proposals failed to receive the requisite level of support in 2023.

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Introduction

The main 2024 proxy seasons are taking place amid uncertain global macroeconomic conditions, driven by continued geopolitical conflicts, potential delays in expected interest rate cuts, global logistics challenges including shipping disruptions, and heated political environments with several national elections afoot that could have significant implications for the world economy. Companies and investors will have to continue to grapple with these economic uncertainties and their impacts on key governance and stewardship issues such as corporate risk management, climate change risks, executive compensation, human capital management and M&A, as well as board oversight and accountability, through 2024 and beyond. This report sets out to summarize the top governance and stewardship issues likely to be facing investors throughout 2024, and particularly through this year's main proxy seasons.

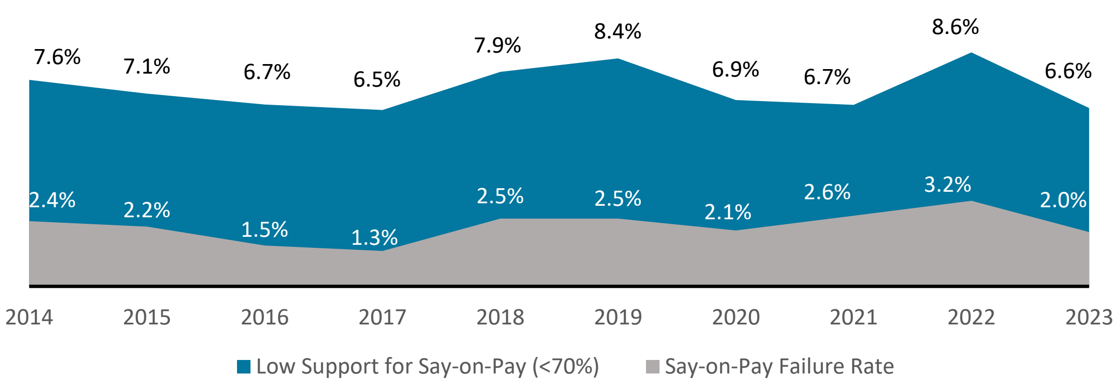
Executive Compensation

United States

Following a historic 2022 proxy season that saw record levels of median CEO pay and significant shareholder opposition to say-on-pay, the 2023 proxy season saw declines in both median CEO pay and say-on-pay opposition. Specifically, for the first time in seven years, median CEO pay in both the S&P 500 and Russell 3000 decreased. The 2023 proxy season also saw say-on-pay failure rates decline substantially, with only 2% of proposals failing to receive majority support, compared to 3.2% in the year prior. Although this year fewer companies will need to demonstrate robust responsiveness to a low say-on-pay support, many investors are expected to remain focused on issues that led to failed votes in 2023, including problematic pay practices, large special awards, and excessive pay magnitude.

Say-on-pay failure rate decreased to lowest level since 2017

proportion of say-on-pay proposals receving <50% and <70% support, Russell 3000



Source: ISS Governance Research & Voting

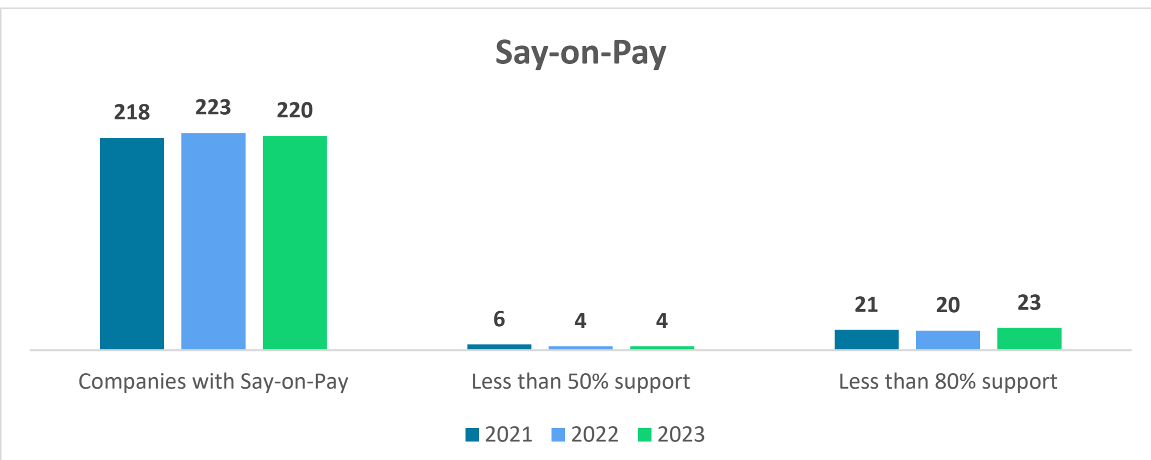
In October 2022, the U.S. Securities and Exchange Commission (SEC) adopted its long-awaited final clawback rule, and the final listing standards proposed by the NYSE and Nasdaq were approved by the SEC in 2023. Many covered companies have already adopted a compliant policy, as listed companies had until December 1, 2023, to adopt a policy. Specifically, they are now required to adopt and disclose a clawback policy for the recoupment of erroneously awarded incentive compensation to current and former executive officers in the event of certain accounting restatements, in addition to certain disclosure obligations. The 2024 proxy season will also represent the second year that companies are required to provide pay versus performance disclosures, and it remains to be seen how companies and investors will use this information to inform pay decisions. Companies will be required to provide data on "compensation actually paid" (CAP) to executives and the important metrics used to link that CAP figure to company performance.

There was a significant spike in compensation-related shareholder proposals on ballot during the 2023 proxy season. This comes after a steady decline in these proposals since the introduction of say-on-pay. Specifically, there was a 76% increase in compensation-related shareholder proposals compared to 2022, with a wave of proposals requesting companies seek shareholder approval of severance arrangements. Given that several of these proposals received majority support, severance arrangements are expected to continue to be a focus for shareholder proponents in 2024.

Canada

Median CEO pay at S&P/TSX Composite Index companies declined slightly on a year-over-year basis in 2023, driven primarily by a reduction in median annual bonus and option grants, offset by an increase in median base salary. The decline in median option grant value stems from the fact that only 49 percent of CEOs at S&P/TSX Composite Index companies received option grants during the reporting year. The number and size of outsized equity grants to CEOs declined from the levels reported in 2022.

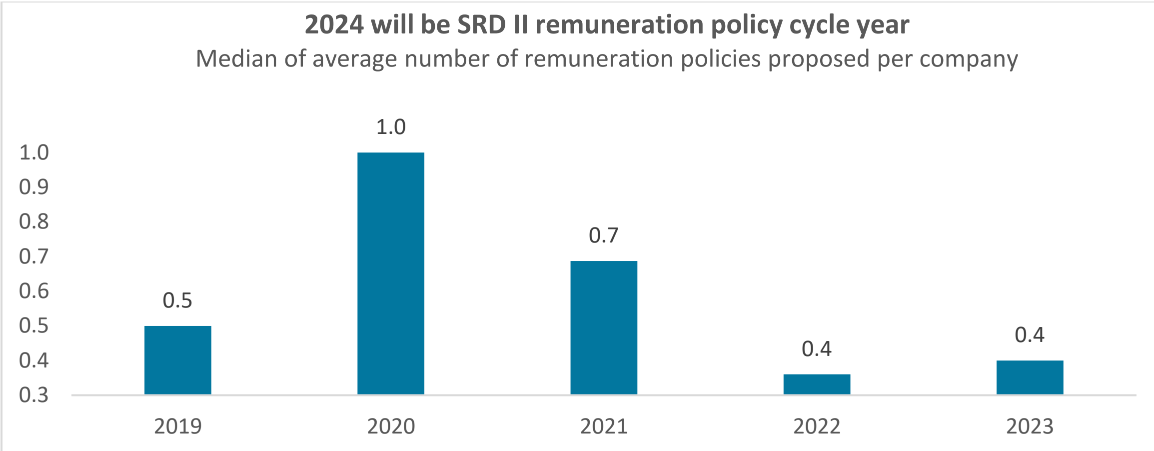
The number of say-on-pay resolutions on ballot also declined slightly, and there were four failed say-on-pay votes in 2023, the same number as in 2022. In total, 23 companies received less than 80 percent say-on-pay vote support, up from 20 in 2022. Companies with low vote support will be expected to include robust responses in their 2024 proxy statements.



Source: ISS Governance Research & Voting; companies covered under ISS Canada Policy

Europe

Four years on from full implementation of EU's Shareholder Rights Directive (SRD II) across most of Continental Europe, executive remuneration is expected to remain a high-profile topic in 2024, especially considering 2024 is expected to be a 'policy cycle' year when many companies will be submitting their remuneration policies for shareholder approval.



Source: ISS Governance Research & Voting

Most EU Member States have adopted the SRD II provision requiring companies to seek shareholder approval for their remuneration policies, whenever it is changed and at least every four years. Considering the first four years have lapsed since transposition of SRD II into local laws, the 2024 AGM season will be heavily impacted by many companies submitting remuneration policies for shareholder approval, with or without changes. This is expected to significantly increase the number of remuneration-related ballot items investors must vote on in 2024. However, since companies are largely compliant with SRD II requirements, no major overhaul of policies or major structural changes are expected across Europe. A general development, and an ongoing expectation, is the increased effort by companies to further integrate ESG performance metrics into their remuneration policies, which are increasingly linked to the company's ESG strategy, and more concretely linked to longer-term ESG goals.

Asia

In many Asian markets, where executive compensation practices are often disclosed poorly and therefore cannot be assessed fully by shareholders, some limited improvements in disclosure are expected that may have a positive impact in 2024 and beyond.

India

The overall executive compensation levels in India are considered moderate, compared to other global markets. However, the disclosure with respect to compensation, especially the variable component is not comprehensive. Major concerns that were observed in 2023 pertain to executive compensation being open-ended, lack of disclosure of objective criteria for variable pay, low proportion of variable pay component relative to overall pay, and compensation not being commensurate with the overall performance of the company.

The compensation for "promoter" executive directors is often subjected to greater scrutiny in India, given that they are insiders and in some cases these promoters or their relatives are part of the nomination and remuneration committees, thus creating potential conflicts of interest. Recently, the Indian regulator SEBI tightened the rules on remuneration paid to promoters by requiring companies to pass the proposal through a special resolution (which requires 75% majority of votes cast). This is required if the promoter's pay exceeds the threshold of INR 50 million or 2.5% of net profits in a financial year and 5% of net profits for all promoter executive directors put together. In light of this change, we expect to see more special resolutions in 2024.

Diversity, Equity & Inclusion

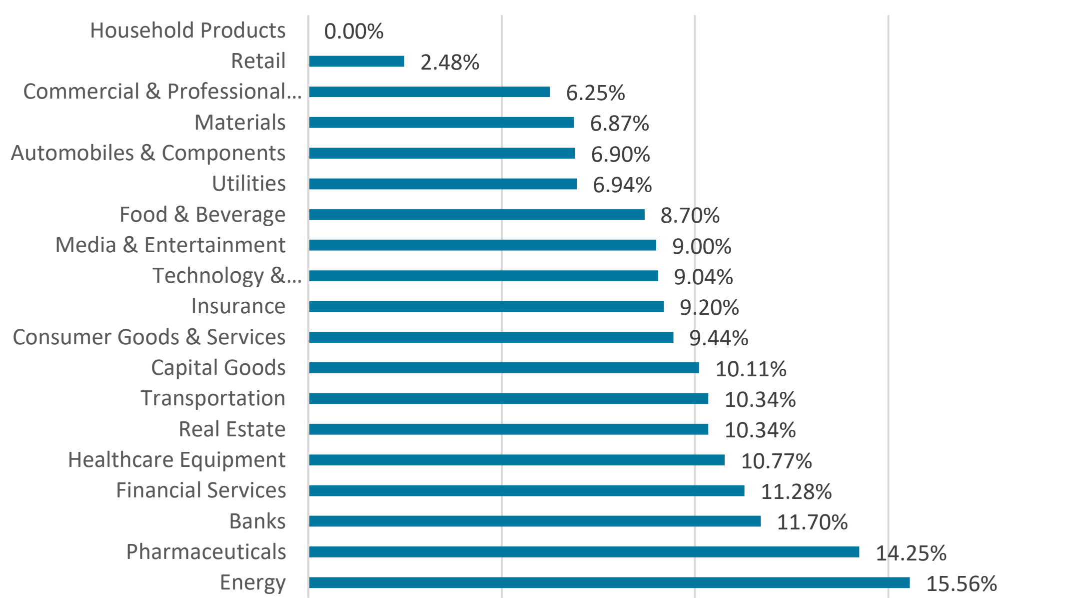
Gender, Race & Ethnicity

United States

Reported racial and ethnic board diversity continued to improve over the past year. According to ISS data, only two companies in the S&P 500 did not have at least one racially/ethnically diverse board member at the start of 2024. In the Russell 3000 Index (excluding the S&P 500), only 12 percent of companies in the index lacked a racially/ethnically diverse board member, an improvement from 14 percent at the start of 2023. Meanwhile, as in 2023, 100 percent of the S&P 500 now has at least one female director and 98 percent of the Russell 3000 has at least one female director, a slight increase from 97 percent at the start of 2023. Just over 70 percent of companies in the S&P 500 have boards where at least 30 percent of directors are female. For Russell 3000 Index companies (excluding the S&P 500), this figure is approximately 48 percent.

The graph below shows the proportion of Russell 3000 Index, inclusive of the S&P 500, companies in each industry sector that remain without a racially/ethnically diverse board. Only one industry sector remains where at least 15 percent of companies are without a racially/ethnically diverse board. This compares to the start of 2023 where four industry sectors were above 15 percent. Conversely, all companies within the household products sector now have a racially/ethnically diverse board.

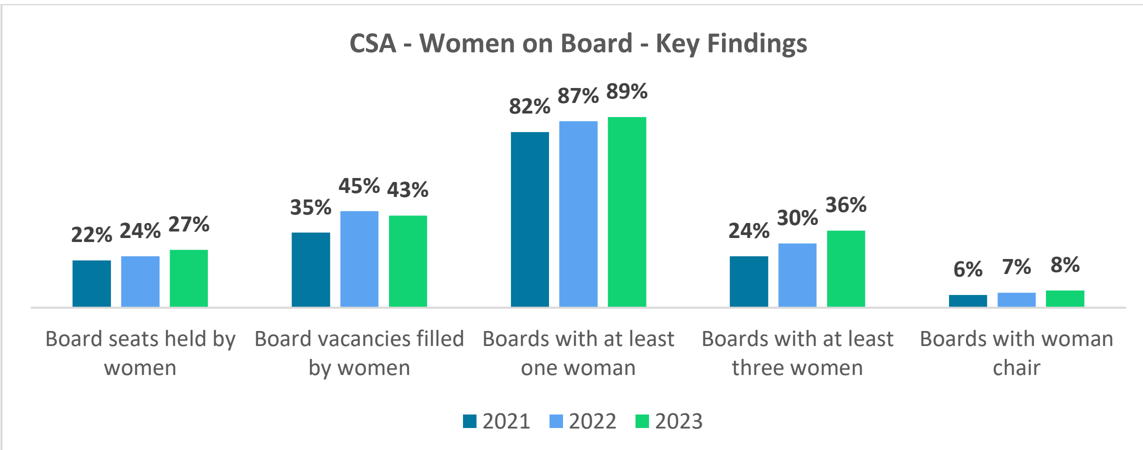
Boards without Racial or Ethnic Diversity (as of February 2024)
R3K companies; percent within each industry



Source: ISS Qualityscore

Canada

In October 2023, the Canadian Securities Administrators (CSA) announced publication of their 9th annual review and report on the representation of women on boards and in executive officer roles. Based on the disclosures of 602 non-venture reporting issuers in the participating regulatory jurisdictions, the key findings indicate that since the prior year there had been a 3 percent increase in the number of board seats filled by women; the number of board vacancies filled by women decreased 2 percent; the number of issuers having at least one woman on the board increased 2 percent; and, the number of issuers having at least three women on the board increased 6 percent to 36 percent of issuers included in the review. Eight percent of issuers had a female board chair.



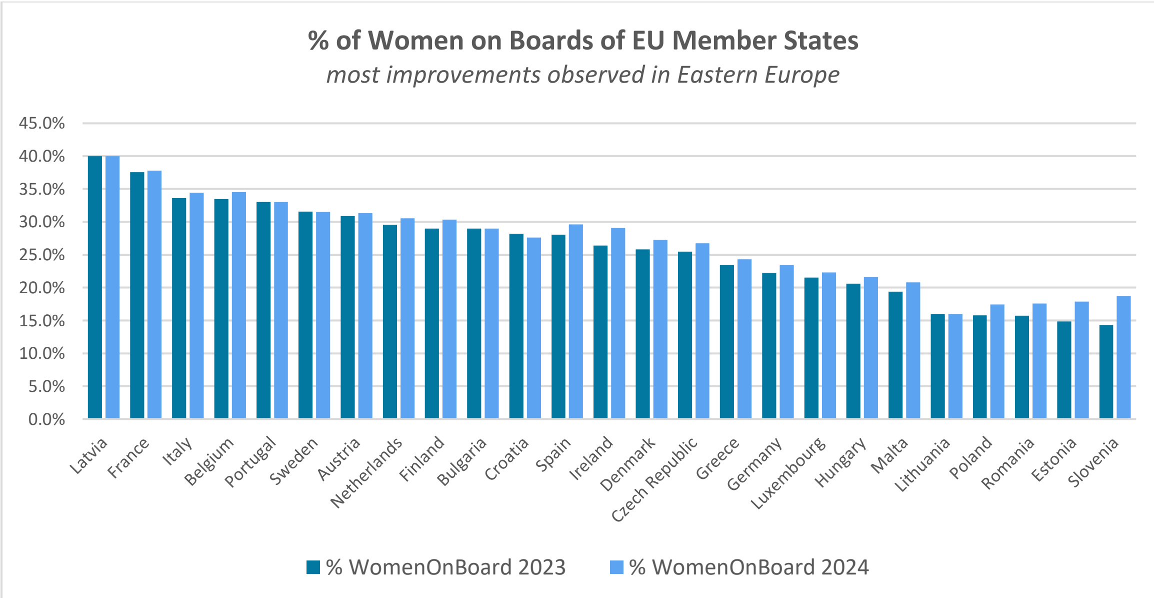
Source: Canadian Securities Administrators (https://www.securities-administrators.ca/)

Europe

In Europe, gender diversity is an important element when considering board composition, whereas ethnic diversity remains a sensitive topic particularly as there are restrictions on the recording and processing of racial and ethnicity data in many European jurisdictions. Since approval of the European Directive on Gender Balance on Company Boards in 2022, only limited further progress has been made on the regulatory front or on improving the overall board gender balance across Europe, except for some relative improvements in Eastern Europe.

The European Directive on Gender Balance on Company Boards was approved by the European Parliament on November 25, 2022. The European Parliament and the Council of the European Union – which was not supportive initially – reached a provisional agreement on June 7, 2022, on the expectation that listed companies will need to have 40 percent of the underrepresented sex among non-executive directors or 33 percent among all directors by June 30, 2026. Although European Member States may adjust the Directive to local circumstances, Article 9 of the Directive sets a clear expectation that these requirements represent the minimum standard for gender representation across the EU. All Member States must transpose the Directive by December 28, 2024, and listed companies must meet the standards by June 30, 2026.

This regulatory development will not only potentially harmonize existing divergent hard and soft rules on board gender diversity across Europe, but it will also mean the introduction of diversity standards in a large number of EU Member States that currently do not have requirements or where gender diversity is lagging, especially in Eastern Europe.



Source: ISS Diversity Data

Since the approval of the Directive, gender diversity on boards in countries with already existing gender balance requirements have made little to no progress. Instead, progress on increased gender balance is observed in markets with lagging gender diversity and/or non-existing requirements, such as in Eastern Europe (see graph above). On average gender diversity has increased by 1 percentage point in EU member states to 29.5 percent.

In the U.K., this is the first full calendar year, where listed companies will be required to report compliance against the three diversity targets outlined in the FCA's Listing Rules. In addition, the updated version of the Parker Review expected FTSE 350 constituents to disclose their own targets for the percentage of senior management who self-identify as being in an ethnic minority by December 2023. Such companies are likely to begin working towards their targets in 2024, which they will be required to meet by December 2027.

Asia

The percentage of women on boards across companies in some key Asian (ex-Japan) markets covered by ISS has continued to show a steady increase, and the average percentage of women directors increased from 11% to over 15% percent over the last five years. Below we look at diversity drivers and trends in 2024 in India, Korea, and Taiwan.

India

The Companies Act of 2013 made it mandatory for companies in India to include a woman director on their boards as of April 1, 2019. More recently, the Securities and Exchange Board of India (SEBI) made it mandatory for the top 1000 listed companies to have at least one independent woman director by April 1, 2020.

Before the implementation of the Companies Act 2013, corporate boardrooms were dominated by men, and female representation was less than 10%. The regulatory changes resulted in boards framing their own charters on diversity and inclusion, which encouraged many companies to appoint more women directors.

In the ensuing decade, the percentage of female representation on boards has almost doubled from 2013 levels, and now at least one director on every Indian top 1000 listed corporate board is a woman.

Although there has been good progress on board gender diversity, India still lags many markets globally on the percentage of female directors. The current pace of slow, incremental increase is not expected to change in 2024.

Korea

Board gender diversity continues to steadily advance with some visible improvements among large-size companies to meet regulatory requirements. The number of female directors in ISS' Korea coverage universe has almost tripled compared to 2021, which was before the introduction of a new regulation mandating at least one female director for companies with asset sizes greater than KRW 2 trillion. Overall, women now constitute 7 percent of all Korean board directors, which is a marked improvement from c.3 percent in 2015. Roughly half of all female directors are independent, mostly coming from academic and legal professions. Slowly, smaller companies have voluntarily followed suit. The trend is expected to continue in 2024.

Taiwan

According to a new regulation in Taiwan, all listed companies are required to appoint at least one female director from 2024. In 2025, the regulation will require listed company boards to be at least one-third female, with a disclosure of reasons required for companies that do not meet the requirement.

Director Elections

United States

Support for director elections remained relatively high in 2023, averaging 95.7 percent of votes cast for S&P 500 Index companies and 93.6 percent of votes cast for Russell 3000 Index companies (excluding the S&P 500). In 2023, only one S&P 500 director failed to receive majority support, compared to five in 2022. Across the broader Russell 3000 Index (excluding the S&P 500), 39 directors failed to receive majority support, compared to 48 in 2022. Failed directors at S&P 500 companies are expected to continue to be exceedingly rare, but the crystal ball on the rest of the R3K is not as clear. However, the relatively high overall director support level is expected to hold in 2024.

Europe

Following substantial voting dissent observed at 2023 AGMs in France, director elections will be a key topic for the upcoming French 2024 AGM season. The composition of boards of directors in France will be under heavy scrutiny for the 2024 proxy season as around 27 percent of the SBF 120 (excluding CAC 40) and 29 percent of the CAC 40 directors' mandates are coming to an end in 2024. Within the CAC 40 index, 29 percent of directors will end their mandates in 2024. Nine chairs, including five chairs/CEOs, will be up for reelection. Regarding the SBF 120 index (excluding the CAC 40 index), 27 percent of directors will see their mandates terminate in 2024. 24 chairs, including five chair/CEOs, will be up for reelection.

India

Current Indian regulations require that 50 percent of the board should be independent if the board chair is an executive director or part of the promoter group. Otherwise, 33 percent of the board should comprise of independent directors.

The Companies Act 2013 introduced a cap on board term served by independent directors of two, each lasting a maximum of five years. Since these regulations were applied prospectively, the clock for director terms was reset in 2014, allowing directors with tenure of ten years or more to continue to serve as independent directors until the 2024 AGM. As the deadline will end in 2024, several companies will seek to appoint new independent directors.

In 2023, almost 15% of companies in the ISS' India coverage universe had board independence below 50 percent. Within this pool, state-controlled entities have fared the worst. Indian boards still trail global standards on independence. Looking ahead, board independence at Indian companies is expected to improve as many tenured independent directors are replaced with fresh directors in 2024.

Hong Kong

Hong Kong-listed companies will be required to appoint a new independent director at their forthcoming 2024 AGM if current independent directors on a company board have all served over nine years, effective for financial years ending on or after January 1, 2023. This enhanced requirement was implemented to ensure that companies have a better independent representation on their boards, as long tenured independent directors might lack objectivity due to their familiarity with the company.

Anticipating the 2024 proxy season, companies falling into the above category are expected to submit newly appointed independent directors to shareholder vote. From January to June 2023, 7 percent of Hong Kong companies covered by ISS had all long-tenured independent directors.

Singapore

Similar to Hong Kong, enhanced board independence at SGX-listed companies is anticipated this year as the transitional period for the nine-year tenure cap for independent directors will end on the date of issuers' AGMs for the financial year ending on or after December 31, 2023. SGX Listing Rules were amended early last year to provide that any director who has been an independent director of a listed issuer for more than nine years will no longer be considered independent. Based on ISS' Singapore coverage universe, the number of long-serving independent directors on SGX-listed boards has been decreasing from 266 in FY 2022 to 155 in FY 2023.

Taiwan

Under the Financial Supervisory Commission's Sustainable Development Roadmap updated in March 2023, listing applicants in Taiwan with a paid-in capital of TWD 10 billion or more, listed financial institutions and insurance companies are all required to have one-third independent board from 2024. Furthermore, all listed companies in Taiwan are required to have no less than one-third independent directors on their boards by 2027.

In addition, the Taiwan Stock Exchange's Listing Rules amended in August 2023 stipulate that no more than half of the independent directors in a listed company shall have tenure exceeding three consecutive terms (9 years total) by 2024 and no independent directors shall serve more than three consecutive terms in a listed company in Taiwan by 2027. These measures are expected to boost board independence levels on Taiwanese boards in 2024 and beyond.

China

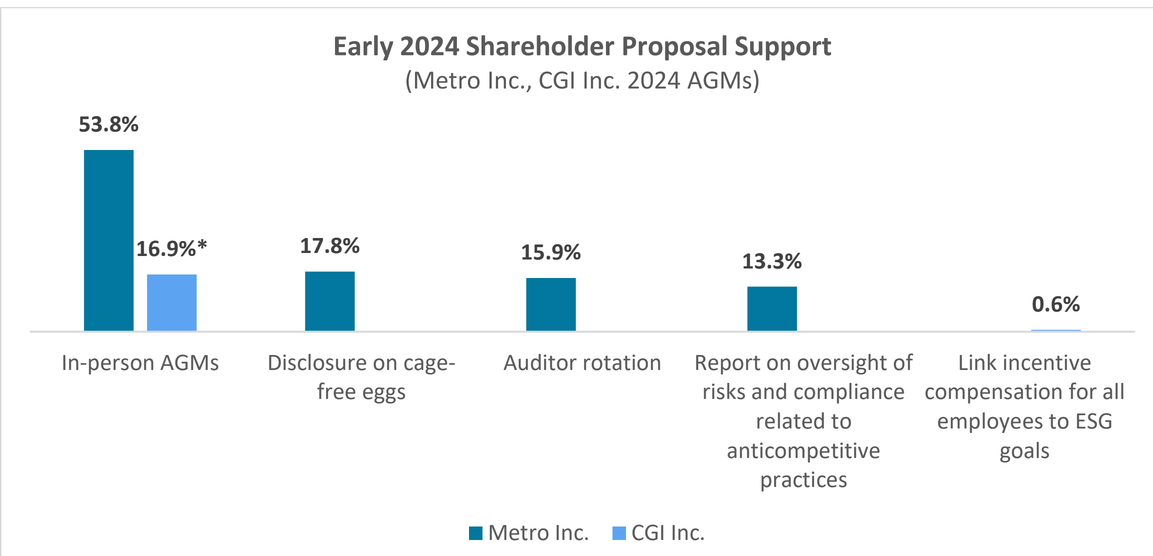
In August 2023, the China Securities Regulatory Commission established new regulations governing the roles and responsibilities of independent directors, and reduced independent directors' overboarding celling from five domestically-listed companies to three. It also specified that independent directors who do not attend board meetings in person for two consecutive sessions should step down and be replaced. Moreover, new regulation also stated that independent directors should make up the majority of the audit, remuneration and nomination committees, and act as the conveners of such committees.

Global Environmental & Social Issues

Canada

As in previous years, for 2024, several shareholder proposals will be submitted by MÉDAC, primarily at Canada's banks. The new shareholder proposal topics are related to: (1) in-person annual meetings; (2) linking part of incentive compensation to all employees to ESG objectives; (3) disclosure of languages mastered by officers and directors; (4) societal dividend and sharing of value; (5) certification of ESG reports; and, (6) public disclosure of non-confidential information, country-by-country reporting, compensation ratios and tax havens. Repeat shareholder proposals will include those related to say-on-climate, auditors, and a circular economy. Some of MÉDAC's proposals were voted on at the AGMs of Metro (January 30, 2024) and CGI (January 31, 2024).

So far, other submissions have come from The Accountability Board (TAB), which submitted a shareholder proposals related to cage-free eggs and one related to equity, diversity and inclusion goals (which was later withdrawn) at Metro; from the BC General Employees' Union (BCGEU), which submitted a shareholder proposal requesting that the board report to shareholders on how it oversees risks and compliance related to anticompetitive practices (Metro); and from the Shareholder Association for Research & Education (SHARE), on behalf of the United Church of Canada, requesting that Metro report to shareholders on its management of climate-related risks (which was also withdrawn).



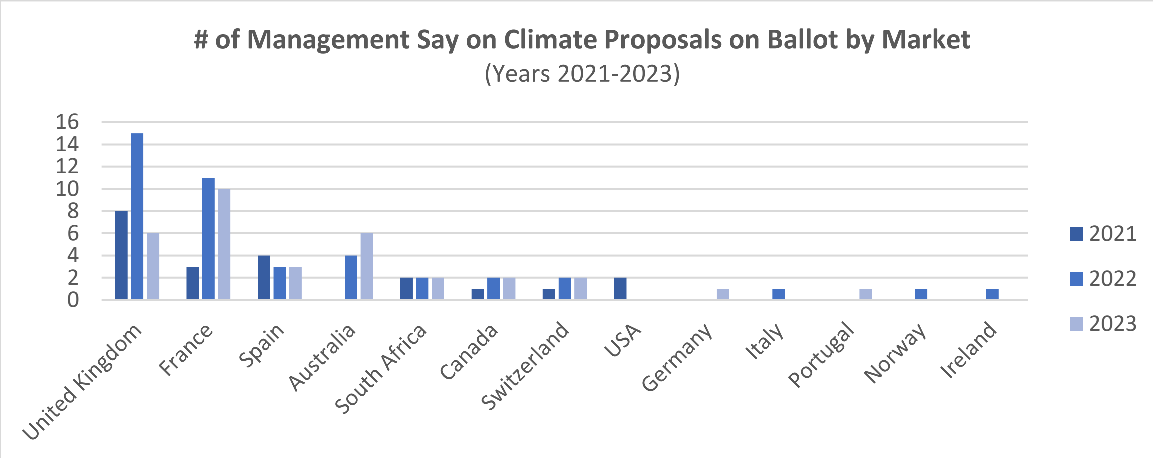
Source: ISS Governance Research & Voting
**Excluding Class B shares, the shareholder proposal received 48.0 percent shareholder support from Class A shareholders.*

Europe

Management 'Say on Climate' Proposals

Globally, the number of Management Say on Climate (MsoC) proposals increased from 21 in 2021 to 33 in 2023, with a peak of 42 in 2022.

Although MsoC proposals have been tabled in companies incorporated in 13 different markets since 2021, most were in Europe: 76 percent in 2021; 81 percent in 2022; and 70 percent in 2023 (see graph below)



Source: ISS Governance Research & Voting, Data as of September 2023

Since 2021, support for say-on-climate proposals has decreased, with 24 percent and 15 percent receiving support from less than 80 percent of voting shares at AGMs in 2022 and 2023, respectively.

For the 2024 season, Switzerland will be the latest country to require mandatory votes on sustainability reporting. In addition to Spain giving shareholders a vote on non-financial reporting, Swiss companies will be required in 2024 to provide disclosures in line with the TCFD and allow shareholders to vote on the report. Swiss corporates, banks, and insurance firms with more than 500 employees, revenue in excess of the equivalent of USD 42 million or assets of more than USD 21 million will have to report publicly on climate issues.

Swiss reporting will include the 'double materiality' standard: the risk to the company from climate-related activities as well as the impact of its activities on the environment. Companies will also have to describe reduction targets for direct and indirect greenhouse gas emissions, as well as how they plan to implement them.

Asia

Improvements in ESG/Sustainability reporting across some key Asian markets are driven largely by recent regulatory requirements for listed companies.

India

To bring consistency and improve the sustainability reporting in India, SEBI introduced the Business Responsibility and Sustainability Reporting (BRSR) framework. Reporting was mandatory for the top 1000 listed companies (by market capitalization), with effect from financial year 2022-23.

On March 29, 2023, the SEBI board approved the introduction of BRSR's core framework which contains a limited set of Key Performance Indicators (KPIs), for which listed entities shall need to obtain reasonable assurance. It will be applicable to the top 150 listed entities (by market capitalization) from FY 2023-24, and gradually extended to the top 1,000 listed entities by FY 2026-27. The amendments were announced to the Listing regulation by SEBI on June 14, 2023.

Hong Kong

Improvements in climate-related disclosures continue to be significant in Hong Kong. The Stock Exchange of Hong Kong Limited (SEHK) issued a consultation paper on April 14, 2023, soliciting feedback on measures to enhance climate-related disclosures within its ESG reporting framework. Such measures were initially proposed to be implemented in January 2024.

However, the SEHK announced on November 3, 2023, that the implementation of the measures on the enhancement of climate-related disclosures will be postponed to January 2025 as the SEHK intends to consider the measures covered by the ISSB Adoption Guide, which is expected to be available in the first half of 2024. ISSB specified that an adoption guide will be issued to support regulators in their implementation considerations of the ISSB standards.

Taiwan

In June 2023, the International Sustainability Standards Board (ISSB) released the IFRS Sustainability Disclosure Standards (ISDS), setting rules for sustainability-related disclosures. The Taiwanese regulator has reacted and initiated a roadmap to facilitate the adoption of the ISDS by listed companies in Taiwan. Carried out in phases, the regulator will first require large-cap listed companies to report in accordance with the ISDC starting from the reporting season in 2027, followed by medium-cap and small-cap listed companies in the subsequent years. The regulator aims to have all listed companies abide by the ISDS by 2029. To ease the transition, all companies will be allowed to only report on climate issues, with exemptions on the disclosure of greenhouse gas (GHG) emissions and comparative information for their first year of reporting.

China

As of June 2023, a total of 1,738 A-share listed companies had disclosed ESG or social responsibility reports. Among those reports, over 50 percent of the listed state-owned enterprises (SOEs) at central and local levels had made ESG-related disclosures. In July 2023, the State-owned Assets Supervision and Administration Commission issued "Notice on Research on the Preparation of ESG Special Reports of Listed Companies Controlled by Central Enterprises", to provide more guidance on ESG disclosure by SOEs including to benchmark the international standards while setting up localization indicators and to provide basic format for ESG reporting.

Singapore

In December 2023, following a public consultation conducted from June to August 2023, the Monetary Authority of Singapore (MAS) published its finalized Code of Conduct for ESG rating and data product providers (CoC) and an accompanying checklist for them to self-attest their compliance with the CoC. MAS seeks to elevate standards and disclosures of ESG ratings and data products in Singapore via a phased and proportionate regulatory approach, starting with a voluntary industry code of conduct for the providers.

The CoC, which builds upon the International Organization of Securities Commissions' recommendations for good practices for such providers, aims to establish baseline industry standards for transparency in methodologies and data sources, governance, and management of conflicts of interest that may compromise the reliability and independence of the products.

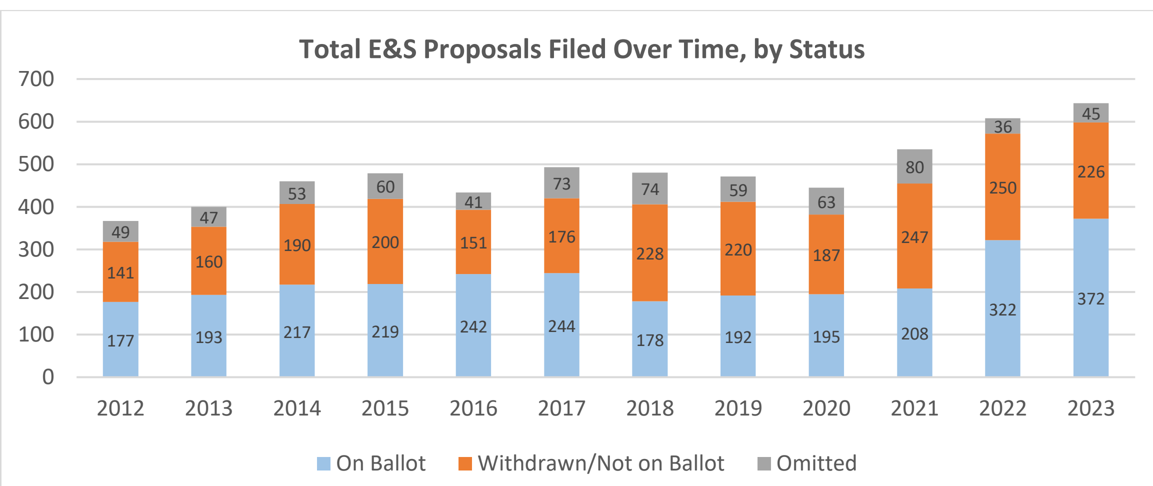
U.S. Environmental & Social Shareholder Proposals

E&S Shareholder Proposal Filings

The number of E&S-related shareholder proposals submitted in the U.S. reached a record high for the third consecutive year in 2023. ISS tracked 643 E&S-related proposals submitted, an approximately 6 percent increase from the 608 submitted in 2022. E&S-related shareholder proposals once again comprised a majority of the shareholder proposals filed at U.S. companies in 2023. After a number of E&S proposals were withdrawn by the proponents and some were allowed to be omitted by the SEC, 372 E&S proposals went to a vote. 2023 was the second consecutive year that a record high number of E&S proposals were on ballot. In 2022, 322 E&S proposals had gone to a vote.

The absolute number of withdrawals of E&S-related shareholder proposals in 2023 dropped compared to 2022. The withdrawal rate for E&S proposals also declined. There were 226 withdrawals in 2023, versus 250 in 2022. The willingness by targeted companies to negotiate with proponents may have lessened due to expectations of lower support for E&S proposals based on recent vote outcomes. The proliferation of so-called "anti-ESG" proposals, and the general unwillingness of their proponents to negotiate and withdraw, may have also had an impact on the drop in the withdrawal rate. However, E&S proposal withdrawal levels remained significantly higher than withdrawal levels of governance and executive compensation related proposals, indicating proponents were still more willing to negotiate on E&S-related topics.

There was a notable uptick in the number of E&S-related shareholder proposals that were granted no-action relief (allowed to be omitted) by the SEC in 2023, compared to 2022. By the end of 2023, 45 E&S proposals were omitted, up from 36 in 2022. However, the overall requests for no-action relief decreased compared to 2022. In 2022, most of the no-action requests submitted were rejected by the SEC after it issued Staff Legal Bulletin 14L (SLB 14L) in November 2021, which resulted in it taking a more restrictive approach toward no-action requests seeking to exclude shareholder proposals. Companies lodged fewer no-action requests based on the "ordinary business" basis for exclusion in 2023 compared to 2022. Lastly, there was an increase in 2023 in no-action requests and proposals being omitted based on procedural grounds, such as excluding proposals for not meeting eligibility requirements or submission deadlines.



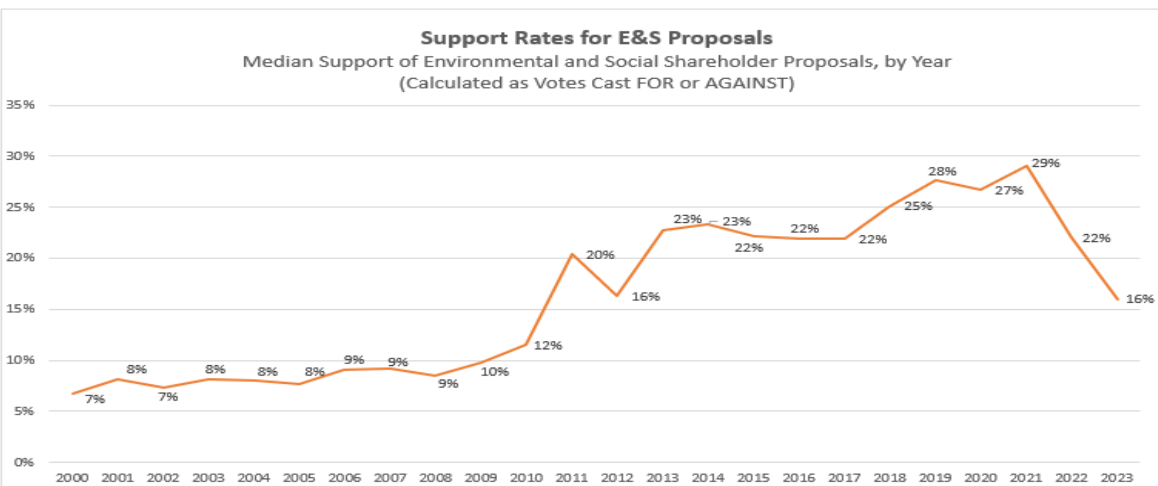
Source: ISS Governance Research & Voting

Based on early tracking so far this year, ISS is expecting a similar or even a higher number of E&S-related shareholder proposal filings in 2024 compared to 2023. As the U.S. heads into a presidential election year, we expect shareholder proponents to continue to submit proposals on hot button environmental and social issues. Similar to 2023, climate change, and diversity, equity, inclusion (DEI) proposals appear to be among the most filed proposal types so far in 2024. So-called “Anti-ESG” proposal filings continue to surge as in the past two years and are currently poised to be among the top four E&S proposal types filed this year. Other proposal types that appear to be filed in significant numbers include those asking to address risks related to workplace issues, health & safety, human rights, environmental pollution and political spending.

U.S. E&S Shareholder Proposal Support

The overall average support for E&S shareholder proposals declined for the second consecutive year in 2023. Last year, E&S-related shareholder proposals received 18.7 percent average support, down from 26.2 percent average support in 2022. These vote results include the results for so-called “anti-ESG” proposals, which have received significantly lower levels of support, and thus have contributed to the overall decline in support of E&S proposals. However, even if the vote results of "anti-ESG" proposals were removed, E&S proposals would still have declined, from 27.7 percent average shareholder support in 2022 to 20.8 percent support in 2023.

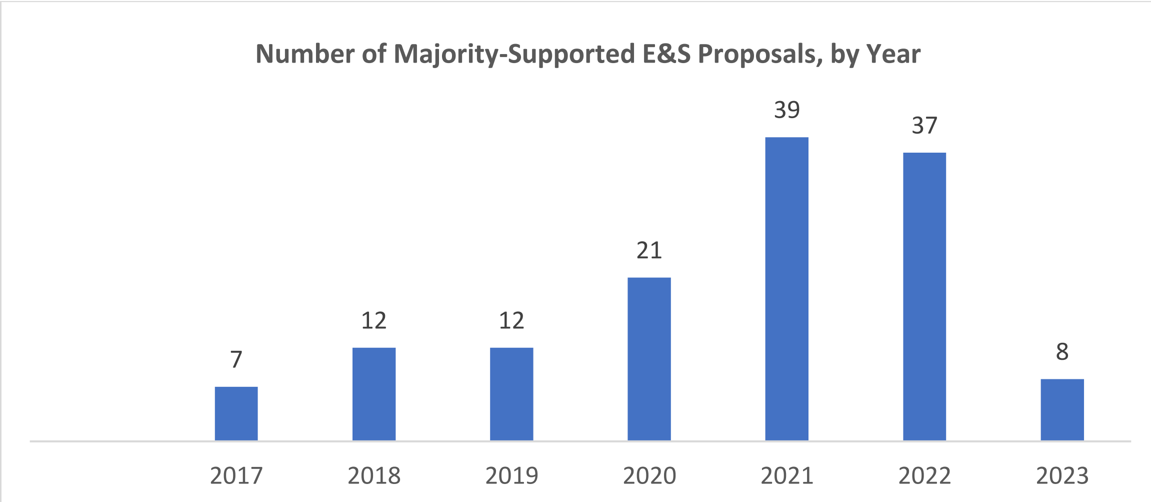
The decline in support continues the trend seen in 2022 when there was also a significant rise in the number of E&S shareholder proposals voted on, mainly due to the SEC’s change in approach toward the excludability of proposals, making it more difficult for companies to omit shareholder proposals. This likely contributed to the decline in average support level in both years, as more proposals made it onto ballots, many of which were considered more prescriptive and/or less likely to lead to long-term shareholder value. The decline in support was also likely a result of several other factors which included geopolitical concerns related to high energy prices due to the war in Ukraine, and the backlash from groups critical of "ESG", arguing that considering a company’s ESG risks in their investment strategies, as well as in their proxy voting, is a “woke” strategy to advance social and political agendas rather than shareholder value.



Source: ISS Shareholder Proposal Data

The decline in support for E&S shareholder proposals is also reflected in the drop in the number of majority-supported E&S proposals. Only eight E&S proposals passed in 2023, compared to a total of 37 in 2022.

The topics with the most majority-supported E&S-related shareholder proposals were climate change and diversity, equity and inclusion (DEI) with two proposals each. The other majority-supported proposals were on the topics of health and safety, human capital management, human rights, and political spending.



Source: ISS Shareholder Proposal Data

Climate and Social Issues in 2024

Climate Change

As with previous years, it is anticipated that climate change-related shareholder proposals will continue to be the most numerous topic for shareholder proponents in 2024. The most common of these proposal types have generally requested that companies adopt greenhouse gas (GHG) emissions reduction targets aligned with the Paris Agreement goals of keeping global warming below 1.5°C or well-below 2°C. In 2024, some proponents have filed proposals at several large financial firms that request a report on any misalignment between client GHG emissions with companies' 2030 Net Zero targets. Proposals with this request have been filed at **Bank of America**, **Goldman Sachs**, **Wells Fargo & Company**, **JPMorgan Chase**, and **Morgan Stanley**. These issues have become particularly contentious as several states have recently enacted legislation restricting state agencies from doing business with financial firms that have pledged to “divest from fossil fuels” or firms that take ESG factors into consideration when making investment decisions.

One proponent has filed a proposal at large oil and gas companies **Exxon** and **Chevron** asking for the companies to report regularly on divestiture of assets with material climate impact, stating that sales of assets may reduce emissions from that company, but it does not reduce stakeholder exposure to climate risk. Specifically, the proposal asks for companies to report on divestments, including whether each asset purchaser discloses its GHG emissions and has 1.5°C-aligned or other greenhouse gas reduction targets.

Exxon has filed a lawsuit in a Texas court seeking to exclude a proposal requesting that the company establish Scope 3 targets to reduce emissions produced by users of its products. A similar resolution was filed and made it on to the ballot in 2023 that garnered just over 10 percent shareholder support, and this is the first time Exxon has sought to exclude a shareholder proposal through legal action. Most oil and gas majors have set at least some targets to reduce their Scope 3 emissions intensity, although most observers say the targets are not aligned with Paris goals. The proponents – Arjuna Capital and Follow This – subsequently withdrew their proposal; however, Exxon said it will continue its case in court. Exxon has stated it believes the repeated proposals are not in the best interest of shareholders and argues that the proponents are "driven by an extreme agenda." The U.S. District Court judge presiding over the case has asked Exxon to file a status update outlining what claims or issues remain before the court.

Proposals relating to climate transition plans which typically ask insurance companies to disclose plans to phase out certain underwriting, lending, and financing activities, are expected to be a notable subject in 2024. Several such resolutions have been filed at large insurance companies in early 2024, including at **Chubb** and **American International Group**. An emerging topic from 2023 which is expected to continue as a point of interest for some shareholder proponents in 2024 is the "just transition," which seeks to minimize harm to various stakeholders while transitioning out of high-carbon activities.

As noted in more detail below, corporate political spending will be a point of emphasis for shareholders during a presidential election year in the U.S. As it relates to climate lobbying, filers have typically requested reports on how direct and indirect lobbying activities align with companies' climate commitments.

Other Environmental Issues

Shareholder proposals relating to plastics, packaging, and deforestation are also expected to be seen during 2024. Similar to the previous year, requests for reporting on reduction efforts around plastic demand and/or financial implications of certain low-plastic scenarios have been filed at **Amazon.com**, **Dow, Inc.**, **Exxon Mobil**, and **Restaurant Brands International**. Multiple proposals have been submitted regarding deforestation efforts, with a resolution at **Tysons Foods** requesting accelerated efforts to eliminate deforestation risks from the company's supply chains by 2025.

New Disclosure Rules

In October 2023, California enacted two pieces of legislation, SB 253 and SB 261, that require the disclosure of Scope 1, 2, and 3 emissions and climate-related financial risks and strategies, respectively. The initial reporting deadline for Scope 1 and 2 annual emissions was set for 2026 with Scope 3 emissions following in 2027. It is estimated that 75 percent of Fortune 1000 companies will be subject to the new reporting standards. In addition, the SEC is considering finalizing its climate-related disclosure rules at its March 6, 2024, meeting, according to the most recent agenda. Both sets of disclosure rules may impact the types of climate-related shareholder proposals presented moving forward.

Diversity, Equity and Inclusion Issues

Diversity, equity and inclusion (DEI) matters are expected to remain one of the top issues for shareholder proposals on U.S. corporate ballots in 2024. Many DEI-related shareholder proposals filed this year request greater disclosure of diversity metrics, including data on workforce diversity, hiring, promotion, and employee retention. Racial and civil rights audits, along with requests to report on median gender/racial pay gap statistics, are also expected to remain a prominent topic. Diversity and inclusion-related shareholder resolutions have tended to receive relatively high levels of shareholder support. However, last year average investor support for DEI proposals fell compared to the previous year, going from 46.2 percent shareholder support in 2022 to 25.8 percent in 2023. The drop in support follows the trend of lower overall support for E&S proposals.

Some proponents have also filed a series of proposals asking a number of companies to report on their oversight of risks related to discrimination, including political and religious views, and to report on the risks from omitting viewpoint and ideology diversity from equal employment opportunity policies. Similar proposals in the past have generally received relatively low shareholder support.

Labor issues are likely to be a key topic of focus this year. Several proponents have submitted proposals asking several companies to report on conditions within their operations and supply chains, such as protections against child labor, and harassment and discrimination, and fair pay. Resolutions have also been filed requesting several companies to adopt and disclose a freedom of association and collective bargaining policy, adopt a non-interference policy with regards to collective bargaining, or conduct an independent assessment of adherence to stated commitment around workers' freedom of association rights. In perhaps another sign of a strong focus on labor issues, over 20 investors with around $2.2 trillion in AUM launched in November 2023 a Labour Rights Investor Network in support of labor rights.

There is expected to be at least one high-profile proxy fight in 2024 focused on labor issues, at **Starbucks** around collective bargaining and freedom of association. The Strategic Organizing Center (SOC) has submitted three nominees to the company's board. In 2023, a proposal asking Starbucks to conduct a third-party assessment of the company’s adherence to its stated commitment to workers' freedom of association and collective bargaining rights garnered majority support, with 52 percent of votes cast. In response to the shareholder proposal, the company made public a report in December 2023 assessing its commitment.

Shareholder proposals have also been seen around a couple of additional high-profile social issues. Some proponents have filed proposals in 2024 requesting greater disclosure around the risks associated with legislation placing restrictions on reproductive healthcare. In 2023, 12 proposals related to reproductive rights went to a vote, averaging 11.1 percent shareholder support. Some of the reproductive rights-related proposals filed in 2023 were related to reproductive rights and data privacy, and it is likely that such proposals will also be filed in 2024. There also remains strong interest amongst proponents around drug pricing, the abuse of patents, and access to medicine. Proposals have been filed at a few pharmaceutical companies requesting a human rights due diligence assessment around access to medicine. Proposals have also been filed asking several pharmaceutical companies to report on the process by which the impact of extended patent exclusivities on product access would be considered in deciding whether to apply for secondary and tertiary patents. There were seven such proposals on ballot in 2023, which averaged 20.3 percent shareholder support.

Artificial Intelligence and Information Technology Issues

The rapidly growing use of generative AI promises to bring business benefits in many areas. At the same time, employees in potentially highly impacted industries and some shareholder proponents with their interests in mind also have concerns about the way that the increased use of AI may impact employees. A pension fund associated with the AFL-CIO has filed proposals at a number of media companies, including **Apple**, **Comcast**, **Disney**, **Netflix**, and **Warner Brothers Discovery** asking for reports on the companies’ use of AI in their business operations, and guidelines that the companies may have adopted to protect workers, customers, and the public. The SEC has decided that these proposals at Disney and Apple cannot be omitted by the company.

In the supporting statement that can be viewed in the SEC’s No Action decision, the AFL-CIO raises concerns about a number of interrelated risks, including “discrimination or bias against employees,” “mass layoffs,” “violat[ion of] the privacy of customers and members of the public,” and “dissemination of false information in political elections.”

Regarding public trust in elections, shareholders voted on a proposal at the **Microsoft** meeting in late 2023 filed by Arjuna Capital asking the company to issue a report assessing the risks to the company and to the public presented by its role in facilitating misinformation and disinformation disseminated or generated via artificial intelligence. OpenAI says that it has developed a series of rules in an attempt to ban or limit the ways its products can be used to generate misinformation. Yet, generative AI tools like those created by OpenAI and other companies may still propagate misinformation. For instance, high-profile fake images of Biden and Trump that creators acknowledged were fake exposed some of the vulnerabilities. We expect to continue to see shareholder proposals on this topic in 2024, especially given that it is an election year.

The use of copyrighted works is also expected to be a topic of shareholder concern in 2024. In its supporting statement at Apple the AFL-CIO wrote, "AI systems should not be trained on copyrighted works, or the voices, likenesses and performances of professional performers, without transparency, consent and compensation to creators and rights holders." The New York Times sued OpenAI and Microsoft in late December, arguing that “millions of articles published by The Times were used to train automated chatbots that now compete with the news outlet as a source of reliable information.”

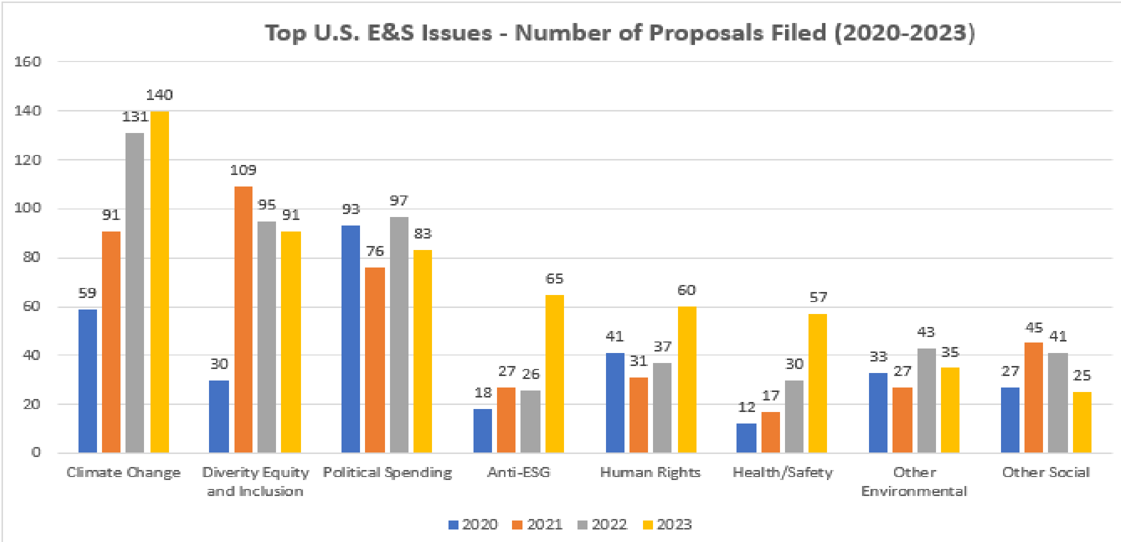
The U.S. Supreme Court has agreed to hear several cases exploring the relationship between First Amendment protections of free speech and content moderation. In two cases, a group representing social media companies argues that Texas and Florida state laws that make rules about how companies' moderate content, unconstitutionally restrict the companies’ free speech rights to make their own editorial choices about what appears on their site. In another case, the plaintiffs argue that government efforts to persuade social media platforms to publish or remove posts were unconstitutional censorship. Content moderation issues are likely to raise concerns for many shareholders, both from groups who may believe that disinformation and hate speech harms discourse and those who believe that their political views are being censored.

Political Spending and Election Related Issues

As we enter another election year, a heightened focus by some shareholder proponents on transparency related to corporate political spending can be expected. In particular, we expect to see continued scrutiny on how corporate funds are being spent and whether they are being used to support causes that are in contrast to a company’s stated interests. The proponents argue that corporations face risks due to their political spending, particularly if that political spending is channeled through third-party groups such as trade associations and non-profit groups and end up supporting controversial political candidates and positions contrary to a company’s values.

A number of shareholder proposals have been filed so far this year along these lines, asking either for more transparency related to political contributions or requesting a report on how companies are ensuring that their political sending is not misaligned with the stated values of the company. In addition, a proposal type first filed last year is expected to be filed again this year at several companies asking them to adopt a policy that requires that a third-party group to commit to annual reporting of their political activity spending prior to the company making a contribution that supports the political activities of that third party.

So-called “Anti-ESG” proponents have also been filing shareholder proposals that ask for more transparency on political and corporate contributions. These generally question some of the organizations a company supports, arguing that they are not in the company’s fiduciary interest. They argue that companies risk decreasing their bottom-line and shareholder value when they engage in overtly political and divisive partnerships.



Source: ISS Governance Research & Voting

Emerging Issues

Two other global issues that are likely to drive some shareholder proposals in 2024 are tax transparency and antimicrobial resistance.

Tax transparency is gaining more attention from some institutional investors, especially given that the EU and Australia are moving toward regulations that require country-by-country tax reporting. Beginning in 2022, we saw proposals asking for companies in the tech sector to report under the GRI 207 standard that asks for information on companies' tax strategies and structures, including their country-by-country tax data, approaches to tax governance and tax risk management, and engagements with stakeholders. In 2023, some proponents expanded the request to several companies in extractive industries. In addition to those, other industries, such as healthcare may be targeted in 2024.

A global biodiversity framework was adopted in late 2022 that sets a goal of "a world living in harmony with nature by 2050." The Taskforce on Nature-related Financial Disclosures (TNFD) has developed a set of disclosure recommendations and guidance "for organizations to report and act on evolving nature-related dependencies, impacts, risks and opportunities" in alignment with the biodiversity framework. ISS is tracking proposals asking for a biodiversity impact assessment filed at least at two companies so far, and there are also proposals filed with more specific environmental pollution concerns such as use of single-use plastics, water pollution, and mining impacts.

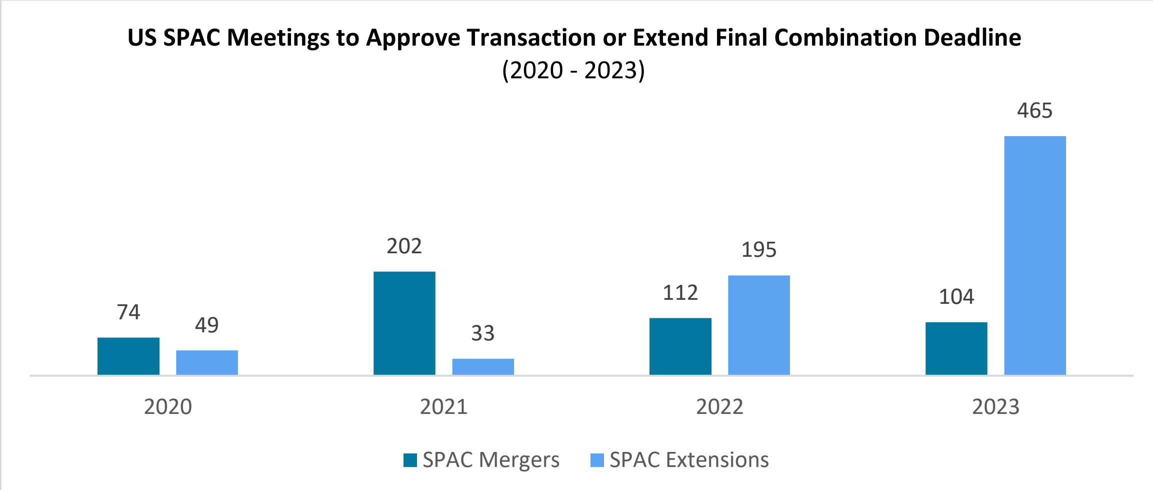
SPACs

United States

The once popular method for private companies to go public in the U.S. during the pandemic, special purpose acquisition companies (SPACs), continue to face challenges. Between 2020 and 2021, over 800 SPACs went public in the U.S., raising proceeds to be held in trust, with the sole purpose of using the trust capital to effect a merger with a private company. While a peak of over 200 SPACs reached their ultimate merger goal during 2021, changes in market sentiment and indications of increased regulation from the SEC have diminished the viability of many SPACs.

In March 2022, the SEC proposed new rules and procedural requirements for SPACs, and in January 2024 the new rules regarding SPACs became final. Among other things, the rules expand disclosure requirements regarding SPAC sponsors, conflicts of interest, target company financial projections, and overall, more closely align the disclosure requirements of SPACs to traditional IPOs.

As of the start of 2024, over 250 SPACs continue to seek their initial business combination. Many of these SPACs are now nearing or are past their original termination dates, typically 24 months from the IPO, to consummate an initial business combination. In 2023, the pace of SPACs seeking shareholder approval to further extend their termination date greatly exceeded the volume of SPACs seeking shareholder approval for their de-SPAC merger transaction. Some SPACs sought shareholder approval for extensions multiple times in 2023, without having entered into a combination agreement.



Source: ISS Governance Research & Voting

In addition to the increased regulatory pressures, these remaining "zombie" SPACs face additional financial pressures in the form of redemption exercises. SPAC investors hold the ability to redeem their investment either at the time of the de-SPAC merger meeting, or when a SPAC seeks approval to extend the termination date. If requested, these funds are removed from the holdings of the SPAC trust, and throughout 2023 redemption rates were high, leaving respective SPACs with limited funds held in trust. Given that most SPACs had hundreds of millions of dollars held in trust at the time of their IPO, the limited capital remaining currently held by many SPACs makes them less of an appealing merger partner.

Hong Kong

The SEHK introduced a new listing regime for special purpose acquisition companies (SPACs) which took effect on January 2022. Following its implementation, SEHK received 15 applications for SPAC listings but only five were listed, raising a combined USD 639 million in 2022. The market for SPACs failed to gain any momentum as Hong Kong received no SPAC listings in 2023.

The lack of new SEHK SPAC listings may be due to the stringent requirements in place compared to the requirements laid out in the U.S and Singapore. For instance, the SPACs listing regime in SEHK limits investments to professional investors while the U.S. and Singapore do not. New SPACs in SEHK will also be required to raise IPO funds of at least HKD 1 billion versus the required minimum market capitalization in the U.S. (NYSE and NASDAQ) ranging from USD 50 million to USD 100 million. The minimum market capitalization in Singapore is SGD 150 million. Further, only institutional investors and individuals with at least HKD 8 million in financial assets can purchase shares up until the SPAC listed in Hong Kong completes an acquisition.

Exculpation of Officers

United States

The Delaware General Corporation Law was amended in the summer of 2022 to allow companies to limit the liability of certain executive officers in cases of alleged violations of their fiduciary duty of care. Delaware companies have been permitted to exculpate (limit the liability of) directors for many years, and nearly all Delaware companies already provide for director exculpation in their charters. Companies seeking to provide exculpation to officers must first receive shareholder approval for a charter amendment. In 2023, 297 companies – most of which were incorporated in Delaware – proposed such charter amendments at an annual or special meeting. Of these companies, 244 (82 percent of the total) received the requisite level of shareholder approval, but 53 such proposals failed, as the companies were unable to win support from a majority (or in some cases, a supermajority) of outstanding shares.

Most Delaware companies have not yet submitted such charter amendments to a vote, either because they wanted to wait and see the vote outcomes at the early adopters, or because charter amendments require the filing of a preliminary proxy, which would have added to companies' workloads in a year in which they were already grappling with the SEC's new "pay versus performance" disclosure requirements. However, it is expected that more companies will propose charter amendments for officer exculpation in 2024; including those in other states, such as Pennsylvania, that have followed Delaware in amending their corporate laws to allow officer exculpation. It is also possible that some companies will be motivated to reduce or eliminate their supermajority vote requirements, to increase the likelihood that officer exculpation will be approved.

Universal Proxy and Advance Notice Bylaws

United States

2023 was the first full calendar year of director elections under the SEC's rule on universal proxy cards (UPC), which allow shareholders voting by proxy to pick and choose from among the full set of management and dissident nominees – an option that has long been available to those few shareholders who attend the meeting. Contrary to the predictions of some lawyers and corporate advisers, the new rules did not lead to a surge in contested elections at US companies, nor to a significant change in dissidents' win rates in such contests. There could be several reasons for this. First, some companies may have been more willing to settle with dissidents to avoid a contested election, due to uncertainty about the impact of universal proxy. In addition, many companies amended their "advance notice" bylaw provisions in response to the SEC rule changes, in many cases greatly expanding the volume of information sought about director nominees, nominating shareholders and related parties, and thereby providing additional grounds for disqualifying nominees. More than half the companies in the S&P 500 -- 263 companies -- amended their advance notice bylaws either after the universal proxy rules were first announced (in November 2021) but before they took effect (in September 2022), or in the 12 months after the rules became effective. Numerous smaller companies have also amended their advance notice bylaws. But perhaps the biggest reason why universal proxy cards did not lead to a flood of contested elections is that universal proxy does not make it easier for a dissident to convince shareholders that the dissident has established a compelling case for change, nor make it easier to recruit qualified candidates to stand for election.

Two proxy contests are expected to take place in 2024 that would be by far the largest of the "UPC era" to date. At **Starbucks Corporation**, the labor union coalition Strategic Organizing Center has nominated three directors, while at **The Walt Disney Company**, Trian Partners has nominated two candidates and Blackwells Capital has nominated three. As the respective meeting dates approach, shareholders should anticipate much ink being spilled speculating on the impact that universal proxy may have on the outcome of these contests. Shareholders should also anticipate additional amendments to advance notice bylaws. However, the most restrictive of such bylaw provisions, adopted by **Masimo Corporation** and a handful of other companies -- and already repealed by several of those companies -- are unlikely to be widely copied. These provisions required disclosure by a nominating shareholder of its plans for director nominations at any other companies in the coming 12 months, as well as any shareholder proposals submitted at other companies in the past (even if withdrawn), and disclosure of the nominating shareholder's own limited partners. These disclosure requirements were widely viewed as unacceptable to any activist shareholder, as well as unnecessary for ordinary shareholders in deciding whether to support dissident nominees.

Activism and M&A

Europe

The number of European proxy contests for board seats in 2023, at a total of 25, was just above the long-term average of 24 proxy fights since 2009. The dissident success rate (24 percent) and median market cap of target companies (EUR 113 million) have declined in recent years, reaching their second lowest level in the past decade.

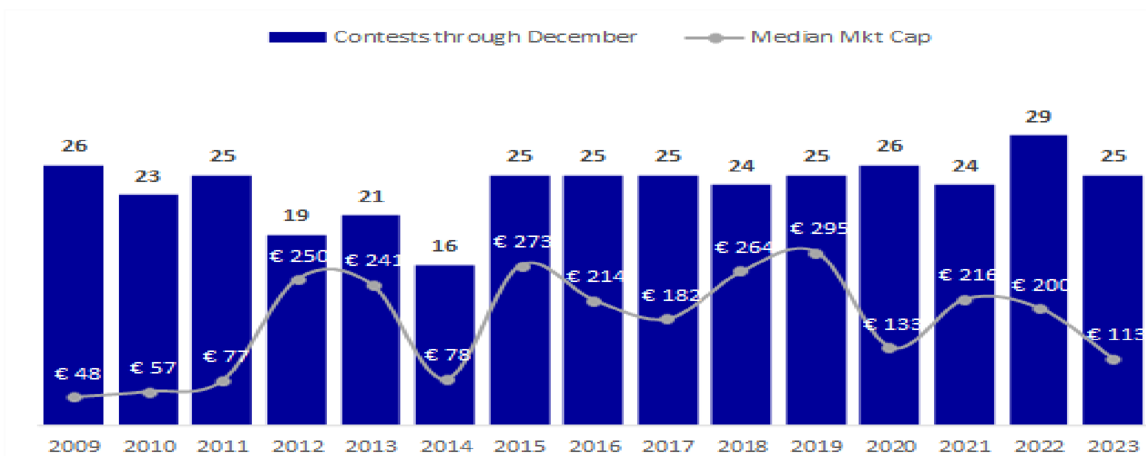
After a sharp decline in 2021, the number of control fights at European companies in 2023 exceeded the long-term average of approximately nine fights per year. Yet, the dissident success rate for control fights (10 percent) declined further to its second lowest level on record, in line with the success rate for overall dissident campaigns.

There have been 94 control fights in Europe since 2013. The dissidents gained board control in fewer than one-in-three fights over that period. However, the dissident success rate (defined as dissident gaining board control) has fluctuated widely, peaking at 50-60 percent in 2016-2018. The dissidents have succeeded in gaining board control in only one case in each of the last three years, below the long-term average of 2.7 and second lowest on record after 2019 (which was the only year when dissidents did not register success in a control fight, despite the number of control fights in that year being at the long-term average).

Another interesting observation is the relatively small size (median market cap of EUR 130 million) of the companies at which dissidents succeeded in gaining full support for their director slate, compared to a median market cap of EUR 200 million for the sample of European companies that had a proxy contest for a board seat since 2013. This is not surprising considering that most control fights in Europe are not run by professional investors, and the dissident has a substantial stake that enables it to win the contest.

M&A activism is a continuing trend in Europe, where several buyouts by financial sponsors have been perceived as opportunistic, stirring public opposition, though mostly in the form of short comments in the press.

CHART FOCUS: EUROPEAN PROXY CONTESTS



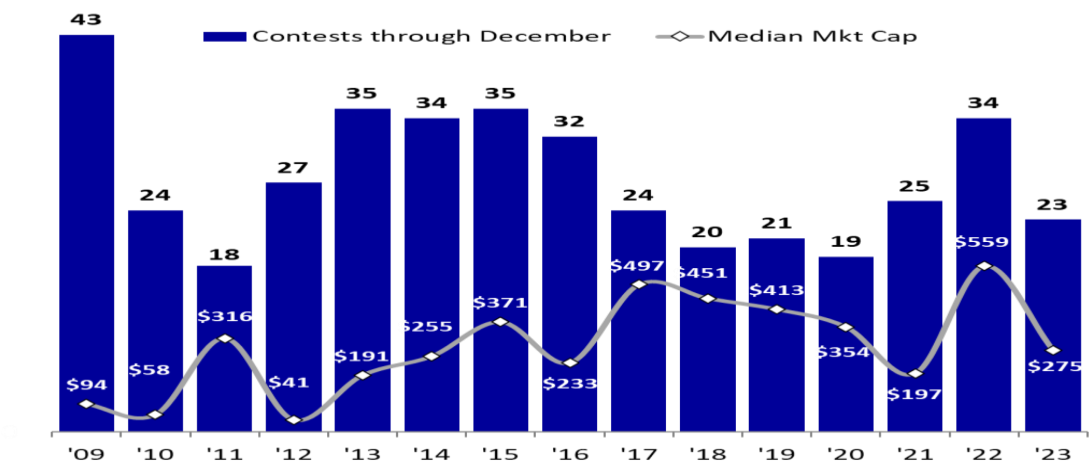
Source: ISS Governance Research & Voting, SSR Pipeline; EUR in millions

United States

Though US activists had a busy year in 2023, the number of contests that ultimately went all the way to a vote declined compared to 2022, underscoring the fact that Universal Proxy Card (UPC) adoption had a muted impact on the 2023 proxy season. The requirement that dissident nominees be listed on the management proxy card, thereby lowering the potential costs of running a contest, did not facilitate a surge in campaigns by first-time, inexperienced activists, as some had feared. UPC adoption also did not directly impact the success rate of activists; at 43 percent, the activist win rate in 2023 was effectively unchanged over the prior year (44 percent). The median market cap of target companies fell approximately 50 percent.

Nonetheless, as discussed above, concern over the potential impact of UPCs led many companies to take a more defensive stance, including by using advance notice provisions to invalidate dissident nominees. While this high-risk strategy proved successful for a few small companies, the second-largest company targeted in 2023, Masimo Corporation, saw its controversial advance notice provisions roundly rejected by the court of public opinion. This reputational damage contributed to the success of Politan Capital Management, which ultimately won two seats on the five-member board, along with the reimbursement of $18 million in legal fees.

CHART FOCUS: US PROXY CONTESTS



Source: ISS Governance Research & Voting, SSR Pipeline; $ in millions

Canada

There was an increase in the number of proxy contests at Canadian companies in 2023, with seven contests that saw a shareholder vote compared to four in 2022. The targeted companies had a median market capitalization of $48 million, a significant rise from the $4.3 million seen in the previous year. Although junior natural resource companies continued to be prominent spaces for activism, there was also representation from the technology and healthcare sectors. Compared to 2022, proxy contests at natural resource companies involved firms with generally more progressed exploration and development assets, with some even having producing interests.

As 2023 ended, **Gildan Activewear Inc.** became embroiled in a proxy fight stemming from the termination of its co-founder and CEO, Glenn Chamandy. The board's decision to remove Chamandy faced criticism from various institutional shareholders purported to represent 35 percent of outstanding shares. On December 29, 2023, Browning West, LP, a member of this shareholder group, indicated its intention to requisition a special meeting, present a five-member director slate, and seek the reinstatement of Chamandy, citing him as instrumental to the company's success. In response, Gildan stated the former CEO had attempted to subvert a previously agreed upon succession plan while seeking to entangle the company in an ill-conceived M&A strategy. Subsequently, on January 9, 2024, the dissident requisitioned a special meeting with a larger eight-member majority slate (out of an eleven-member board), pointing to alleged entrenchment tactics and accelerated start date of Gildan's new CEO as basis for seeking additional seats.

The proxy fight at Gildan is noteworthy in the Canadian market context, as battles involving S&P/TSX Composite Index constituents are infrequent, with the most recent one reaching a shareholder vote at **Detour Gold Corp.** in 2018. On January 21, 2024, Gildan alleged the dissident violated U.S. anti-trust laws while reaching the 5 percent ownership threshold necessary to requisition a special meeting under the CBCA. The issues related to the share acquisition have been implied to cast doubt on the dissident case and demonstrate overall imprudence; however, Gildan has set a meeting date for May 28, 2024, while the validity of the requisition is disputed in court.

2023 Outlook

United States

Consistent with a broader pushback on ESG, environmental and social issues did not feature prominently in US proxy contest in 2023. However, one of the first major contests of 2024 – the nomination of three directors to the board of Starbucks by the Strategic Organizing Center (SOC) noted earlier in this report – is centered on labor issues. The outcome of this contest in mid-March will provide some indication as to whether proxy contests predicated on such issues could proliferate.

In late 2022, Disney reached a settlement with Third Point, adding a new independent director to its board. Shortly thereafter, the company brough back Bob Iger as CEO. In early 2023, it was Trian Fund Management's turn to challenge the company; Trian announced its intention to nominate Nelson Peltz to the board in January but paused its campaign a month later after the company announced operational changes. The truce did not last long, and by October Trian resumed its campaign. Trian has since doubled its ask and is now seeking to elect Peltz and former Disney CFO James Rasulo to the board, in what could be the largest contest this year. Several other activists have also joined the fray, including ValueAct, which has since signed a confidentiality agreement with the company; Blackwells Capital, which has criticized Trian's campaign and nominated three candidates of its own; and Ancora Advisors, which has stated its support for Trian.

The M&A environment, which was subdued by regulatory concerns and higher financing costs in 2023, is showing signs of recovery. While some major deals have been blocked (**Illumina**'s acquisition of **GRAIL**; **JetBlue**'s acquisition of **Spirit Airlines**), others have withstood FTC challenges (**UnitedHealthcare**'s acquisition of **Change Healthcare**; Microsoft's acquisition of **Activision Blizzard**). The U.S. energy sector has also seen a rapid pace of consolidation involving major producers.

Europe

Activist activity in Europe is expected to remain robust in 2024. Bluebell Capital is continuing its campaign at Swiss commodity trading firm **Glencore**, having recently upped the stakes by seeking the removal of the company's CEO. The UK-based activist is also targeting French luxury goods producer **Kering** and payments provider **Worldline**, where it is campaigning for board changes and removal of the chair. German pharma and biotech group **Bayer** is facing renewed calls for a breakup, this time from one of its largest shareholders, Harris Associates. Other shareholders on the register that have recently floated the idea of breaking up the company include Artisan Partners and Bluebell. Irish REIT I-RES is facing a renewed campaign from Vision Capital, which is seeking board control.

Europe is poised to see some high-profile contests with an environmental focus. Oil giant **Shell** is facing investor rebellion over its alleged lack of alignment with 2015 Paris agreement on emission reduction. A resolution filed by Dutch activists at Follow This has gained the support of a group of 27 shareholders owning approximately 5 percent of the capital, including French asset manager Amundi and UK's National Employment Savings Trust.

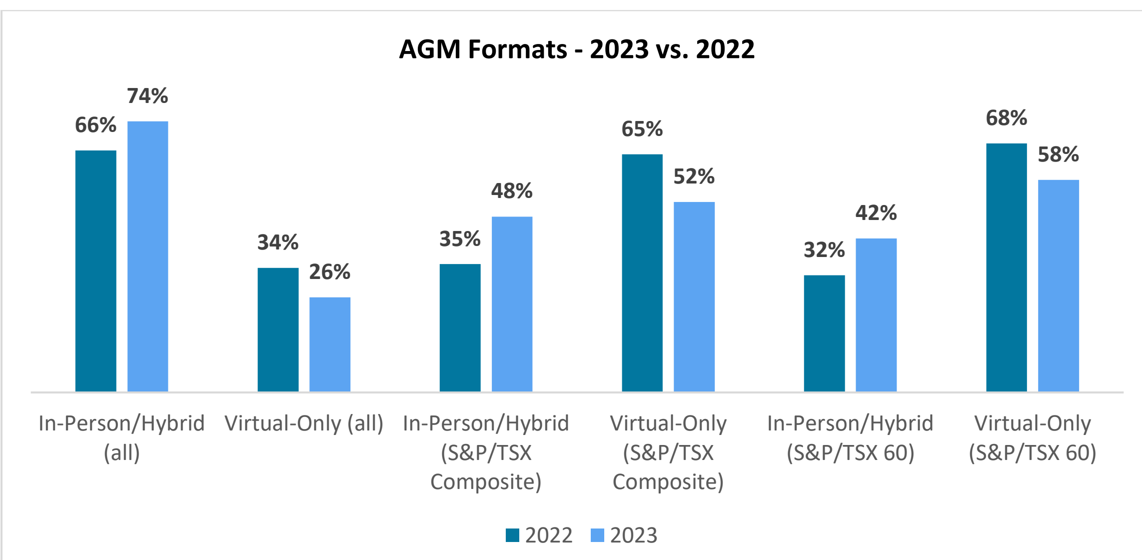
Virtual Meetings

Canada

In January 2024, the Canadian Coalition for Good Governance (CCGG) published its Virtual Only Shareholder Meeting Policy, which came after a May 2023 op-ed by the CCGG's CEO, voicing opposition to the virtual-only meeting format in a post-pandemic world. The policy recognizes that virtual attendance comes with certain benefits to shareholders; however, the CCGG believes there is a risk that shareholder participation is being diminished. As such, the CCGG advocates for in-person attendance at AGMs and recommends hybrid meetings as the preferred format.

In addition to the CCGG policy, shareholders are also becoming more vocal in opposing the continued use of the virtual-only format. Mouvement d'éducation et de défense des actionnaires (MÉDAC) submitted shareholder proposals at **Metro Inc.** and **CGI Inc.**, requesting that their AGMs are held in person, with virtual meetings being complementary and not replacing in-person meetings. The shareholder proposal received 53.8 percent shareholder support at Metro and 16.9 percent at CGI; however, excluding Class B shares, held primarily by the controlling shareholder and founder, the shareholder proposal received 48.0 percent support from Class A shareholders. It can be expected that similar shareholder proposals will be submitted at other companies, including the banks.

Prior to the pandemic, in-person AGMs were the norm in Canada, and while the number of virtual-only AGMs went down in 2023, a significant number of Canadian companies continues to use the virtual-only format. In total, 26 percent of companies held virtual-only meetings in 2023, down from 34 percent in 2022. This practice is even more pronounced at Canada's largest companies. 52 percent of S&P/TSX Composite Index companies held virtual-only meetings in 2023, and 58 percent of S&P/TSX 60 Index companies.



Source: ISS Governance Research & Voting; companies covered under ISS Canada Policy

In late February 2024, the Canadian Securities Administrators (CSA) provided updated guidance on virtual shareholder meetings following initial guidance provided in February 2022, noting that some stakeholders have continued to raise concerns based on their experience participating in virtual-only shareholder meetings. Various stakeholders have expressed that virtual-only meetings present challenges for shareholders wishing to exercise their rights and express themselves to management, as well as difficulties accessing and participating in the virtual meetings.

Europe

European meetings formats will likely be interesting this year because, throughout 2023 and in early 2024, several additional European markets (namely Sweden and Austria) adopted permanent legislation to regulate the shareholder meeting format. In the Netherlands, legislation is also anticipated soon. Thus, similar to 2023, a significant number of companies are expected to continue holding virtual-only meetings this year, especially as the true hybrid format still has not become the norm in Europe.

There are exceptions to this at certain companies, however. The Austrian company, **Raiffeisen Bank International**, will be holding its second consecutive hybrid meeting this year. Many shareholders were very positive about the company's shareholder meeting last year and have encouraged other companies across Europe to offer similar meeting formats. Thus far, there appear to be few takers, and we expect most of Europe to go either fully in-person, or virtual, or "hybrid light" (i.e., recorded meeting but without the possibility of actual/live shareholder interaction or voting).

In the U.K., the ongoing debate over standard market practice for meeting format will likely continue into 2024, with companies adopting different meeting formats depending on their individual circumstances. In 2023, both physical and hybrid formats constituted the overwhelming majority of all meetings. However, given the recent climate change activism faced by companies in certain industries, it is plausible that we will see some more companies propose virtual-only meetings in 2024 to avoid such disruption.

Regulatory & Other Developments

United States

SEC proposed rules covering climate-related disclosures and the submission of shareholder proposals first proposed in 2022 are among many rules slated for finalization in 2024.

In March 2022, the SEC released a proposed climate disclosure rule which would require companies to disclose certain climate-related risks and greenhouse gas emissions within their registration statements and periodic reports. Under this proposal, companies would be required to disclose their own Scope 1 and Scope 2 emissions, as well as Scope 3 emissions if they are material or included in any company set emission targets. However, the breadth of disclosure requirements in final form is subject to change as in late 2023 the SEC indicated it may scale back certain of its initially proposed requirements. The SEC announced on February 28, 2024, that it is considering finalizing its climate-related disclosure rules at its March 6, 2024, meeting.

In July 2022, the SEC released its proposed amendments to Rule 14a-8; specifically, revising three of the 13 bases companies may use when seeking to exclude a shareholder proposal from appearing on ballot through the no action process. The "substantial implementation" exclusion basis would be amended to provide that a proposal may be excluded under this provision if the company had already implemented the "essential elements" of the proposal. The duplication exclusion basis would specify that a proposal "substantially duplicates" another proposal if it addresses the same subject matter and seeks the same objective by the same means. Finally, the resubmission exclusion basis would specify that a proposal constitutes a resubmission if it "substantially duplicates" a proposal on ballot within the prior five years.

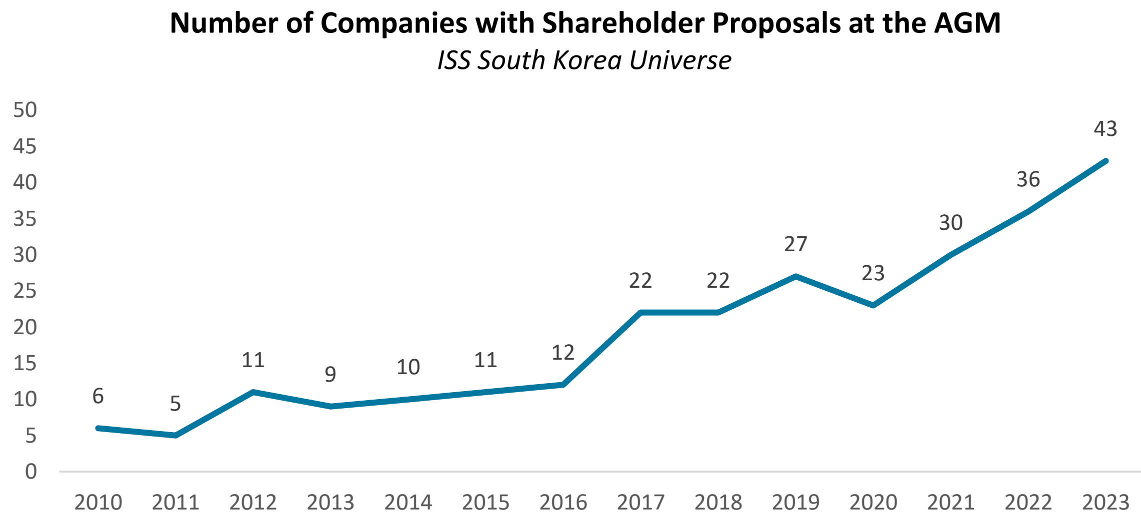
Korea

Korea’s unique economic development produced a structural imbalance of power between the majority shareholders (founding family members) of a company and its minority shareholders. This lopsided playfield rendered a conflict of interest between the majority and the minority shareholders, which seldom came to light unless otherwise highlighted by foreign investors. Increasingly, the domestic investor community is starting to express concern on the issue, supported by the surging stake of retail investors (and politicians interested in winning their votes in election campaigns). The collective interest brought an unprecedented rise of shareholder activism in 2023.

In terms of topics, the entrenchment of controlling shareholders, capital allocation, and the lack of board oversight continue to be the most debated items. In the 2023 proxy season, the number of shareholder proposals asking companies to return capital via cash dividends or share buybacks increased by 30 percent compared to the previous season. Some institutional investors and activists expressed concern over a company's cash-hoarding practices serving the interests of controlling stakeholders.

While the number of shareholder proposals has been drastically increasing, the win-rate remains low, in part due to the lackluster participation of domestic minority shareholders and the use of entrenchment tools supporting the interests of controlling shareholders such as cross-shareholdings, uncancelled treasury shares, and non-profit corporations. Despite the low win-rates, the shifting landscape and how the growing influence of minority shareholders may impact the overall support rate is something to watch for in 2024.

In the 2023 proxy season, Korea received the third highest number of shareholder proposals next to the US and Japan. the rise of shareholder activism largely relates to the governance concerns noted earlier. A similar level of intensity is expected to trend throughout 2024, based on freshly launched campaigns and the progress of existing campaigns.



Source: ISS Governance Research & Voting

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