Fewer shareholder proposals, greater board outreach seen

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Era of harmony expected in upcoming proxy season

The proxy season opens with the biggest number of shareholder proposals corporations confront coming from a group of investors representing $428.1 billion in combined assets and led by a Harvard University initiative, filing 74 resolutions calling for annual elections for directors.

On other issues, Walt Disney Co. and Verizon Communications Inc. have been fighting shareholders to keep proposals out of their proxy statements, while Hewlett-Packard Co. and Chesapeake Energy Corp. are cutting a new path to quell shareholder conflict over proxy access.

Despite the upcoming clashes, corporate governance has reached a new harmony. Corporations this year face a likelihood of far fewer shareholder proposals and higher shareholder support for directors and executive compensation, according to experts.

Corporations increasingly have reached out to shareholders to initiate discussions on executive pay and other key issues to reach agreement on reforms.

There "is more engagement between institutional investors and companies over pay issues, bringing directors into that discussion — members of the executive compensation committee, in a very significant way," said Patrick McGurn, special counsel, Institutional Shareholder Services Inc., Rockville, Md., a corporate governance and proxy-voting advisory firm. "Boards are being very responsive to shareholders concerns on say on pay," he said of what has been one of the most contentious issues.

"Companies are much more likely today than they were a few years ago to pick up the phone and reach out to institutional investors to listen to their concerns about executive compensation," he said.

Cornish F. Hitchcock, attorney with Hitchcock Law Firm PLLC, Washington, who is working with pension funds and other institutional investors on proposals, said, "I think companies realize they need to do more outreach ... I think there is more engagement of shareholders."

Michael P. McCauley, senior officer, investment programs and governance of the $160.9 billion Florida State Board of Administration, Tallahassee, sees a relationship between market performance and shareholder indignation.

"There is a high correlation of what the market does and I think the investor appetite for evaluating pay-for-performance relationships," Mr. McCauley said. "If you have a really strong

market, I think that would damp down the antagonism toward some of these say-on-pay (ratifications). But if it were to stay flat or decline, a lot more attention would be paid to it."

So far for this year, shareholders have filed 450 proposals, well off the pace of last year, according to ISS data.

While shareholder proposals could grow substantially, "it looks unlikely" to surpass last year's level, Mr. McGurn said. Overall, there are "not a lot of new issues coming up in 2013," he said.

Proposals filed so far

Among key issues, according to ISS data, shareholder proposals filed so far for this proxy season include:

- 76 calling for annual election of directors;
- 40 on executive compensation;
- 39 calling for disclosure of corporate political spending;
- 28 calling for an independent chair of the board of directors; and
- three calling for proxy access.

In addition, shareholders filed 221 proposals on social issues, excluding resolutions filed on political spending, according to ISS data.

"Right now, the biggest shareholder proposal campaign we are looking at by far" this year is the one led by Lucian Arye Bebchuk, professor of law, economics and finance at Harvard Law School, Cambridge, Mass., said Mr. McGurn.

Mr. Bebchuk leads the campaign as part of the Shareholder Rights Project he directs.

Under the project, seven major pension funds and a foundation are targeting 74 S&P 500 and other U.S. large-cap companies to end classified boards and move to annual elections of all their corporate directors.

The investors are the Florida SBA; Illinois State Board of Investment; Los Angeles County Employees' Retirement Association; Massachusetts Pension Reserves Investment Management Board; North Carolina Department of State Treasurer, which oversees the North Carolina Retirement Systems; Ohio Public Employees Retirement System; Ohio School Employees Retirement System; and Nathan Cummings Foundation.

Each fund worked with the Shareholder Rights Project independently of the others and targeted different companies, Mr. McCauley said.

Companies targeted include NCR Corp., Lincoln National Corp., Cigna Corp., United States Steel Corp., FMC Corp., Apache Corp., Ashland Inc. and Airgas Inc.

"We expect that a substantial proportion of these proposals will result in negotiated outcomes involving a move to annual elections with the remainder going to a vote and commonly receiving

majority support," Mr. Bebchuk, who is also director of the Harvard Law School's Program on Corporate Governance, wrote in an e-mail.

"The (Shareholder Rights Project) has facilitated, and continues to facilitate, a substantial increase in activism by public pension funds," he wrote. "During 2012, proposals by SRP-represented investors represented 40% of all proposals by public pension funds that went to a vote and 60% of all proposals by public pension funds that obtained majority support."

Last year, 88 shareholder proposals were filed under the SRP, including 56 that came to a vote, achieving an average 81.4% in support, including 50 with majority support, Mr. Bebchuk said.

At Disney, management appears likely to face a shareholder proposal from Legal & General Assurance (Pensions Management) Ltd. calling for proxy access.

The proposal calls for Disney to enable a shareholder or a group of shareholders that owns at least a total of 3% of its stock for at least three years to nominate up to 20% of the directors on company's the board.

Michael J. Reedich, special counsel in the Securities and Exchange Commission's Division of Corporation Finance, in a letter to Disney on Dec. 13 denied the company's request to exclude the proposal from its proxy statement.

"So far as I know it's on track to be in the proxy statement," said Mr. Hitchcock.

Disney media relations did not respond to a request for comment.

Verizon proposal

Verizon faces the potential of a proposal from Legal & General calling for an independent chair of its board. Verizon, in a Dec. 28 letter, asked the SEC to exclude the proposal, according to communication provide by Mr. Hitchcock, representing Legal & General. On Jan. 11, Mr. Hitchcock, in a letter, asked the SEC to reject Verizon's request. The issue is still pending. Robert A. Varettoni, Verizon executive director media relations, said company executives "have had productive discussions" with Mr. Hitchcock but no resolution yet.

For its March 20 annual meeting, Hewlett-Packard put a management process access proposal in its proxy statement, which was filed Jan. 11. That decision came after an agreement with Amalgamated Bank's LongView Funds, which agreed to withdraw its proxy access proposal last year in exchange for the management proposal this year.

The board of Chesapeake Energy also plans to include a proxy access proposal in its proxy statement this year after a proposal filed in 2012 by New York City Comptroller John C. Liu on behalf of the five city retirement systems won a majority vote in support.

The company plans to put the proposal in its proxy statement "because this relates to the fundamental right of shareholders to elect directors," Chesapeake Energy said in a statement Jan. 7.

Despite making headway on the issue, the ISS' Mr. McGurn doesn't expect proxy access proposals to reach last year's level of 24 filed, including 12 that came to a vote, receiving on average 29% support.

A lot of large public funds “turned to other issues, such as the independent chair (and) repeal of classified board structures,” Mr. McGurn said. “We're just not seeing a significant number of proposals” on proxy access.

On independent chair proposals, Mr. McGurn said, “We are seeing a substantial number,” even though majority support has been relatively low. Last year, of the 64 filed, 56 came to a vote, receiving on average 35% support, including four that got a majority in support, according to ISS data.

“It's just an issue where there is a lot of case-by-case voting by institutional investors,” Mr. McGurn said. “If they don't see a compelling reason to force a board to adopt an independent chair structure,” they tend to be supportive of companies having a meaningful lead director in place.