



Paul Hodgson: Proxy Preview 2017 - Shareholder resolutions in a time of Trump

Cautious optimism about this year's AGM season in a changed political climate

by Paul Hodgson | March 10th, 2017

As with last year's Proxy Preview report, the release of this year's Proxy Preview 2017 was accompanied by a webinar. The speakers were report authors Heidi Welsh from Si2 and Michael Passoff of Proxy Impact, along with Tim Smith of Walden Asset Management and **Andrew Behar**, CEO of **As You Sow**.



Welsh opened the webinar by saying that shareholders needed to be wary of how or if the SEC was going to limit shareholder rights and the requirements for corporate disclosures. "We think the current situation works," said Welsh. But she warned that with a new (albeit yet to be confirmed) SEC chairman – Jay Clayton, former lawyer at law firm Sullivan & Cromwell, with many connections to former Goldman Sachs employees already in the Trump administration – this situation could change dramatically. At the end of the webinar, Welsh reminded everyone that most of the resolutions covered in the report had been proposed before the election result was known. It won't be until next year, she said, that we will see what changes in the patterns of resolutions will emerge as a result of the actions of the Trump administration.

She also said that there was no evidence thus far of the impact of the Trump administration on the SEC though she did note that the number of challenges from companies had increased this year. While figures from the Review do not cover governance shareholder resolutions, Welsh noted that among the ways investors have been trying to change the way corporate America operates have been proxy access proposals. Now half of the S&P 500 has proxy access, she announced. Although the total number of social and environmental resolutions has dropped in number since 2016, fewer have been withdrawn, and there will be a new record set in 2017 on the number of resolutions actually voted on. The approximately 20 per cent average support masks some substantial minority and majority votes from last year. Said Welsh, there is a record 338 resolutions to be voted on, up from 243 last year. There were 114 challenges to these resolutions last year, compared to 71 this year.

Welsh's figures show that SRI firms are most likely to be the lead filers on these resolutions, faith-based organisations are the second-biggest group. The number of resolutions on E&S from pension funds is down due to their concentration on governance-related issues. Human and labor rights resolutions show the largest real growth year on year, though the largest number of resolutions on a single issue was 83, on political activity, followed by 70 on climate change and 64 on human and labor rights.

The biggest grouping of resolutions within the climate change proposals relates to impact and strategy; how is an energy company going to cope in a 2°C world? Investors are looking for companies to provide transparency and scenario analysis on how to cope with these realities. Among new 'E' resolutions are those on coal financing and several on high carbon exposure divestment.

Among environmental resolutions more generally there were new initiatives on disclosures about the dangers of lead in paint at Home Depot and Lowe's. In addition, a resolution on antibiotics in meat at Tyson Foods was withdrawn because the company had acquired Beyond Meat, a firm developing protein from non-animal sources. On the other hand, a resolution calling for the prevention of the use of antibiotics in raising animals had received 31 per cent support at Sanderson Farms. Some companies have made commitments in this area, but mainly in the production of chicken, shareholders want these commitments to spread to the production of beef and pork.

Most political activity resolutions are about lobbying oversight and disclosure, and there are a lot of them, some 50 so far. Si2 recently released a study with the IRRC Institute called [How leading US corporations govern and spend on state lobbying](#). It found that around 90 companies of the 100 largest US companies disclosed their policies surrounding election spending but only a quarter have board policies around lobbying.

The successful gender pay equity campaign launched in the tech industry last year has now shifted to finance, with the highest ever number of resolutions this year, at 29. Welsh had confidently announced last year that the LGBTQ equality campaign was successfully over. Unfortunately, an SEC decision agreeing with fashion retailer Cato that it did not need to write an explicit non-discrimination policy for LGBTQ employees seems to have reversed this successful conclusion. Another all-time high was reached with 28 resolutions on board diversity. Resolutions on this issue from the UAW Retirees' Medical Benefits Trust are trying a different tack. These resolutions are asking companies to adopt the so-called "Rooney" rule. For those unfamiliar with it, the Rooney rule requires National Football League teams looking for coaches to at least interview minority applicants. In another change to policy, the SEC now considers resolutions on drug pricing as interfering with the company's ordinary business and such resolutions were not allowed this year.

Proxy Impact's Passoff opened his section of the webinar with the announcement that Exxon had wiped off 19 percent of its proven oil reserves; the first in the industry. He also noted that the EPA had repealed the rule requiring companies to make disclosures on meeting emissions. Fortunately, he quipped, shareholder resolutions are taking up the cause where the government has left off. The 'go-to' climate resolution, he said, is still the requirement for a company to make quantitative GHG emission reduction commitments. He noted that the majority of Fortune 100 companies have some kind of GHG reduction goals though it is unclear what the qualitative nature of those goals are. As the shareholder campaign against the Dakota access pipeline gears up, Passoff also wondered how the lack of regulatory risk would weigh against any reputational risk.

Walden's Smith opened his remarks saying we had seen 45 years of shareholder resolutions, which kicked off in the early 70s with the first resolutions about apartheid in South Africa. Smith also pointed to a section in the review written by Ken Bertsch, Executive Director at the Council of Institutional Investors (CII). Bertsch writes that the Business Roundtable (BRT) put out a proposal in October last year that would limit access to the shareholder proposal process to holders owning anywhere from 0.15 per cent to 3 per cent of shares outstanding, depending on the size of the company. He gives the example of

Apple, where this would raise the threshold from the current \$2,000 to just over \$1 billion given current market valuations.

Smith also referred to the 50 resolutions calling for the disclosure of political lobbying which he noted was different from political spending; on that latter issue 155 companies are already doing a good job of disclosure and these are listed on the Center for Political Accountability website. He noted that the national Chamber of Commerce, the BRT and the National Association of Manufacturers are all lobbying for more secrecy surrounding lobbying rather than more disclosure; on the other hand, pharmaceutical giant Pfizer is actually increasing its disclosure levels including on its spending on public policy advocacy. These business groups are also pushing back on climate regulations, he added. Resolutions on lobbying disclosure are meeting with some success, however, with an approximately 40 per cent vote in support at Emerson Electric. During the question-and-answer session at the end of the webinar, one listener brought up the subject of virtual meetings. Smith addressed this issue, saying that for a lot of small companies this was an exercise in economy and efficiency and therefore not a cause for concern. But, he added, since HP and Intel, and now Conoco and Duke, have booked virtual meetings, these attempts at preventing shareholders from confronting management were beginning to seem more like “the recent examples of Congressmen avoiding their constituents at town hall meetings”. Smith also praised the work of SRI firm Newground in Seattle, with its continuing resolutions calling for simple majority vote counting. He noted that Simon Property had recently agreed to this principle. Smith also announced that State Street had just disclosed its decision to vote its \$2.5 trillion worth of holdings in favour of resolutions on board diversity and against boards that had no diversity.

Another question seeking information on how to find out how major asset owners had voted on resolutions brought a comment from Smith noting that most major asset owners simply vote against all E and S resolutions, though a few vote for some governance proposals. Walden has been petitioning some of the major asset owners to review their proxy voting policies. As a result, BlackRock, for example, has indicated that it will be publishing a revised climate change vote policy.

While the mood of the webinar was optimistic and relatively feisty, there was a general mood of foreboding as to the future over fears that the US Chamber and the BRT would gain more power and influence and that the SEC commissioners would be populated by Trump nominees. [Link](#)