2023 SHAREHOLDER MEETING AGENDA

Acclimating to Uncertainty in 2023

BDO

Contents

2023 Shareholder Meeting Priorities

Over the last three years, corporate boards and executive teams have weathered the macroeconomic challenges of crippling supply chain woes, resource shortages, labor crises, dramatic stakeholder cultural shifts, and increasing regulatory oversight. As outlined in BDO's recent insight *What's on the Minds of Corporate Directors Heading Into 2023*, directors have reached consensus that this year will see much of the same ongoing uncertainty. As corporate leaders navigate another year of disruption, their ability to evaluate risk and help create and sustain value for shareholders remains central.

As the board's oversight role further expands and becomes more complex, directors will in turn face new and legacy challenges in their endeavor to anticipate threats, oversee change, and hold management accountable for strategic growth. During 2023 shareholder meetings, we anticipate material ESG risks, plans to insulate the business from rising interest rates and inflation, and continued activism will capture significant attention. Investors are likely to hone in with particular vigor on human capital management; supply chain resourcing; climate change-related and cyber risks, executive compensation; and new and complex disclosure mandates.

BDO's 2023 Shareholder Meeting Agenda presents the most pressing issues for boards and management teams to consider ahead of this year's annual shareholder meetings. In this issue, we feature comments from Pam Marcogliese, a Partner with Freshfields Bruckhaus Deringer US LLP. Pam, along with board member Gloria Carson and compensation consultant Adam Kahle, a Principal with Pearl Meyer, joined BDO's Amy Rojik in a related complimentary webinar to further explore many of the topics covered here.

Structural Changes to Shareholder Engagement

Two major regulatory developments will be top of mind at this year's shareholder meetings: the **SEC's universal proxy card** (UPC) and **pay versus performance** rulings.

THE UNIVERSAL PROXY CARD

Last year's universal proxy card decision amended federal proxy rules for contested director elections. Now, management and shareholders soliciting proxy votes for director candidates must use a singular proxy card that lists all nominated candidates. As such, shareholders can vote by proxy for individual nominees from competing candidate slates, a privilege previously reserved only for those voting in person at the annual meeting.

While this new process eliminates logistical hurdles for shareholders seeking to nominate their own directors and shifts away from a one-for-all director slate proxy vote, it may lead to more contentious and potentially hostile director elections. Established activists and newly galvanized shareholders will be further empowered in their targeting and scrutiny of individual directors on opposing slates.

BDO Insight: A history of poor financial performance, absence of transparency, and/or a lack of board diversity will likely draw special attention to weak links in corporate governance oversight. Boards that routinely evaluate their vulnerabilities, engage with shareholders and develop intentional succession plans that align director skills and experience with the strategic imperatives of the company better insulate against activist campaigns.

On succession planning: Proxy advisory firms **Institutional Shareholder Services** (ISS) and **Glass Lewis** generally do not support director tenure or age limits but do have strong recommendations on board diversification and governance oversight practices. Proactive, future-oriented boards should assess strategic needs and overall diversity of demographics and skillsets. Annual evaluations of individual directors and overall board performance should be used to inform actions enhancing the quality of a board's governing ability. If age or term limits are utilized, these should not be the de facto means for driving refreshment or vulnerability exercises.

PAY VERSUS PERFORMANCE

The SEC's pay versus performance disclosure rules, finalized in late August 2022 as required by the Dodd-Frank Act, mandate more detailed disclosures on the relationship between financial performance and executive pay. Now, organizations must disclose (among other data) complex computations regarding the compensation "actually paid" to key executives, as well as its cumulative total shareholder return (TSR) for the year, TSR for its chosen peer group, and the metrics by which it measures its own financial performance.

As we enter proxy season, the ruling will embolden investors to dig more deeply into guidance, particularly the board's oversight of management compensation, and obtain more information to use when benchmarking issuers against their peers.

BDO Insight: Investors will soon be equipped with significantly more data about compensation decision-making. In turn, boards will be expected to better articulate related processes, calculations, and evaluations. To do so, directors and investors alike will continue to sharpen computational skills to understand and contextualize the data and disclosure they are looking at.

For more detail on the ruling, read BDO's SEC Flash Report on the topic.

> *"Recent regulatory decisions foretell even greater shareholder scrutiny of compensation, and a surge in Say-On-Pay voting will likely be one of many symptoms of this shift. In short order, recently finalized disclosure rules will grant investors access to more information about their holdings than ever before. The trend of decreasing approval for compensation will likely continue, especially if challenging macroeconomic conditions persist."*
>
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> Partner, Freshfields Bruckhaus Deringer US LLP

ESG Remains in the Spotlight

While various stakeholders will still emphasize ESG risks in 2023, we expect the rising anti-ESG movement to continue to swell in parallel. Political polarization, disagreement about the costs and benefits of sustainability initiatives, and other macroeconomic concerns have propelled this vocal and well-resourced countermovement to advocate against ESG regulation and standard-setters. Nowhere is this more evident than within U.S. politics. Freshfield's Marcogliese adds, *"Amid the considerable polarization of the U.S. electorate, corporate ballot boxes are being leveraged to advance political agendas. This year's shareholder meetings will likely become yet another arena on which political opponents may wage ideological battles."*

With this in mind, as the investing world reacts to Blackrock CEO Larry Fink's **annual letter**, which this year is a singular letter addressed not only to investors but stakeholders more broadly to highlight the importance of trust and hope in the capital markets. While the this year's letter significantly scales back on specific ESG issues (e.g., climate) in favor of highlighting global and domestic macroeconomic trends impacting business decisions, the need to incorporate E, S and G elements into future sustainability plans remains clear. When **interviewed** in Davos, Switzerland earlier in January, Fink said, *"If you do not have a lens toward decarbonization, you will not win one Euro of business…"* As Fink and others endeavor to dispel misconceptions of ESG investing, companies will need to determine how best to assess and manage ESG risks in ways that satisfy both shareholders and other stakeholders.

Another striking example of the corporate sustainability positioning: In December, proxy advisory firm ISS clarified its **voting stance** on shareholder proposals, requesting greater clarity around the congruency of organizations' political contributions, lobbying and electioneering spending with the company's publicly stated values and policies.

CLIMATE CHANGE RISK MANAGEMENT

Facing ongoing stakeholder and global and domestic regulatory pressures, boards and management teams will need to become or remain active on climate risk identification and related management practices and controls and their transparency in disclosing such to shareholders.

As of June 2022, more than **one-third** of the world's largest publicly traded companies have committed to net-zero greenhouse gas emissions targets. Many companies have issued other public ESG commitment statements and other climate-friendly objectives, and standard-setters and other stakeholders expect to see performance against those commitments. As an example of the support for standardization in progress reporting, the **Science Based Targets initiative**, to which BDO is a signatory, recently announced that it would begin to develop the first science-based global standard for financial sector net-zero targets.

BDO Insight: All eyes (U.S. and globally) are fixed on the SEC as it finalizes its climate change risk disclosure ruling. It issued its expansive proposal last spring and is currently wading through comment letters ahead of its final decision. However, companies are strongly cautioned against a "wait and see" approach and should actively consider the various significant components of the proposed rules.

Issuers are further reminded that the SEC has an increasingly close eye on companies' public commitments. In particular, it is watching for how such commitments, if material, are being addressed along with financial impact of such commitments and activities to achieve them, and whether this information is being disclosed appropriately. Additionally, the SEC has been more active in reminding issuers about existing disclosure requirements with respect to material risks posed by climate change. In sample comment letters issued in 2022, the SEC emphasizes:

- Interpretive guidance from 2010 on climate change disclosures and the duty to disclose material information even if not expressly required by rules
- Key areas of consideration:
  - Climate-related disclosures in other issuer reporting outside of SEC filings (e.g., standalone ESG and/or Sustainability reports, website content, etc.)
  - Impact to the issuer of climate-related legislation, regulations, and international accords
  - Indirect consequences to the issuer of regulation or business trends — e.g.,
    - Decreased demand for goods with significant greenhouse emissions
    - Increased competition to develop new/innovative products
    - Decreased demand for services related to carbon-based energy sources
  - Physical impacts to the issuer of climate change events
    - Severity of weather and financial/operational impacts
- Such disclosures may appear in Business, Legal Proceedings, Risk Factors, and MD&A sections of public filings

Where climate change risks may be material to a company, Boards and management teams should expect inquiries and/or formal proposals from shareholders if it is unclear how such risks are being assessed, as to impact, and managed.

HUMAN CAPITAL MANAGEMENT

Ongoing regulatory and stakeholder activity also reflects an increasing focus on workforce engagement and welfare and executive compensation. 2023 shareholder meetings will likely cover the changing paradigms around human capital management. Several key developments and inflection points have paved the way for this shift in attention:

TOPIC	DESCRIPTION	INSIGHT
SEC's Clawback and Compensation Disclosure Ruling	In October 2022, the **SEC adopted accountability rules and amendments** to implement the clawback requirements of the Dodd-Frank Act. The **provisions** will require an issuer, upon preparing a financial statement restatement, to recover incentive-based compensation awarded to any current or former executive officers during the three years preceding the date of the restatement. Additionally, issuers are required to disclose their clawback policies and any actions taken in response to those policies, file them as exhibits to their annual reports, and indicate whether the financial statements reflect the correction of errors and necessitated a clawback analysis by a new checkbox on their annual report.	Note, the Board and, in particular, the Audit Committee should be aware that clawback policies must be triggered by accounting restatements that correct an error in the prior period financial statements that is material to those financial statements (knowns as a "Big R" Restatement) OR a revision restatement (commonly referred to as a "little r" restatement) to correct an error that is not material to prior period financial statements but would result in a material misstatement in the current period financial statements if left uncorrected or if the correction were recorded only in the current period. The inclusion of "little r" restatements is a departure from original proposal and reflects growing attention being paid to how a company performs its materiality analysis in determining the level of restatement required and the increase in the number of "little r" restatements in recent years. Ahead of meetings, boards should dig deeper into the potential consequences of triggers, ensure that organizational policies are current, align with the new clawback requirements, and have been communicated to shareholders.
Attraction and Retention of Diverse, Skilled Talent Pools	In BDO's ***2022 Fall Board Pulse Survey***, 25% of public company directors named talent acquisition and retention as their greatest business risk for the next 12 months. We expect shareholders to voice similar opinions. In this year's meetings, they will also likely inquire about strategies and commitments to improve retention of diverse talent, not just hiring. Amid "quiet quitting" trends and other cultural upheavals in the labor force, as well as more widespread shareholder belief in the link between worker wellness and productivity, maintaining an engaged, talented and diverse workforce can **sharpen a competitive edge**.	According to BDO's ***2023 CFO Survey***, 47% of middle market CFOs say their ESG initiatives have supported their recruiting and retention. As boards — particularly Nomination and Governance and Compensation and Human Capital Committees — map out and articulate their oversight responsibilities for the corporate and governance talent goals, this may be an important consideration. Refer to BDO's Nomination & Governance Committee Priorities for 2023 for further insights on CEO and director succession and refreshment practices, governance processes, policies and documentation as well as communication and reporting considerations.

TOPIC	DESCRIPTION	INSIGHT
Board Diversity	Shareholders, recognizing the strategic value of diverse perspectives, will likely take a more proactive, uncompromising stance on board diversity. Exchanges, top proxy advisory firms and state legislatures, among other groups, have recently articulated their demand for diverse governance: ISS, for example, announced that it would recommend against chairs of nominating committee at companies with no female directors (a policy it expanded in December 2022 to includes companies outside the Russell 3000 and S&P 1500). Glass Lewis is transitioning its **voting policies** for board gender diversity from a fixed numerical approach to a percentage-based approach. For shareholder meetings held after January 1, 2023, they will generally recommend against the chair of the nominating committee of a board that is not at least 30% gender diverse at companies within the Russell 3000 index. Companies outside the Russell 3000 index will still be required to have at least one gender diverse director. For many Nasdaq-listed public companies, the additional disclosure requirements with respect to the Diversity Objective of Nasdaq's 2021 Board Diversity Rule take effect this year. Thousands of organizations on its U.S. exchange will now be required to disclose and/or explain their lack of board diversity and be expected to have at least one female director and one of an underrepresented background. Read BDO's insight **SEC Approves Nasdaq's Board Diversity Disclosure and Board Recruiting Service Proposals** for more on the rule.	The groundswell of investor, consumer and regulator focus on board diversity is unlikely to fade in 2023. Whether you are a small-, mid- or large-cap company, your Nominating and Governance Committee has equal cause to preempt calls for change and assess their current composition through the lens of diversification expectations.

TOPIC	DESCRIPTION	INSIGHT
Say-On-Pay	Say-On-Pay is a tangible example of investors evaluating executive compensation policies. Sullivan and Cromwell say that poorly defined, undisclosed, or opaque performance goals as well as the granting of above-target payouts influenced negative shareholder recommendations in 2022. As such, more thorough compensation disclosure is a business imperative, and these votes against highlight shareholders' demand for pay-for-performance assessment, especially regarding the alignment of CEO compensation with relative TSR.	According to Freshfields, the 2022 proxy season saw the greatest number of votes against Say-On-Pay (on which approximately 3.5% of Russell 3000 companies failed this year). Further, an increasing number of shareholders have proven themselves willing to hold certain directors, especially those on the Compensation Committee, responsible for perceived poor pay practices. In fact, compensation concerns were identified as a primary culprit in approximately 10% of the failed director elections in Russell 3000 companies this year.
ESG-Linked Compensation Targets	ESG-linked executive compensation targets are expected to receive greater shareholder attention in annual meetings this year as more companies think strategically about accountability protocols and controls related to stated ESG goals.	Directors, particularly members of Compensation Committees, should continue to prepare for questions about the methodology and impact of ESG risks and factors on management compensation decisions. BDO's insight ***Compensation Committee Priorities for 2023*** outlines questions directors should be able to answer with respect to how compensation is aligned with the strategic focus of the organization. Our similar **2022 publication** provides further details with regard to how to incorporate ESG factors in establishing measurable KPIs.

GLOBAL ESG AND SUSTAINABILITY RULE-MAKING

As the International Sustainability Standards Board (ISSB) advances its mission to create a standard baseline for sustainability reporting globally, many jurisdictions are advancing their own considerable ESG regulatory mandates that will have broad-reaching impacts on companies who have concentrated operations or do significant business in those jurisdictions.

BDO Insight: 2023 is bringing extensive ESG and sustainability reporting and disclosure mandates from the European Union, United Kingdom, Canada, and Australia, among others. Organizations with a multinational footprint should be mindful of global ESG regulation, regardless of where they are domiciled. Each of the pending regulations will have varying effective dates that will influence how, which, and when companies will be compelled to procure and disclose information. Issuers should remain aware of such regulatory activity as it may have implications for the organization's compliance, reporting, and corporate strategy. Even in regions where companies may be exempt from new rulings, organizations will still likely be benchmarked against competitors that are required to or proactively choose to comply with more stringent regulation and disclosure.

BDO's **ESG Center of Excellence** recently highlighted key topics under focus from regulators worldwide and what those developments could mean for business in ***Action Required: Sustainability and ESG-Related Regulations Are on the Rise Globally***.

Risk Oversight Amid Ongoing Macroeconomic Disruption

2023 shareholder meeting agendas likely will look very similar to **2022 agendas** with respect to trending threats and disruptions faced by corporations.

SUPPLY CHAIN RISK

Three years into a world impacted by COVID-19 and other dramatic macroeconomic disruption, there is no immediate end in sight for **global supply chain headwinds**. Runaway inflation, labor shortages and surging rates of coronavirus and RSV, compounded by unreliable raw material availability and fraught inventory management, have underscored proactive board oversight of management and communication with shareholders as critical. BDO's ***2022 Fall Board Pulse Survey*** demonstrated that directors see supply chain challenges as the top obstacles to their organizations' economic and operational success. As such, they should regularly communicate the materiality of these forces on business continuity along with clear expectations established for management to navigate them.

CYBER RISK

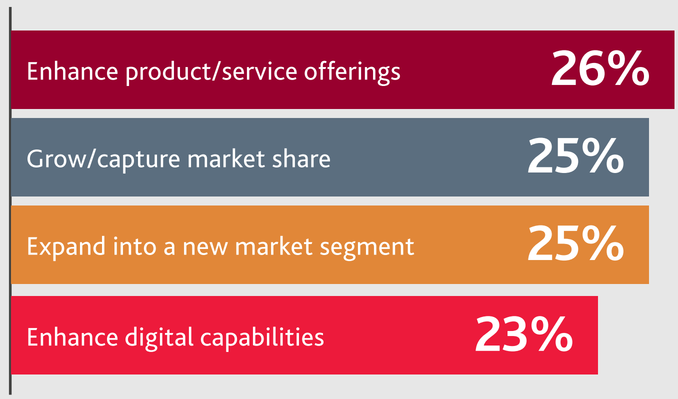
Cybersecurity presents a significant risk to most organizations and all directors, not just those "assigned" to cyber risk by nature of their committee assignment. As such, they each have an obligation to stay apprised of evolving cyber risks and management's approach to mitigating them. Boards also need to evaluate the quality of their oversight of increasing cyber risks, including whether the management team and existing board roster maintains the necessary skills and experience. As they navigate the evolving risk and disclosure landscapes, they will need to determine whether the present board slate sufficiently understands the threat matrix specific to the industry and their business. Looking ahead into 2023, boards also should not be caught flatfooted on anticipated SEC final cyber disclosure rules.* There's no reason to wait to further develop a supporting disclosure framework. Read BDO's ***Board Oversight of Cybersecurity*** to learn more about this critical area of oversight.

*Refer to the **next page** for further discussion on the SEC's proposed cybersecurity disclosure rules.

MERGERS & ACQUISITION RISK

Between 2021 and 2022, merger and acquisition (M&A) activity **dropped** from first place to third in public company directors' ranking of corporate strategies; meanwhile, global M&A deal volumes fell to surprising lows in 2022. Nonetheless, there is still an appetite for and confidence in M&A strategies: According to BDO's ***2023 CFO Outlook Survey***, 78% of middle market CFOs plan to maintain or increase their M&A activities even if economic conditions worsen. How closely the board oversees management's execution of corporate M&A strategy is critical to business resilience.

Top M&A strategic goals include:



More than one-quarter of middle market CFOs who plan to pursue an acquisition are looking to enhance their product or service offerings in the coming year. Nearly 40% of the companies within this group saw revenue decreases in 2022. They likely see new products and services as their ticket to a more successful 2023.

In tech, sharp drops in valuations have led many companies to search for new value-creation opportunities. Some are reconsidering their **integration** plans for recent acquisitions and setting shorter time horizons that align with current market conditions and near-term forecasts.

Source: BDO's ***2023 CFO Outlook Survey***

Given the incredible impact that due diligence around pending deals and integration activities on consummated deals can have on M&A success or failure, the board's role in such transactions remains unchanged. As a best practice, boards should clearly disclose their role in the oversight of both the due diligence and integration processes and controls related to the organization's M&A growth strategies. Additionally, they should be mindful of how transparently they describe how M&A activity aligns with risk assessment impacts of valuation, financing and liquidity, given the ongoing tumult in interest rates and impacts on deal terms and outcomes.

As outlined in BDO's insight ***Mitigating Common Integration Risks to Capture Deal Value Drivers***, establishing accountability and governance structures is a critical first step to mitigate integration risks. In the event that changes must be made to the integration process, the onus is on the board to uphold transparency and communicate those pivots with shareholders.

BDO Insight: The SEC remains heavily focused on how issuers are tailoring leadership structures and board risk oversight responsibility disclosures under Item 407(h) of Regulation S-X. The following examples, underscores the SEC's dissatisfaction with the current quality of issuer disclosures:

Current SEC Disclosure Requirements:

Regulation S-K Item 407(h): Requires disclosure of the leadership structure of the board and why it is appropriate and extent of board's role in risk oversight and how the board administers the risk oversight function, including its effect on the board's leadership structure.

Recent SEC Activity and Rule-Making On the Horizon:

- Fall 2022, SEC's Division of Corporation Finance sent **comment letters** requesting registrants to expand current proxy disclosures as to why a leadership structure is appropriate, the role played by lead independent directors, and specifics as to how the board administers its risk oversight function with the intention of incenting boards to provide less "standardized" and more insightful information to investors about how the entity is governed.
- May 2022, SEC issued proposed rules to **Enhance and Standardize Climate-Related Disclosures for Investors**, specifically board governance disclosures as to:
  - Which board members are responsible for the oversight of climate-related risks;
  - Which board members, if any, have expertise in climate-related risks and the nature of their expertise;
  - The process and frequency by which the board discusses climate-related risks;
  - Whether and how the board or committee considers climate-related risks as part of its business strategy, risk management, and financial oversight; and
  - How the board sets and monitors climate-related goals.
- March 2022, SEC issued proposed rules on **Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure**, specifically board governance disclosures as to:
  - Whether the entire board, specific board members or a board committee is responsible for the oversight of cybersecurity risks;
  - The processes by which the board is informed about cybersecurity risks, and the frequency of its discussions on this topic;
  - Whether and how the board or board committee considers cybersecurity risks as part of its business strategy, risk management, and financial oversight; and
  - Whether any member of the registrant's board has expertise in cybersecurity, and if so, the names of such directors and the nature of such expertise.

Additional Resources for Consideration in 2023

As companion pieces to help prepare for this year's shareholder meeting season, BDO has provided a series of resources that further explore prioritization for the board and its standing committees around the above topics and more:

- **Setting Expectations for 2023 Shareholder Meetings** (Webinar Recording)
- ***What's on the Minds of Corporate Directors Heading into 2023?***
- ***Audit Committee Priorities for 2023***
- ***Compensation Committee Priorities for 2023***
- ***Nomination & Governance Committee Priorities for 2023***

Conclusion

2023 is set to be another year of change, but boards can and should be a port in this storm. Amid a dynamic regulatory environment with implications for activism campaigns and board succession planning, shareholders will expect 2023 annual meetings to delve deeply into disclosure practices, ongoing macroeconomic risks, and due diligence and integration processes. Heightened attention on the compensation of executives, the welfare of workers, and risk disclosure is expected. Facing new shareholder expectations, directors should lean into rich data assessment and refreshment planning to preempt regulatory burdens, satisfy stakeholder demands, and evaluate their own vulnerabilities. Such broad-based proactivity will better protect organizations from the challenges that lie ahead, to the benefit of management, shareholders, partners, employees, and the customers they serve.

HAVE QUESTIONS OR WANT TO LEARN MORE? CONTACT US!