



# 5 Common Shareholder Proposal Mistakes in an Uncommon Year

Shareholder proposal season is upon us, with companies in the full swing of the SEC no action process and beginning to think about their response strategies. This year will be unlike any other. 2023 is poised to be the most unique, and, quite frankly, weirdest year for shareholder proposals we have ever seen:

- **(anti) ESG's Impact:** Companies are no longer just being pressed for more disclosure and action on ESG topics. Now, they are facing questions on whether their ESG efforts are truly in the best interest of shareholder value. Meanwhile, large asset managers and proxy advisors continue to be the targets of loud anti-ESG pressure. Understanding if, and how, stewardship engagement and voting behavior changes will be crucial in 2023.
- **ESG's First Recession:** The potential for an economic downturn will challenge how the investor community prioritizes ESG and governance engagement. While large passive funds are expected to remain committed to their stewardship programs, actively managed funds may refocus recent investment in these teams.
- **Giving Up the Vote:** Large institutional investors rolling out voting choice for their clients is in its early days in terms of scale and adoption. Still, the net result is marginally lessening their impact, enhancing the impact of proxy advisors, and raising questions for issuers trying to understand who is actually voting at their annual meeting.
- **Emboldened Proponents:** Despite a general decrease in support for proposals last year, shareholder proponents remain emboldened going into 2023. Many of these funds view themselves as the protectors or originators of the ESG movement itself. For the first time ever, they feel their work in promoting ESG is under threat.<sup>1</sup> In our view, this has imbued them with a new energy as they refile proposals that previously saw high support and expand their target universe beyond the typical mega-caps to target companies who may have never faced a proposal before.

**Against that backdrop, companies would be wise to avoid these common shareholder proposal mistakes in 2023 more than any year before:**

**Mistake #1: Assuming previous results (yours or others) are indicative of future results.** Every shareholder base is different and every company’s relevant disclosure or exposure to a risk is different. Even your shareholder base, the views of your shareholders, and your risk exposure change year over year. Do not assume your past results or the results of others will be yours. Instead, conduct a thoughtful analysis to gain an understanding what drives your investors’ votes to better predict a vote outcome.

**Mistake #2: Waiting for the proxy to start your defense.** Supplemental disclosure, particularly prior to the filing of the proxy, can go a long way in winning investor support. Supplemental disclosure after the proxy can still win over your shareholders, but leaves the possibility investors perceive this as reactive or potentially inauthentic. Armed with an early and a thoughtful understanding of the market’s view on its position, a company could provide pointed additional disclosure to the market prior to filing its proxy.

**Mistake #3: A zero-communication policy with the proponent.** There are certainly proponents who will not budge at all in reaching a compromise with an issuer in exchange for withdrawing the proposal, or proponents who are filing a proposal to draw attention to a topic without any intent to change the company’s action. Engagements with these proponents may prove fruitless. However, many proponents may be willing to reach a compromise with a company on a given topic in exchange for withdrawing a proposal. Proponents are shareholders, too, and it is certainly not in a company’s best interest to agitate a proposal filer.

**Mistake #4: A lengthy, unstructured response statement that “boils the ocean”.** In an effort to try and prove to its shareholders a company is doing enough on a topic, there is a tendency to cover as many related topics as possible. Shareholder proposals have become increasingly sophisticated and often target a specific issue or deficiency at the Company. The best responses acknowledge the issue raised, directly address how the Company mitigates or addresses the issue, and then provides a broader picture that demonstrates Board oversight and covers the thematic issues at hand.

**Mistake #5: Thinking of a shareholder proposal as strictly a governance issue.** In the past, only the individuals drafting the proxy and directly engaging with large stewardship teams needed to be aware of the shareholder proposals a company is facing. The days of putting these proposals in a “governance box” are over. Many of the proposals being filed in 2023 often address acute issues that are very important to stakeholders beyond investors – namely employees, suppliers, or customers. In 2022, politicians became another stakeholder in this process. The hyper charged debate around (anti) ESG, combined with sophisticated proposals addressing “hot-button” issues, make it is easy for a company to end up in the media crosshairs. A response to a shareholder proposal can recognize the importance of a topic but disagree with the proponent on the best way for the company address said topic. This balancing act amidst many competing stakeholder priorities in 2023 will be key.

<sup>1</sup> As You Sow, “Countering Anti-ESG Attacks” (11/16/2022), <https://www.asyousow.org/newsletters/winter-2022/countering-anti-esg-attacks>

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