CORPORATE GOVERNANCE INITIATIVE

Reinvigorating the Public Company Model

SPRING 2018
INTRODUCTION

Over the last few decades the U.S. has experienced a steady decline in public companies. In fact, in 19 of the past 20 years, the number of public companies has dropped. The tragedy of this decline is that public companies have historically been a key source of growth, innovation, and job creation. The U.S. Chamber is committed to fighting for responsible corporate governance policies that encourage companies to stay public and benefit the long-term position of shareholders while opposing special interest activist agendas unrelated to the interests of a business or investors.

U.S. Publicly Traded Firms (1975-2015)
INVESTORS’ AGENDAS AND MOTIVES

The pressures public companies face

**Activist Investors: Individuals & Firms**
(i.e., Carl Icahn, Pershing Square)
- Seek to unlock value
- Sometimes seek control
- Sometimes prone to ‘short and distort’

**Institutional Investors**
(i.e., Vanguard)
- Act on behalf of clients to increase portfolio value

**Public Pension Funds**
(i.e., CalPERS)
- Large funds run by political elites
- Push social / environmental agendas

**Gadfly Investors**
(i.e., Chevedden, Steiner)
- Pet projects
- Personal grievances

**Union Pension Funds**
(i.e., AFL-CIO)
- Helped give us ‘pay ratio’
- Push union agendas
- Union participation rate

**Public Company**
(Job creators, growth drivers)

**Martin Act**
State AG's launching politically-charged investigations

**Class Action Litigation / Trial Lawyers**
(ILR)

**Individual Investors**
Simple goals:
Education
Retirement
Home purchase

**Proxy Advisory Firms**
FIVE PROBLEM AREAS

1. Proxy advisory firms
2. Shareholder proposal system
3. Disclosure Reform
4. Special interest activists
5. Class action litigation / trial lawyers (ILR)
OUR WORK

There are plenty of reasons why companies are deciding to stay private or to go private. The U.S. Chamber’s Corporate Governance Initiative is centered on four problem areas:

Four Problem Areas:
1. Proxy advisory firms
2. Shareholder proposal system
3. Antiquated 1930’s disclosure system
4. Special interest activists

1. Proxy advisory firms
   Can now control up to 38% of the vote on proxy issues

2. SHAREHOLDER PROPOSAL
   The average cost for a company $87,000

3. SNAP INC. 2017 IPO
   Only 1/3rd of institutional investors understand executive compensation disclosures and find them to be helpful

4. WALMART’S 1970 IPO
   28 Page Prospectus
“To the extent companies are eschewing our public markets, the vast majority of Main Street investors will be unable to participate in their growth. The potential lasting effects of such an outcome to the economy and society are, in two words, not good.”

**JAY CLAYTON**
SEC Chairman | July 2017
SUCCESS TRACK RECORD

The U.S. Chamber has long advocated on behalf of public companies.

- **2009**: Stopped Naked Short Selling
- **2011**: Blocked Proxy Access
- **2013**: Released Proxy Advisory Firm Best Practices and Principles
- **2014**: SEC Issued Proxy Advisory Firm Guidance
- **2014**: Released Corporate Disclosure Reform Report
- **2015**: Struck Down Portion in Conflict Mineral Rule for Violating the 1st Amendment
- **2016**: Blocked Universal Proxy Rulemaking
- **2016**: Blocked Political and Lobbying Spending Disclosures
- **2017**: Blocked Resource Extraction Disclosures
- **2015**: Congress Passed Legislation to Require SEC to Simplify Disclosure
- **2017**: SEC Released Shareholder Proposal Guidance to Help Companies Exclude Frivolous Proposals
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Congress Passed Legislation to Require SEC to Simplify Disclosure

2016
Blocked Universal Proxy Rulemaking
Blocked Political and Lobbying Spending Disclosures

2017
Blocked Resource Extraction Disclosures
SEC Released Shareholder Proposal Guidance to Help Companies Exclude Frivolous Proposals

2017
SEC Released Proxy Advisory Firm Best Practices and Principles
PROBLEM AREA #1

Proxy Advisory Firms: Balancing the outsized influence in proxy voting

Proxy advisory firms have been estimated to control up to **38% of the vote** on proxy issues

Two firms—ISS and Glass Lewis—**control 97% of the market** and often side with activists

The U.S. Chamber’s plan to bring transparency and accountability to proxy advisory firms:

1. Congressional Engagement to increase pressure on firms (i.e., the Duffy Bill and Oversight)
2. Corporate Engagement to educate the Hill and SEC
3. Regulatory Engagement to provide additional oversight

“Privatization has unleashed the passion of our team members...in a way that was not always possible when striving to meet the quarterly demands of Wall Street.”

MICHAEL DELL

on the topic of taking Dell private.
PROBLEM AREA #2
Shareholder Proposal Systems: Reforming the system to promote the long term value of a public company

The U.S. Chamber has made a series of recommendations to reform the shareholder proposal system, which has become dominated by special interests that use proposals in order to push political or social agendas.

1. Raising the “resubmission thresholds” which determine when a proponent is allowed to resubmit a proposal that previously received low shareholder support

2. Reforming the SEC’s no-action process to help companies exclude more non-material proposals from their proxy materials

3. Requiring greater disclosure from proponents in terms of their proof of ownership and overall objectives

In November 2017, the SEC staff issued guidance that incorporates many of the recommendations in the Chamber’s report, and should be helpful for companies as they navigate the 2018 proxy season.
PROBLEM AREA #3

Antiquated 1930’s Disclosure System: Streamlining and updating

The U.S. Chamber’s plan to modernize disclosures:

1. Ensure that materiality remains the guiding principle of disclosure
2. Develop further recommendations for how to improve disclosure regime
3. Remove obsolete and duplicative disclosures
4. Push back on Environmental Social Governance (ESG) Disclosures

Opportunity - On October 11, 2017 the SEC released an initial proposal to remove obsolete disclosures and streamline the filing process to eliminate duplication; some Chamber recommendations were included as part of that release.

40,000 WORDS

AVERAGE ANNUAL REPORT LENGTH

Longer than Shakespeare’s Hamlet and up 33% since the year 2000
**PROBLEM AREA #4**

**Special Interest Activists:** Exposing politically and socially motivated activist investors

Special interest activists have increasingly used corporate governance to advance their agendas for the past 30 years. While *we are on the offense* for the first time in 8 years, we are also laying the groundwork to stop the next Administration from taking the efforts of special interest activists to new levels. The 2017 proxy season was significant as—for the first time—proposals related to climate change disclosure passed with a majority of shareholder votes at three companies. The 2018 proxy promises to hold a continued focus by activists on climate change, the opioid crisis, gender pay equity, and other issues.

**The U.S. Chamber’s offensive plan to push back on special interest activist investors:**

1. **Demonstrate** that politically-motivated activism is not in the best interest of plan beneficiaries

2. **Repeal** politically-motivated disclosure requirements, and oppose such mandates in the future

3. **Expose** short and distort campaigns

4. **Reinstate** 2008 Department of Labor ERISA Voting Guidelines so plans must use economic return as the sole consideration in deciding how to cast their proxy votes
CAMPAIGN SPOTLIGHT: EXPOSING PUBLIC PENSION PLANS

Activist public pension plans...

Are poorly managed and have an incredibly low rate of return
Use unrealistic discount rates and threaten the retirement security of pensioners and the wallets of taxpayers
Are collectively $4 trillion in the ‘red’ in terms of unfunded liabilities
Use plan assets to advance political agendas and embarrass public companies

And it is only going to get worse...The New York City Comptroller has launched the “Boardroom Accountability 2.0” project to push proposals (i.e. climate change disclosures, board diversity, and gender pay inequity) at 150 companies.

The U.S. Chamber’s plan to push back on public pension funds:

• Build congressional and administrative support to reign in political and socially motivated activities
• “Shame” public pension plans—$4 trillion in the hole and telling others how to run their affairs!
• Pass state legislation to prohibit plans from engaging in activities that are not correlated to enhancing economic return
• Produce research on:
  » Funding shortfalls at plans and the threats to taxpayers and beneficiaries
  » Public opinion on management’s motives
• Engage 3rd parties to build the echo chamber and develop additional credible voices
GET INVOLVED

Corporate Governance Working Group:
CCMC advances an effective and transparent corporate governance structure by bringing together corporate secretaries and other individuals to discuss current developments affecting companies’ corporate governance policies. This group shares insights and determines collective strategies moving forward on issues such as executive compensation, conflict minerals, pay-ratio disclosures, proxy advisory firms, activist investors, and other issues.

Corporate Secretary Working Group:
A subset of the Corporate Governance Working Group, the Corporate Secretary Working Group provides an advisory role to CCMC as well as participates in a number of DC Fly-Ins to meet with policy makers.

Corporate Governance Coalition for Investor Value:
The Corporate Governance Coalition for Investor Value has formed to provide a forum for the discussion of issues of common interest among select trade associations with respect to corporate governance and the federal securities laws.
For more information, reports, and resources, visit:

www.CenterForCapitalMarkets.com