

CII Brief - 2020

Declining IPOs and Rising Litigation in Securities Market: The Role of Corporate Governance and Legal Framework (governance)

The content explores the noticeable increase in securities class action litigation, particularly following the financial crisis of 2008, and its effect on the Initial Public Offering (IPO) market, which has seen a steady decline. The high possibility of follow-on litigation for IPOs has led to more companies favoring private capital transactions or strategic combinations. The recent spike in class action lawsuits has also resulted in elevated director-and-officer insurance premiums, especially for companies facing a wave of securities claims in state courts. A strong emphasis is placed on the importance of proper disclosure, good corporate governance, and the role of corporate officials and financial advisers. The content scrutinizes the Securities Litigation Uniform Standards Act and its implications on state courts' concurrent jurisdiction regarding IPO-related claims under federal law. Discussion also includes corporate governance codes covering ethics, transparency, and information sharing. The impact of legislation in areas such as consumer protection, credit ratings, and their influence on securities litigation is also examined. Overall, the information underscores the complexity and importance of securities-related regulations and their potential impact on businesses and investors.

The Impact of Decreased Shareholder Proposals on Environmental, Social, Governance-related Decisions. (environment)

Over the past year, there has been an observed decrease in Environmental, Social, and Political (ESP) proposals, with a significant drop in compensation-related proposals and a slightly less decline in governance-related proposals. Although this trend is argued to be isolated to large companies with robust resources, the downstream impact affects thousands of publicly traded companies. Corporate lobbyists argue the presence of excessive shareholder proposals, specifically those touching on environmental and social impacts on company performance, justifying a limitation on shareholder proposal rights. A re-conceptualization of corporate governance is emergent, viewing corporations in a broader context as engines of economic progress and stakeholders in environmental sustainability. Even though companies began increasing reporting on environmental risks and supply chain oversight, shareholder proposals expressing similar concerns received less support. Dialogue regarding executive compensation structures, shareholder rights, and disclosure requirements have been fueled by shareholder proposal submissions. However, the debate continues over the effectiveness of social media in providing a platform for shareholders' collective voice expression. Ultimately, the significance of shareholder proposals is evident in its integral role in driving necessary actions from the company management in handling and addressing environmental, social, or governance issues.

The Evolution and Impact of Shareholder Activism on Climate Change and Corporate Governance (climate change)

Initiation of governance norms, like board diversity, carbon emissions disclosure, and sustainability reporting, didn't secure extensive shareholder support initially. The first-ever shareholder proposal on carbon emissions and climate change was made by a small individual

shareholder in Exxon. Despite limited support for these ideas, companies began improving reporting on environmental risks and supply chain oversight. While it's unclear what the tangible benefits of these proposals are today, circumstances have changed due to significant downturns in company performance and increased global attention on climate change impacts, especially in the investment community. It's uncertain whether the initial shareholder proposal on climate change would be accepted under current proposed ownership thresholds. However, shareholder proposals in the past, particularly those from Ceres and groups affiliated with the Interfaith Center on Corporate Responsibility, helped raise company awareness about the potential harm of climate change risks to long-term performance, human life, and the global community.

The Evolving Landscape of Corporate Governance and Sustainability (sustainability)

Over the past three decades, shareholder proposals have significantly influenced change in corporations on various governance issues, including board composition, director remuneration, diversity, risk management, and sustainability, among others. However, there's been a recent shift in the understanding of corporate governance; from an exclusive focus on corporations and shareholders to a bigger picture that includes corporations as drivers of economic progress and key players in environmental sustainability. While well-established governance norms struggled to gain majority support initially, their relevance is more recognized now across sectors. Shareholders are increasingly engaged in various topics from environmental to social. These include climate and sustainability, gender pay equity, and non-discrimination policies. Notably, companies with solid ratings on sustainability are reported to perform better in the future. The corporate sector's response to these evolving trends and demands has been substantial despite the potential costs.

Opposition and Critiques on Securities Law Enforcement Practices (nist)

A variety of groups such as investors, public officials, workers and pension funds including organizations like the AARP, AFSCME, and the U.S. Conference of Mayors, have explicitly opposed a certain bill. In addition to this, groups like the North American Securities Administrators Association have advocated for the restoration of aiding and abetting liability in private actions. The Securities and Exchange Commission (SEC) has dealt with an increasing number of disputes regarding their use of administrative law judges (ALJs) to enforce securities laws as part of their three-part strategy. This continual usage resulted in a constitutional ruling from the seventh circuit. These administrative choices by SEC have stirred controversy, with predictions of the SEC shifting towards administrative over court orders for funds allocation, leading to concerns from defendants. There is an explicit call for judicial attention for such practices and an effort to reduce expense and delay in litigation. There is a decrease in new injury filings according to the office of court administration. The complex issue of fee awards in class actions was underscored with a caution for judges to ensure the interests of representation and integrity of justice. The overview included in-depth testimonies from prominent professionals in related fields, contributing to the ongoing debate.

Evolutions in Shareholder Proposals and Corporate Governance Over the Past Three Decades (board diversity)

Over the past thirty years, shareholder proposals have significantly influenced the evolution of corporate governance norms. Key areas impacted include majority voting and annual election

of directors, independent board leadership, outside director compensation forms, proxy access, board diversity, and clawback policies for excessive executive compensation, among others. Issues like equal employment policies, climate change impact disclosures, and sustainability reporting, which receive majority approval today, initially suffered from a lack of shareholder support. While some proposals advocating for board diversity have gained majority support, on an annual average, the support for these proposals hasn't surpassed that for political contribution reports. Multiple proposals, specifically those from the National Center for Public Policy Research, have seen little support, thus lowering the average voting support for board diversity.

Increasing Corporate Attention to ESG Matters (esg)

Companies are demonstrating growing interest in integrating Environmental, Social, and Governance (ESG) principles into their daily operations. Reports indicate that both companies and investors are evolving their methods of engagement, focusing on comprehensive and personalized disclosures regarding purpose, strategy, and other key components. They're investing in long-term growth sectors including R&D and innovation, as well as prioritizing sustainability and human capital matters. This approach proves beneficial, with research showing positive correlation between companies' ESG records and shareholder value. Good ESG practices could potentially lower capital costs, increase valuations and enhance profitability. As ESG matters gain prominence, companies are responding significantly, which is apparent in comparison to the subjective and reportedly exaggerated cost figures presented.

Challenges and Inefficiencies in the Current Shareholder Voting System (technology)

Criticisms of the current system emphasize its complexity and potential to harm shareholders. It particularly underlines how the long-standing proxy voting system has not adequately adapted to modern technology, leading to inaccuracies in vote tabulation during critical corporate elections. Noteworthy issues have also risen from the tech sector due to insider-protection measures such as dual-class stock structures, deemed necessary for founders to uphold their vision during the company's formative years.

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