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Vanguard Investment Stewardship Insights

Contested director elections at Norfolk Southern Corporation

May 2024

Company: Norfolk Southern Corporation (Norfolk Southern)

Meeting date: May 9, 2024

Proposal(s): Items 1A–1T: Election of 13 Directors as Named in the (Company's) Proxy Statement

How the funds voted

Norfolk Southern, a U.S.-listed freight railroad company, faced a proxy contest at its 2024 annual meeting. Ancora Holdings Group LLC (Ancora), an activist investor, nominated seven directors to the company's board. The Vanguard-advised funds voted in support of each of the Norfolk Southern board's nominees and did not support the Ancora nominees.[1]

The funds' proxy voting policies

As articulated in the funds' proxy voting policies, the Vanguard-advised funds evaluate contested director elections on a case-by-case basis, taking into consideration the facts and circumstances at the company in question, and with an assessment of what is in the best interests of each fund's shareholders. On behalf of the funds, our process for evaluating contested director elections focuses on three key areas:

Case for change. Does the dissident make a compelling case that a change in the target company's strategy and board composition is likely to address concerns regarding underperformance and/or board oversight failures and increase long-term economic returns for company shareholders, versus the status quo? When engaging with a dissident, we seek to understand their perspective on the company's current state and future trajectory as well as the recommended changes the dissident believes would benefit the company and be in the best interests of shareholders.

Company's approach to governance. What is the quality of the company's corporate governance practices? By reviewing a company's public reporting and disclosures, and through discussions with company leaders, we assess boards' corporate governance practices and to what extent they support long-term shareholder returns.

Quality of directors. Do the company's nominated directors appear to bring the necessary capabilities to the company's board? Assessing a board's composition starts with understanding a company's strategy and how board members' skills (collectively and individually) align with that

1 Vanguard's Investment Stewardship program is responsible for proxy voting and engagement on behalf of the quantitative and index equity portfolios advised by Vanguard (together, "Vanguard-advised funds"). Vanguard's externally managed portfolios are managed by unaffiliated third-party investment advisors, and proxy voting and engagement for those portfolios are conducted by their respective advisors. As such, throughout this document, "we" and "the funds" are used to refer to Vanguard's Investment Stewardship program and Vanguard-advised funds, respectively.

strategy and position the board to appropriately oversee and advise management. In a contested director election, we assess all director nominees—both nominees put forward by the board of the portfolio company in question as well as nominees put forward by the dissident—to understand how their skills align with the company's strategy and/or the dissident's case for change. We seek to understand the qualifications and perspectives of all director nominees so that we can make informed judgments about which nominees are best positioned to provide for the company's long-term success.

Analysis and voting rationale

In advance of Norfolk Southern's 2024 annual meeting, activist investor Ancora nominated seven directors to the 13-member Norfolk Southern board. Ancora sought to drive strategic change focused on improving operational performance by seeking a majority of board seats and replacing the current CEO and COO. To inform the funds' voting decisions, we met with several current Norfolk Southern board members and executives as well as Ancora leaders and director nominees.

Ancora's leaders and board nominees asserted that Norfolk Southern had demonstrated both operational and financial underperformance relative to its peers, stemming from a mismanagement of assets, human capital, and failure to follow rail operation principles. Ancora attributed the underperformance to ineffective leadership on the board and company management, including insufficient operational experience. Ancora contended that the incumbent board had not held management accountable for driving financial, operational, and safety improvements.

During our engagement with Norfolk Southern, the directors acknowledged room for improvement in operational outcomes but argued that the company is progressing on a plan to close these gaps. Company leaders maintained that contextual factors impacting the company's performance should be considered. Specifically, the company asserted that progress had been made under the current CEO's strategy prior to a train derailment in East Palestine, Ohio, in February 2023, which required management to prioritize actions related to improving the company's safety culture, resulting in temporary strategic setbacks. Board members expressed conviction in the company's strategy and concern that the dissident's proposed strategic approach was too narrowly focused. Company leaders shared their view that the existing board members possess a relevant mix of skill sets, built through active refreshment, which positions them to appropriately oversee the company's strategy.

Through our research, engagements, and analysis, we assessed that both Ancora and Norfolk Southern identified opportunities to improve the company's operational and financial performance, though they identified different paths to achieve that outcome. Ancora and its nominees argued that a more wholesale strategic and leadership change was needed to produce improved outcomes for shareholders, while the company's board members and executives argued that context mattered when considering historical results and that the company was on the right course.

In considering the case for change at Norfolk Southern, we noted the company's under-performance, which raised questions about the board's oversight of strategy and the board's accountability to drive returns for shareholders. Yet, we also considered the context and duration of performance gaps and weighed arguments on both sides regarding the effectiveness of the board's oversight of strategy and risk.

We noted that Norfolk Southern's current CEO assumed responsibility in 2022, and much of the gap in trailing period performance was due to sharp total shareholder return underperformance in 2023 following a serious incident, though the dissident pointed to more consistent opportunities in operational metrics. The company's board conceded the need for operational performance improvement and pointed to steps it has taken to improve.

The accident in East Palestine raised questions about the board's oversight of risk and has been a topic of ongoing engagements we have held with the board over the past year. While the accident and its impact on shareholder returns certainly raised questions around the board's track record and oversight, in our assessment, the board appeared to be actively engaged in responding to the incident, including taking steps to strengthen its oversight of safety.

The dissident made the case for significant (and simultaneous) changes in the company's strategy, leadership, and board composition. In our evaluation, the dissident raised reasonable questions, including evidence of underperformance, but it was unclear whether the duration and magnitude of the issues warranted the degree of change proposed by Ancora. Our analysis led us to question whether the case for change (with its associated risks of disruption) outweighed the benefits of exercising patience with the incumbent board. Ultimately, the Vanguard-advised funds supported each of the Norfolk Southern board's nominees and did not support Ancora's nominees.

Our assessment of the case for change was done at a particular point in time, and future assessments could differ in the presence of sustained underperformance or evidence of lapses in board effectiveness or oversight. Going forward, we will continue to engage with the company's board to understand progress against their strategic plan and the board's risk oversight.

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