

***2018 Proxy Season Review***

Sullivan & Cromwell LLP, [excerpt, p.7–10]

July 2018

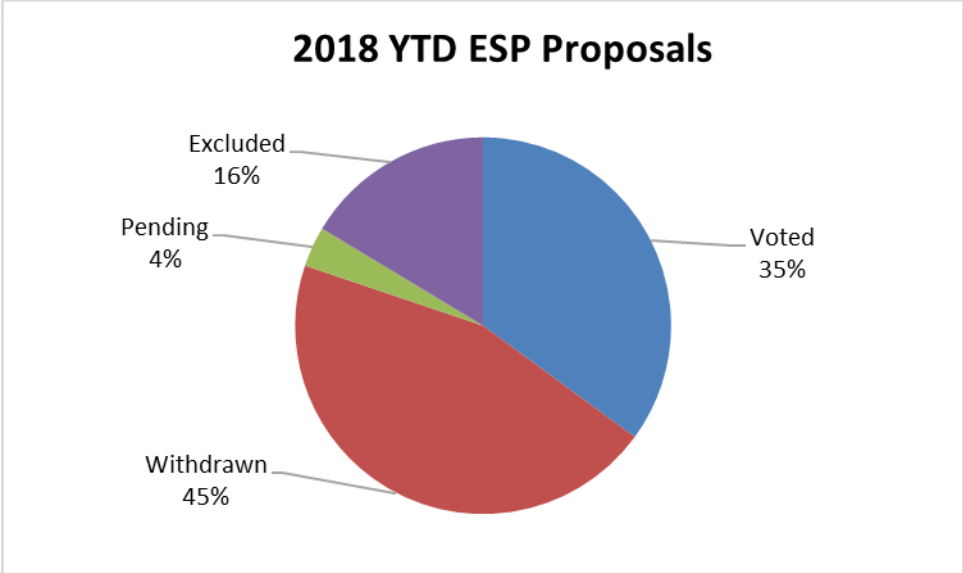
## SULLIVAN & CROMWELL LLP

In comparison, proxy access and special meeting rights are less common among the S&P Composite 1500 at this time. Over 500 U.S. companies have adopted proxy access provisions at this point, which is concentrated at large-cap companies. (About two thirds of S&P 500 companies have adopted proxy access, versus 21% of the S&P 400 and only 7% of the S&P 600.) In contrast, there is a similar level of adoption of special meeting rights among large-cap and smaller-cap companies (nearly two thirds of the S&P 500, versus around 50% among each of the S&P 400 and S&P 600). This trend is partially attributable to the fact that many of the smaller companies are incorporated in states that have adopted the Model Business Corporation Act, which mandates the shareholder right to call special meetings (about 30% of S&P 400 companies and 25% of S&P 600 companies are incorporated in states that mandate the right, as compared to about 15% of S&P 500 companies).

### D. SHAREHOLDER PROPOSALS ON ENVIRONMENTAL/SOCIAL/POLITICAL MATTERS

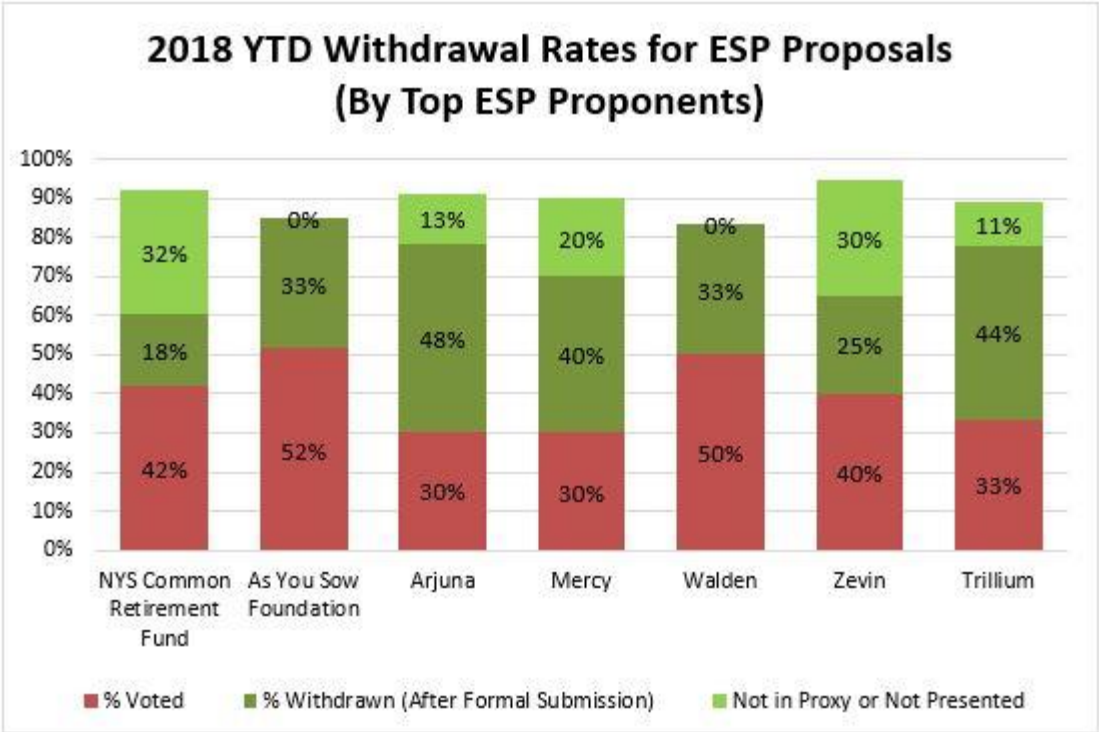
	<i>ESP PROPOSALS</i>							
	<i>Shareholder Proposals Submitted</i>		<i>Shareholder Proposals Voted On</i>		<i>Average % of Votes Cast in Favor</i>		<i>Shareholder Proposals Passed</i>	
	<i>2018 YTD</i>	<i>2017</i>	<i>2018 YTD</i>	<i>2017</i>	<i>2018 YTD</i>	<i>2017</i>	<i>2018 YTD</i>	<i>2017</i>
Environmental issues	<b>107</b>	121	<b>31</b>	61	<b>31%</b>	29%	<b>5</b>	3
Political issues	<b>87</b>	89	<b>49</b>	64	<b>29%</b>	26%	<b>0</b>	0
Anti-discrimination	<b>58</b>	65	<b>11</b>	32	<b>29%</b>	16%	<b>0</b>	0
Human rights issues	<b>34</b>	43	<b>10</b>	24	<b>9%</b>	7%	<b>0</b>	0
Sustainability report	<b>18</b>	23	<b>7</b>	10	<b>34%</b>	29%	<b>1</b>	1
Health and safety	<b>8</b>	20	<b>3</b>	9	<b>17%</b>	17%	<b>0</b>	0
Animal rights	<b>7</b>	7	<b>1</b>	4	<b>3%</b>	10%	<b>0</b>	0
Other social policy issues	<b>50</b>	53	<b>16</b>	5	<b>17%</b>	4%	<b>2</b>	0

Although the level of ESP proposals submitted remained relatively consistent year-over-year (both as a percentage of all shareholder proposals submitted and across the different ESP categories), there was a significant decrease in the percentage that reached a vote. This year, there were more withdrawn ESP proposals than those going to a vote, as shown in the following chart, which underscores the robust engagement between issuers and shareholders on ESP topics. However, the withdrawal data in this publication generally excludes shareholder engagement prior to the receipt of a formal proposal, which may obscure actual trends in shareholder engagement with respect to at least some categories of ESP proposals.



The major shareholder proponents referenced in Section I.B submitted close to 60% of all ESP proposals received by U.S. S&P Composite 1500 companies. Among these proponents, the New York State Common Retirement Fund submitted the greatest number of ESP proposals (38), most of which related to environmental issues and political contributions and lobbying. Collectively, social investment entities, such as As You Sow Foundation (33 ESP proposals submitted), Arjuna Capital (23), Mercy Investment Services (20), Zevin Asset Management (20), Walden Asset Management (18) and Trillium Asset Management (18), submitted the bulk of the proposals and tended to focus on environmental issues and gender pay equity. As the following chart shows, almost all the top ESP proponents withdrew 50% or more of their proposals this year (either before or after a proposal was included in a company’s proxy statement), likely following engagement with the company.<sup>4</sup>

<sup>4</sup> The chart does not show the percentage of excluded or pending ESP proposals submitted by each proponent.



The significantly lower number of ESP proposals that went to a vote this year reflects issuers’ recognition of the growing importance of ESP issues to institutional investors. Proposals relating to discrimination (predominantly gender pay equity) had the highest withdrawal rate of any category this year (most likely following an issuer’s commitment to make improvements in this area), with less than a fifth of all submitted proposals reaching a vote. The withdrawal rate is unsurprising given the impact of the #MeToo movement and the public attention on workplace culture this year. The most common subjects among ESP proposals that reached a vote continued to be environmental issues (including climate change) and political contributions and lobbying, correlating with the comparatively lower withdrawal rate among the major shareholder proponents that focused on these issues (e.g., As You Sow Foundation).

The ESP proposals that went to a vote received higher shareholder support on average than in 2017 (more than 25% for the first time). In particular, average support for proposals relating to discrimination almost doubled this year (29% in 2018 compared to 16% in 2017). The number of ESP proposals that passed this year doubled, notwithstanding the decline in the total number of ESP proposals voted on. Whereas no political proposals passed in 2018, as was the case in 2017, the number of environmental proposals that passed increased to five in 2018 (all related to either climate change or emissions) from three in 2017.

This year, ISS supported an even higher percentage of ESP proposals voted on (74% in 2018 compared to 64% in 2017), including 94% of the political proposals and 87% of the environmental proposals. ISS supported 73% of anti-discrimination proposals this year, more than doubling the percentages from 2015

## SULLIVAN & CROMWELL LLP

to 2017. Overall, shareholder support averaged 32% for ESP proposals where ISS recommended in favor, compared to 8% for proposals where ISS recommended against.

New types of ESP proposals submitted by shareholders this year included those relating to recent “hot button” political issues, such as gun safety (at Dicks Sporting Goods and Sturm, Ruger & Co) and social media “fake news” (at Alphabet, Facebook, Twitter, Comcast, Disney and Time Warner). The gun safety proposals were all submitted by religious organizations, and the only one that has been voted on passed with 69% of the votes cast. Facebook, Disney, Comcast and Time Warner obtained no-action relief from the SEC to exclude proposals seeking the adoption of anti-“fake news” policies. The other “fake news” proposals requested reports on major global content management controversies. All these proposals were submitted jointly by the New York State Common Retirement Fund and Arjuna Capital, and received very low support (8.5% on average).

### **E. SHAREHOLDER PROPOSALS ON GOVERNANCE MATTERS**

After a consistent and significant downward trajectory from 2015 to 2017, the number of proposals on governance matters (board-related and anti-takeover concerns) that came to a vote in 2018 remained at levels comparable to 2017. There was a dramatic spike in the number of proposals to lower the ownership percentage required for calling a special meeting and to adopt written consent rights, offsetting the steep drop in adopt proxy access proposals as more companies adopt a market-standard provision. There are very few proposals coming to a vote at this point on the traditional governance topics of destaggering the board, adopting majority voting in uncontested director elections, and eliminating supermajority provisions. Few large companies have not already adopted these practices, and many of the smaller companies that receive these proposals decide to adopt the practices rather than letting the proposal come to a vote.

Average support for governance proposals in 2018 was 37% overall (slightly lower than the 2017 average of 39%), continuing the downward trend since 2013.