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The 2021 Proxy Season: A Preview of Key Issues

Materials

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The 2021 Proxy Season: A Preview of Key Issues

Readings

2020 Annual Corporate Governance Review

Posted by Donald W. Cassidy, Hannah Orowitz, and Brigid Rosati, Georgeson, on Thursday, October 1, 2020

Editor's note: Donald W. Cassidy is executive vice president of business development and corporate strategy; Hannah Orowitz is managing director of corporate governance; and Brigid Rosati is director of business development at Georgeson. This post is based on their Georgeson memorandum.

The Impact of COVID-19 on the 2020 Proxy Season

The COVID-19 global pandemic fundamentally altered the 2020 U.S. proxy season by changing the logistics of annual meetings, introducing regulatory changes, influencing voting decisions and shaping future shareholder proposal trends.

Changing Meeting Logistics and Investor Perceptions

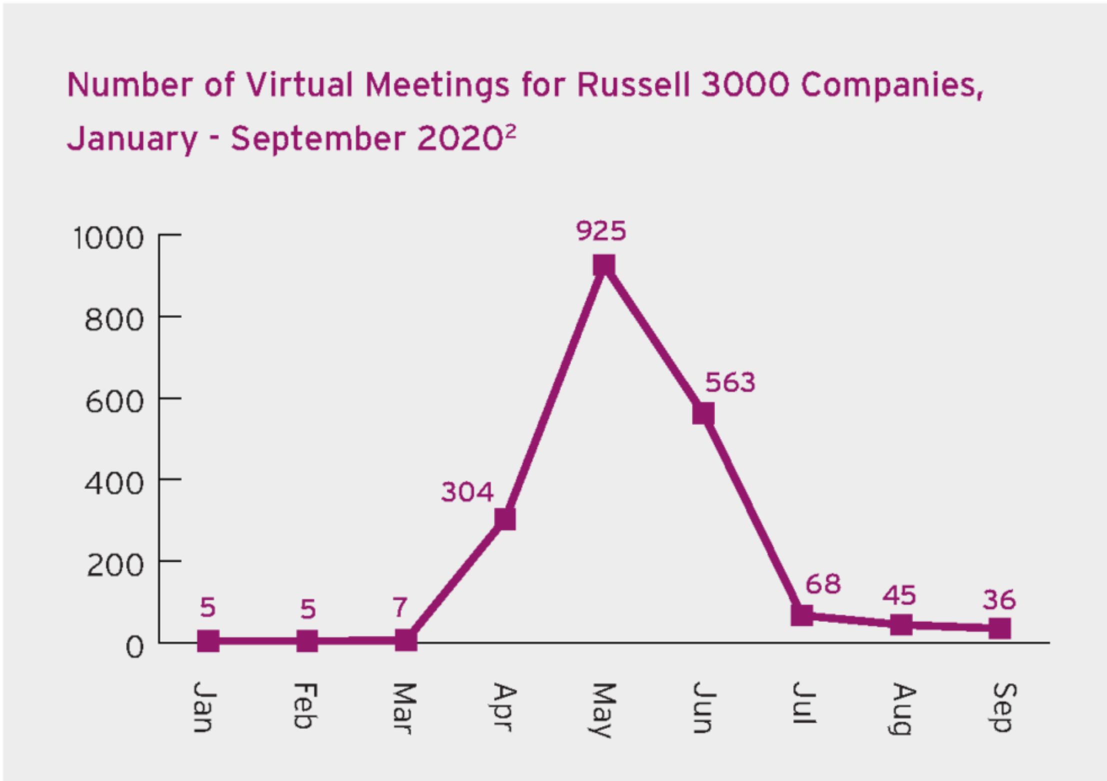
Restriction on travel and large gatherings combined with growing global health and safety concerns forced companies worldwide to quickly modify meeting logistics late in the planning stages of their 2020 annual shareholder meetings. In the U.S., while COVID-19 caused some companies to postpone or cancel their meetings, the majority of companies shifted to a virtual-only or hybrid format.

Most U.S. companies with mid-March 2020 and later meeting dates quickly opted to transition to a virtual meeting format—over 1,900 companies in the Russell 3000, which includes the S&P 1500, as of July 2020 according to ISS. Recognizing the need to prioritize health and safety, most investors were understanding of a company's choice to hold a virtual meeting in 2020.

The use of virtual meetings will likely continue at least into the conclusion of the 2020 calendar year as the pandemic continues to maintain momentum in the U.S. Longer term, the 2020 proxy season will likely become the tipping point at which investors began to embrace virtual meeting technology. While lessons learned this season will certainly shape future best practice recommendations, a June 2020 Proxy Insight survey of investors [1] clearly signals broader future use: 90.5% of investors surveyed expect to see increased future use of virtual meeting technology, and 64.3% expect to see more hybrid meetings once COVID-19 subsides. Most notably, 58.4% of investors surveyed said that they support the use of virtual meetings and, if

[1] Available at https://www.proxyinsight.com/wp-content/uploads/dlm_uploads/2020/06/ Corporate-Governance-and-COVID-19.pdf.

appropriate shareholder rights protections are in place, that number climbs to 82.2%, exceeding the number that reported supporting future use of a hybrid model (81%). [2]



Regulatory Guidance

U.S. regulatory bodies, state governments, investors and proxy advisory firms made rapid adjustments to accommodate COVID-19's disruption of the 2020 proxy season. Read more in Georgeson U.S.'s mid-season report on Annual Meeting Adjustments Amid COVID-19.

In March 2020, the U.S. Securities and Exchange Commission (SEC) published guidance to provide publicly listed companies with additional flexibility with respect to certain annual meeting-related requirements, including communicating with shareholders about the change in meeting format and details about additional filings. [3] The SEC guidance, which was later updated in April 2020, states that if a company has already mailed and filed its proxy materials, the company can notify shareholders of a change to the annual or special meeting, including from a physical location to a virtual location, without mailing additional soliciting materials or amending proxy materials, so long as the company: [4]

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[2] Companies that have had or plan to have virtual meetings based on year-to-date data available from ISS Corporate Solutions, July 2020.

[3] U.S. Securities and Exchange Commission. "Staff Guidance for Conducting Shareholder Meetings in Light of COVID-19 Concerns." April 2020. https://www.sec.gov/ocr/staff-guidance- conducting-annual-meetings-light-covid-19-concerns.

[4] Change in in the date, time or location of the meeting.

- Issues a press release announcing such change
- Files the release as definitive additional soliciting material
- Takes reasonable steps necessary to inform other related parties of such change [5]

Recognizing the risk associated with disruption to the proxy mailing process, Computershare U.S. engaged with the SEC during the 2020 season to agree to further guidance to help more issuers take advantage of “Notice and Access” options.

Shareholder Proposal Voting, Trends and Future Considerations

While COVID-19’s shadow loomed large over the peak proxy season, the proposals voted upon were submitted in advance of the pandemic’s arrival in the U.S. Accordingly, while in some cases a company’s to-date response to the pandemic may have factored into investors’ voting decisions, the full impact of the COVID-19 pandemic will crystalize as we head into the 2021 proxy season. In particular, investors are indicating intentions to scrutinize companies’ supply chain management, a range of human capital management topics and compensation practices.

For example, as off-season engagement gets underway, investors are seeking to understand how companies are addressing employee health and safety measures and pay practices. Topics like diversity, equity and inclusion also continue to be top of mind for investors, while focuses expand from gender to racial and ethnic diversity and investors seek data supporting companies’ commitments in this area. As discussed below, we expect these topics will also heavily influence the 2021 shareholder proposal landscape. As connections continue to be drawn between climate change, deforestation and the pandemic, we may also see some evolution within climate change proposals.

Furthermore, we expect there will be additional focus on compensation-related matters. Investors will be keen to know how companies adjust executive compensation practices and programs as compared to broader employee compensation decisions in light of pandemic-related financial performance issues.

Shareholder Sponsored Proposals

Approximately 58% of shareholder sponsored proposals submitted were voted upon this season, compared to approximately 55% in each of 2019 and 2018.

At the same time, the number of proposals withdrawn during the 2020 season represents 15.5% of submitted proposals, compared to 26.4% and 20.0% in 2019 and 2018, respectively. While an increase in the number of proposals not included in the proxy during the 2020 season (i.e., where there is no public record of a proponent withdrawing its proposal) offsets some of the decrease in withdrawals, there remains a notable decrease in negotiated settlements in 2020 as compared to 2019 and 2018. Based on our review of available data and conversations with shareholder proponents, it appears that a few factors may have contributed to this decrease. With respect to E&S topics, while withdrawals continue to be more common for these proposals compared to governance proposals, it is possible that target companies previously implemented practices that

[5] Including intermediaries in the proxy process and other relevant market participants.

addressed fundamental aspects of the topic at issue, perhaps making both parties less willing to compromise than in prior seasons. Likewise, as convictions become more urgent with respect to climate matters in particular, negotiated withdrawals may be less palatable. Conversely, there may have been an increased willingness by proponents to reach settlement on environmentally-focused proposals during the 2018 and 2019 seasons as proponents learned to navigate the SEC's October 2018 guidance regarding micromanagement as a basis of exclusion under Rule 14a-8. That guidance has also narrowed the format that many climate-related proposals take, which may also disincline proponents to further adjust their requests. Lastly, co-filers continue to be a popular approach to proposal submissions, and multiple co-filers may also make it more challenging for a company to negotiate withdrawal of a proposal.

As for proposals receiving no-action relief, those numbers have held relatively steady representing 15.9%, 15.2% and 14.5% of all submitted proposals for 2020, 2019 and 2018, respectively. Accordingly, it appears that the revisions to the SEC's no-action process in the Fall of 2019 had minimal impact on the number of proposals receiving no-action relief.

Proponents

While the Chevedden group was responsible for the majority of governance proposals voted upon during the 2020 season, the majority of E&S proposals that went to a vote were put forth predominantly by what we have categorized as "other shareholder groups," which include socially responsible asset managers, non-profit organizations, and religious organizations.

Proponent*	**2020 total submissions**	**2019 total submissions**	**Primary Focus**
John Chevedden (& associates)	191	250	Governance
As You Sow Foundation	63	53	Environmental & diversity
Mercy Investment Services	35	37	Political, environmental & executive compensation
Trillium Asset Management	36	29	Environmental & social
New York City Comptrollers	31	21	Diversity & social

*In some instances these proponents were co-filers or co-sponsors with other proponents.

Governance Shareholder Sponsored Proposals

The number of corporate governance-related proposals submitted and voted on during the 2020 proxy season trended up slightly, but the number receiving majority support dropped significantly compared to 2019 (27 in 2020 as compared to 42 in 2019). This year the average support for governance proposals was slightly down from prior years.

An examination of proponents reveals that almost two-thirds of the governance proposals voted upon this proxy season were sponsored or co-sponsored by John Chevedden, James McRitchie, Kenneth Steiner, William Steiner or Myra Young (collectively "the Chevedden Group").

The remaining proposals were sponsored primarily by public pension funds, labor unions and other socially responsible investors. This breakdown remains relatively unchanged from prior proxy seasons. One interesting trend in 2020 is that 11.7% of governance shareholder proposals did not disclose the proponent, which is up considerably from 1.3% in 2019. Companies need not disclose the proponent of the shareholder proposal, but it is generally considered best practice to do so. This shift is particularly interesting in light of Glass Lewis's March 2019 launch of its Report Feedback Statement process, which among other things requires issuers to name the shareholder proponent of any shareholder proposal(s) up for a vote at the relevant annual meeting in the company's proxy in order to use the process. [6]

Independent Board Chair

Independent chair proposals have been prolific since the mid- 2000s. Despite their popularity, these proposals have experienced average support in the range of 29% to 32% since 2012.

After witnessing only one proposal pass in the past five calendar years (at Rite Aid Corporation in 2018), two proposals passed this year at Baxter International and The Boeing Company. In addition, 11 proposals received support in excess of 40% compared to four such proposals in 2019. The COVID-19 pandemic seems likely to have fueled shareholders' focus on improving board oversight, effectiveness and independence by requiring an independent chair. Overall average support for these proposals rose to 34% in 2020.

The proposal at Baxter International, a company in the health care sector, received the highest support this proxy season, with 55% of the votes cast in favor. Although the company maintains a combined chairman and CEO position, it has an independent lead director with robust duties. However, the proponent (Kenneth Steiner) raised the lead independent director's 19-year tenure as a factor compromising his independence. While Institutional Shareholder Services (ISS) did not identify any significant shareholder rights concerns at Baxter, it supported the shareholder proposal on the basis of a recently identified material weakness that resulted in financial restatements, suggesting the need for greater board oversight.

The proposal at Boeing received approximately 52% support even though the company put an independent board chair in place in late 2019. The grounding of the 737 MAX airliner following two deadly crashes, and the associated concerns relating to the culture and safety issues at the

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[6] See https://www.glasslewis.com/report-feedback-statement. This requirement must be met even if the report content the issuer wishes to comment on does not relate to the shareholder proposal(s).

company, raised questions about the Boeing board's failure in executing its oversight responsibilities. The undisclosed proponent of the proposal also highlighted concerns regarding the then current independent chair's ability to effectively lead the board in light of his other professional responsibilities and interlocking directorships with two other board members (one of which was Boeing's then CEO Dennis Muilenburg). While most of these concerns were addressed through leadership changes prior to Boeing's annual meeting, the proposal still received majority support as investors believed formalization of this leadership structure was important to ensure ongoing independent board leadership.

Investors view strong, independent board leadership as a matter of importance to ensure effective board oversight and accountability to shareholders. While many investors recognize that an independent lead director with robust duties can be an acceptable alternative, they are increasingly expressing a preference for an independent board chair. Taking a historical view of this topic, it appears the preference for an independent chair gets stronger during the time of market-wide economic crisis. Although there is a current stock market rebound, persistent economic and social challenges presented by COVID-19 are not expected to subside in the near future. It will be interesting to see how these proposals fare during the 2021 proxy season. One thing, however, is certain: independent board oversight and leadership will remain an area of investor focus into 2021 and beyond.

Eliminate/Reduce Supermajority/Adopt Simple Majority

The number of proposals voted on in connection with the elimination of supermajority voting or the adoption of uniform simple majority requirements dropped significantly to 12 in 2020 as compared to 20 in 2019, but returned to historic norms in line with the number voted upon in the 2018 and 2017 seasons.

This proposal category also represents the most highly supported category among governance proposals, with 11 of the 12 proposals that reached a vote receiving majority support—10 of which received the necessary support to pass. [7] The two instances that did not receive the requisite support are distinguishable given individual facts and circumstances.

Despite shareholders' routinely high support of these proposals, they sometimes prove difficult for management to implement in subsequent years. This is due to the supermajority vote required to eliminate the supermajority provisions themselves and the composition of the company's shareholder base.

Reduction of Thresholds for Shareholders to Call a Special Meeting

The number of proposals seeking reduction of the threshold required for shareholders to call a special meeting saw a surge similar to what we saw in the 2018 proxy season, with 40 such proposals going to a vote this year. The 2018 surge was due to the Chevedden Group's focus on the proposal and its ability to get the proposal on 52 companies' proxy ballots. This proposal was a focus of the Chevedden Group again this year as at least 33 of the 40 proposals that went to a vote were proposed by John Chevedden or members of his group, particularly Kenneth and

[7] While the proposal at PetMed Express, Inc. received nearly 60% of votes cast in favor of the proposal, it required 67% of shares outstanding and entitled to vote in order to pass.

William Steiner. The continued high average support that these proposals received (42% in 2020) is not surprising given shareholders' ability to call special meetings is broadly considered to be a fundamental right. However, less consensus exists among investors as to the specific ownership threshold that should be required to have the ability to call a special meeting. Accordingly, the threshold percentage is often a determining factor as to whether these shareholder proposals receive majority support. Of the six proposals that received majority support this season, three sought to reduce the threshold required from 25% ownership to 10%.

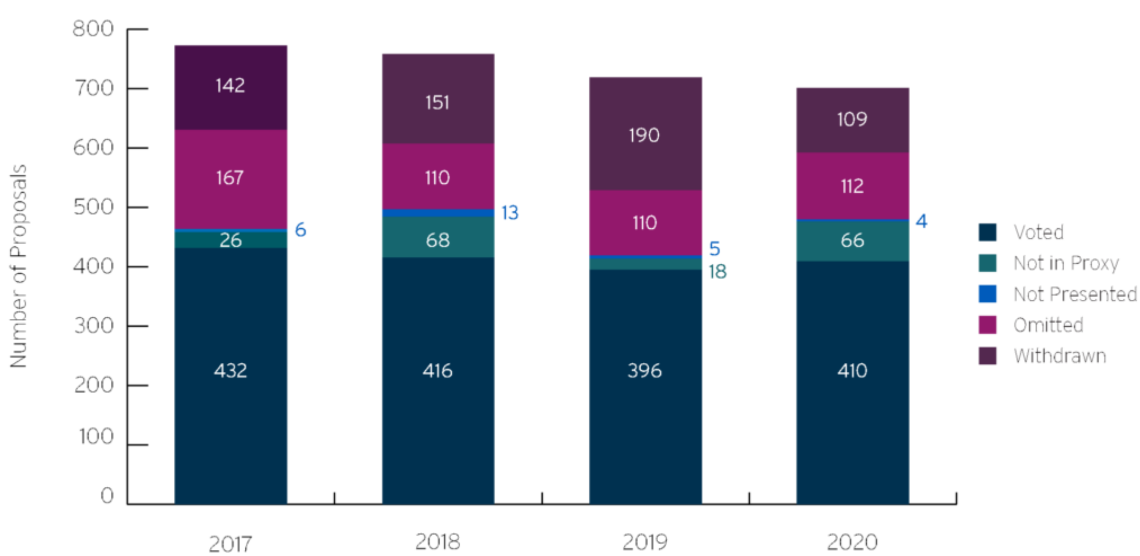
Shareholder Right to Act by Written Consent

This proxy season saw an acceleration in the frequency of proposals seeking the right to act by written consent—56 went to a vote in 2020, compared to 34 in 2019. Despite the increase in frequency, the average level of support continued its downward trend from the high of 45% in 2017 to 35% for 2020. Shareholders' decisions to support proposals demanding a right to act by written consent are often influenced by whether shareholders have an existing right to call a special meeting at an acceptable threshold (generally ranging from 10% to 25% depending on the investor). In the two instances where this proposal received majority support this season, OGE Energy Corp. did not provide shareholders with the right to call a special meeting and Stanley Black and Decker, Inc. provides the right at a 35% threshold.

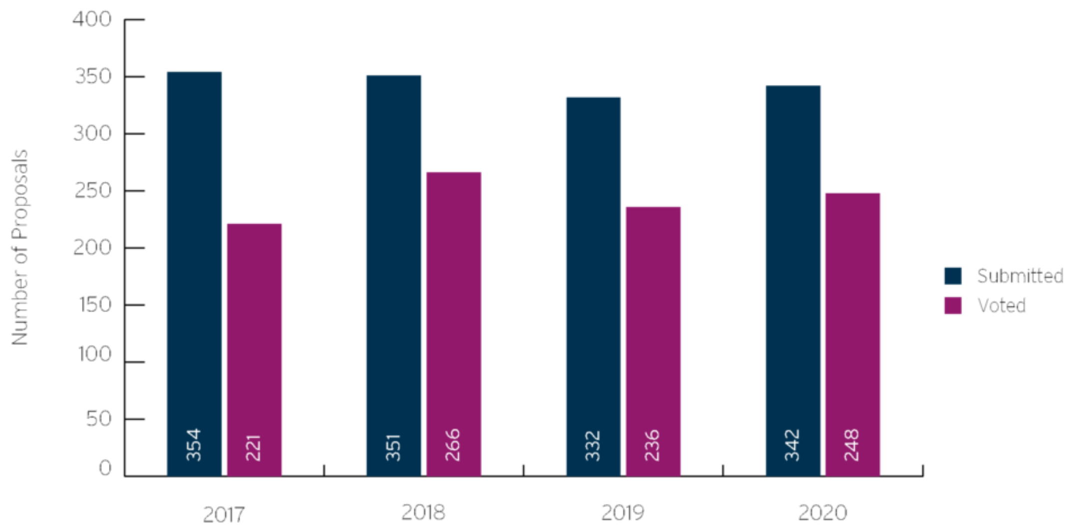
Shareholder Approval of Bylaw Amendments

A new shareholder proposal category from the Chevedden group during the 2020 proxy season sought to require non- binding shareholder approval of any board-adopted bylaw amendments. While the proposal was voted upon at 16 companies, it received average support of only 3.7% Given the low support across the proposals, it remains to be seen if Chevedden will continue to submit these proposals in the 2021 season.

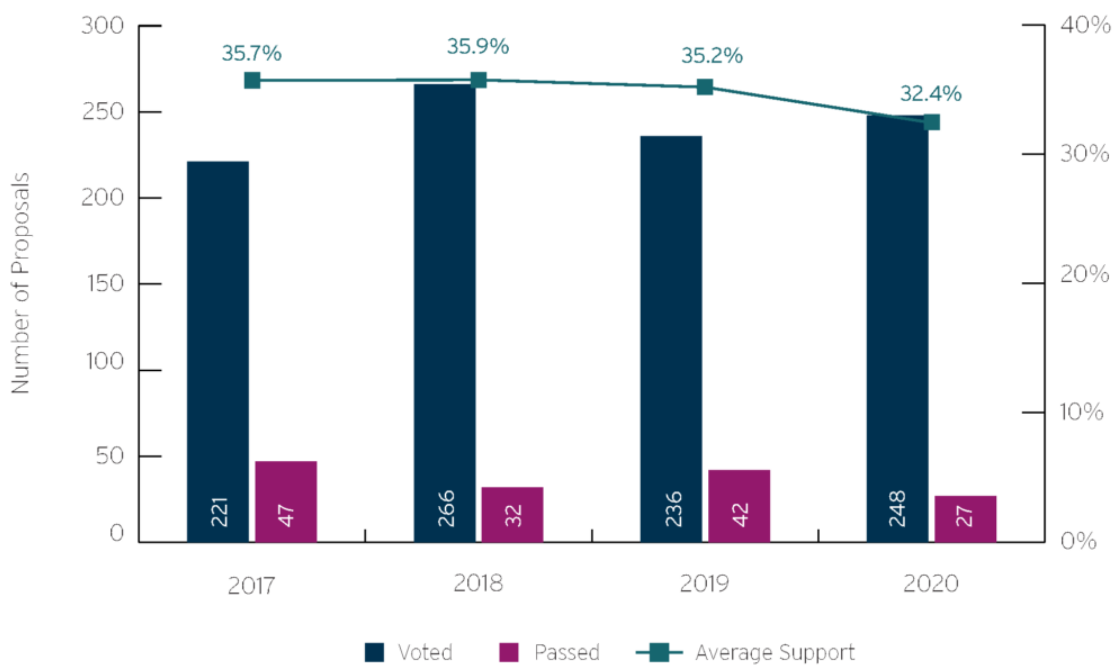
S&P 1500 Shareholder Proposal Activity, 2017-2020



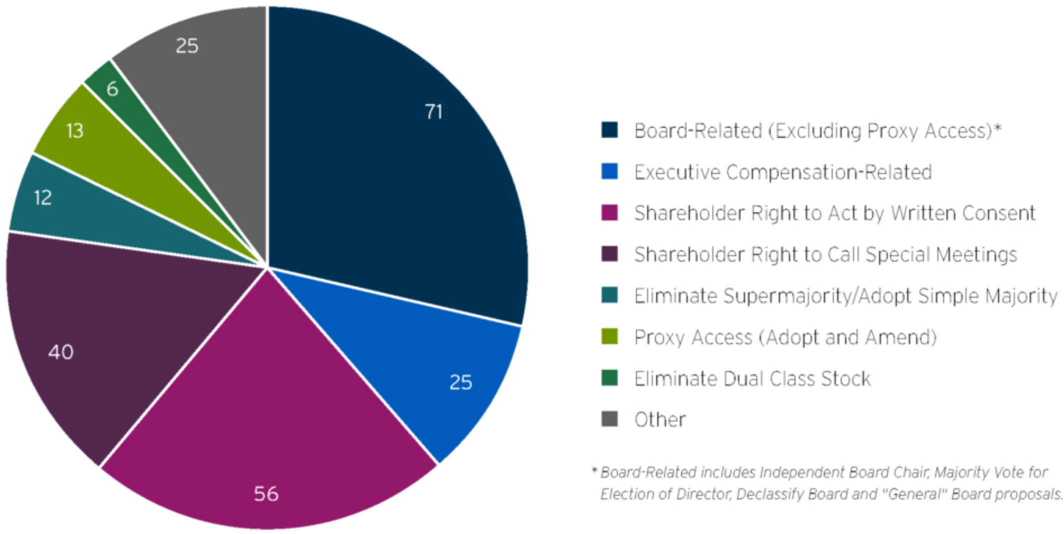
Governance Proposals Submitted vs. Voted, 2017-2020



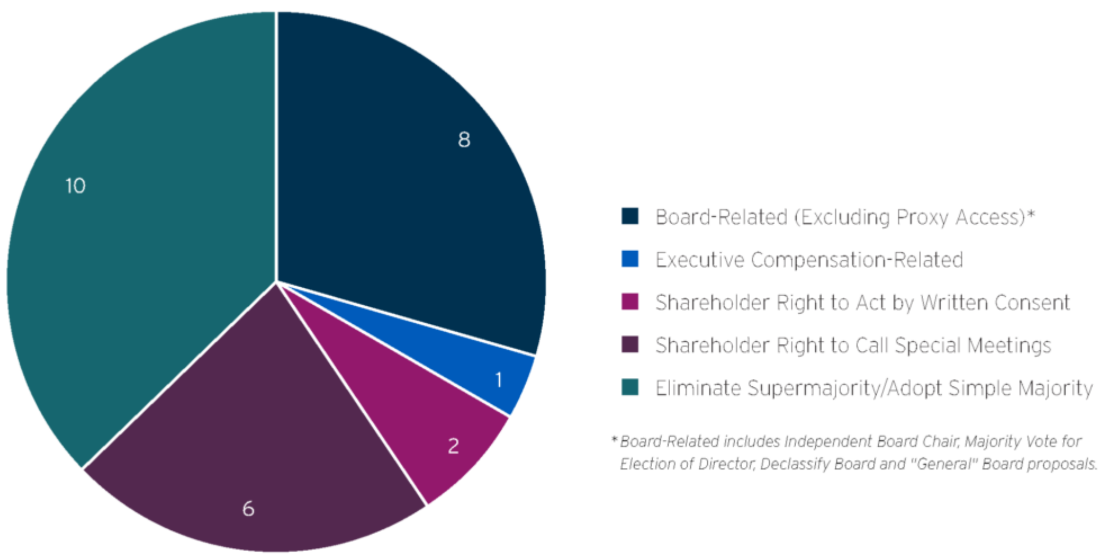
Governance Proposals Voted vs. Passed & Average Support, 2017-2020



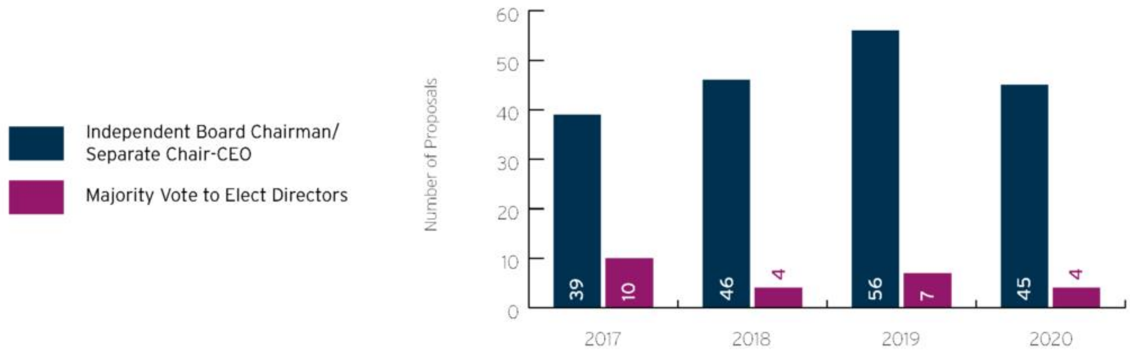
Governance Proposals Voted Upon by Type, 2020



Passing Governance Proposals, 2020



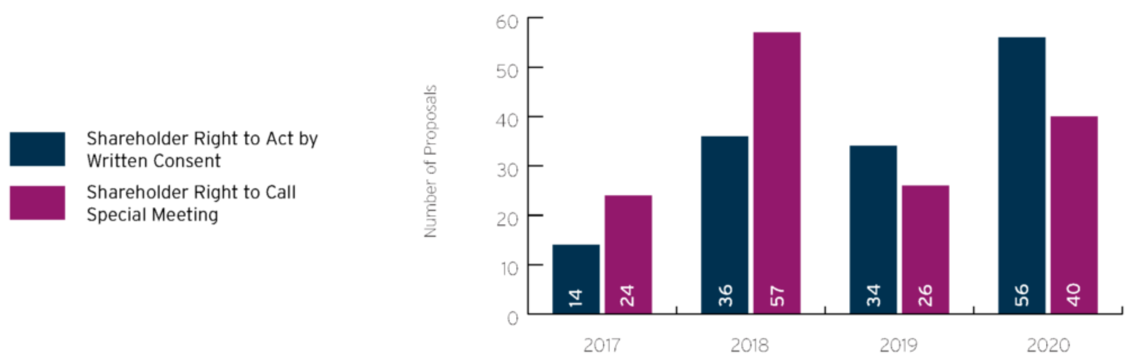
Proposals Voted Upon Relating to Board Issues, 2017-2020



Average % of Shareholder Support

	2017	2018	2019	2020
Independent Board Chairman / Separate Chair-CEO	30%	32%	29%	34%
Majority Vote to Elect Directors	54%	62%	57%	22%

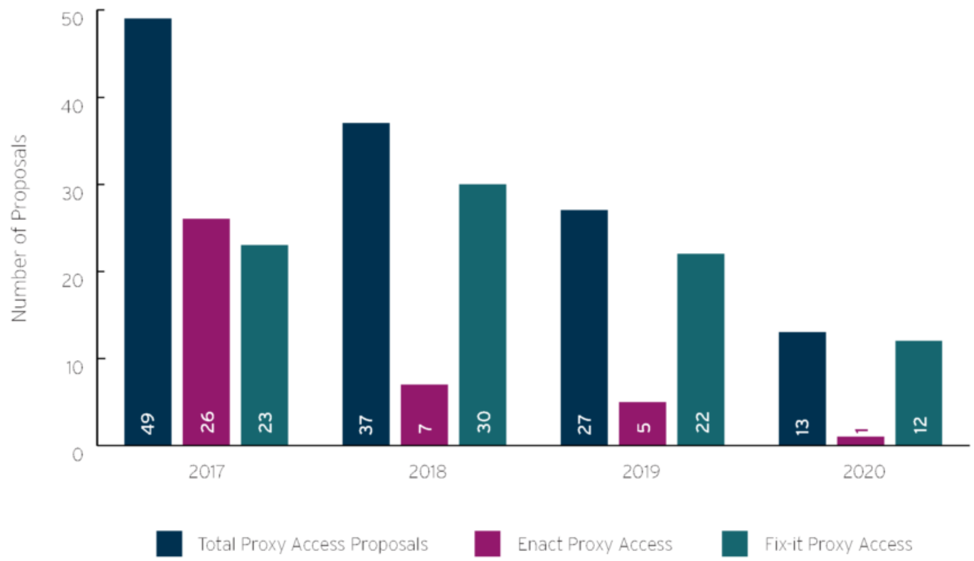
Proposals Voted Upon Relating to Shareholder Rights, 2017-2020



Average % of Shareholder Support

	2017	2018	2019	2020
Shareholder Right to Act by Written Consent	45%	42%	39%	35%
Shareholder Right to Call Special Meeting	42%	40%	43%	42%

Proposals Voted Upon Relating to Proxy Access, 2017-2020



	2017			2018			2019			2020		
	Passed	Failed	Average Support	Passed	Failed	Average Support	Passed	Failed	Average Support	Passed	Failed	Average Support
Total Proposals	19	30	45.4%	4	33	33.0%	3	24	33.0%	0	13	33.0%
- Enact Proposals	19	7	60.4%	4	3	56.4%	3	2	41.0%	0	1	18.9%
- Fix-it Proposals	0	23	28.5%	0	30	27.5%	0	22	22.0%	0	12	30.1%

Environmental and Social Shareholder Sponsored Proposals

The number of E&S proposals submitted was marginally higher than the number of governance proposals this year. Notably, comparing the number of proposals submitted to those voted, while overall shareholder E&S proposal submissions continued their downward trend, the number of proposals voted on increased year-over-year which is consistent with our earlier observation that overall withdrawals decreased this season.

While average support for E&S proposals was relatively steady compared to the prior season, support has increased significantly since 2017 as reflected in below. Looking beyond average support however, there was also a material shift in the number of proposals that passed during the 2020 season—18 proposals received majority support representing approximately 11% of E&S proposals voted on. That is more than double the passage rate seen in the 2019 season and almost four times the passage rate experienced during the 2017 season.

Environmental Proposals

As illustrated in the figures below, support for all environmental- related proposals, except “other climate-related proposals” (i.e., those not specifically focused on GHG emissions) increased in the 2020 season. The decrease in support for “other climate- related” proposals was significantly driven by two anti-climate proposals submitted at XCEL Energy and Exxon Mobil that received minimal support of 3.3% and 4.1% respectively. Excluding those proposals, support for these proposals increased as well from 30% in 2019 to 31.9% during 2020. Given the increasing urgency within society to address climate change, we expect these support levels will only continue to rise in the 2021 proxy season.

14 proposals primarily focused on climate change [8] reached a vote, and three [9] received majority support:

- B. Hunt Transport Services, Inc., where a proposal seeking a report describing if and how the company plans to reduce its contribution to climate change and align its operations with Paris Agreement goals received 54.3% support
- Dollar Tree, , where a proposal seeking reporting on GHG reduction goals and on how the company is aligning its long-term business strategy with the projected long-term constraints posed by climate change received 70.7% support
- Chevron, where a proposal seeking reporting on climate lobbying aligned with Paris Agreement goals received 5% support [10]

An additional two proposals receiving majority support, captured within the environmental and sustainability categories shown below, also included climate-related elements:

- Phillips 66, where a proposal seeking a report assessing the public health risks of expanding petrochemical operations and
  investments in areas increasingly prone to climate change-induced storms, flooding and sea level rise received 53.9% support
- Enphase Energy, where a proposal seeking a report on the company's ESG performance—specifically citing wastewater reduction targets and product-related environmental impacts as topics that potentially pose significant risks to the company received 51.8% support

Phillips 66 and Chevron are two of the 161 companies targeted by the Climate Action 100+ investor initiative focused on climate change, which continued to gain momentum this proxy season. Notably, in line with BlackRock's vocal focus on climate change this season, it became a Climate Action 100+ signatory in January 2020.

The volume of climate-related proposals receiving majority support returned to the level seen during the 2018 season after no such proposals passed during the 2019 season. BlackRock and Vanguard have already disclosed certain voting decisions demonstrating that both are voting in favor of these resolutions with increased frequency at companies where they have concerns around the company's management of climate risk.

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[8] This number does not include the proposal Chevron Corporation received relating to establishment of a board committee on climate risk, which we have categorized as a board- related governance proposal.

[9] A fourth proposal outside of the S&P 1500 also passed at Ovintiv, Inc. with 56.4% support, which sought disclosure of the company's climate-related targets, risks and opportunities aligned with Paris Agreement goals.

[10] Our data counts abstentions as against votes. Chevron's voting requirement did not count abstentions as against votes, so even though the climate change proposal received less than 50% as shown in Figure 12, the proposal passed with 53.5% support per Chevron's voting standard.

To be clear, BlackRock and Vanguard are certainly not the asset managers most frequently voting in favor of climate-related proposals, but they merit highlighting both because of their significant ownership positions within the S&P 1500 (and more broadly across the U.S. equity markets) and because they have been and continue to be criticized for not doing enough to address climate matters.

We expect that as these firms take further voting action at future meetings, support for these proposals will continue to increase. Part II of the Annual Corporate Governance Review will provide further analysis of institutions' voting decisions on these proposals.

In addition to majority supported shareholder proposals, significant activity surrounding climate change during the 2020 proxy season took place outside of the four corners of a proxy ballot.

A review of withdrawn proposals shows nearly 40 environmentally- focused proposals where presumably the subject company and the proponent reached an agreement on the subject matter of the proposal. One company falling into this category—Southern Company—had a withdrawn proposal seeking climate change risk reporting from Climate Action 100+ participant As You Sow. At its recent annual meeting, Southern Company announced committing to a 2050 net-zero carbon emissions target consistent with the position advocated by Climate Action 100+.

Social Proposals

Across the 359 E&S shareholder proposal submissions, a wide range of social topics were addressed during the 2020 season including human capital management issues such as workforce diversity, gender and racial pay equity, sexual harassment, human rights, board diversity and political contributions and lobbying expenditures. As shown below, workforce diversity and political contributions proposals had the highest number of passages with four proposals for each category.

Board Diversity

Proponents filed 35 proposals addressing board diversity, eight of which were voted upon. This year, almost half (17) of these proposals were submitted by the New York City Comptroller's Office as part of its Boardroom Accountability 3.0 campaign, which focused on the implementation of policies requiring the consideration of qualified women and racially/ethnically diverse candidates for director and external CEO searches. [11] The Comptroller's proposed policy is referred to as the Rooney Rule, borrowed from the NFL, which requires teams to interview minority candidates for front office positions. 13 of the proposals were withdrawn prior to reaching a vote and one received majority support—at Expeditors International of Washington, Inc.

Two of the focus companies—Arthur J. Gallagher and PACCAR—implemented policies addressing only the director search prong of the Comptroller's proposal. PACCAR subsequently successfully received no-action relief from the SEC to exclude the proposal. However, the proposal went to a vote at A.J. Gallagher receiving just over 24% support. The fourth proposal, at Berkshire Hathaway did not receive meaningful support given company's significant insider

[11] The New York City Comptroller's Office was the primary proponent of 14 board diversity proposals, and the co-sponsor of an additional three.

ownership. While not passing, one additional proposal filed by Trillium Asset Management focused on management diversity at IPG Photonics Corporation received nearly 45% support. That proposal requested a report assessing the current state of IPG management's diversity and how it plans to make the management team more diverse in terms of race, ethnicity, and gender. While not specifically seeking implementation of a Rooney Rule policy, the proposal suggested inclusion of disclosure regarding the company's use of Rooney Rule practices when interviewing for open positions.

These results demonstrate that, during the 2020 season, the absence of any policy at a target company was heavily scrutinized by investors. However, extrapolating from the results at A.J. Gallagher as compared to those at Expeditors International, diverse candidate pools at the C-suite level appear to have been lower priority to investors than in the boardroom. We expect many companies may face increasing pressure to extend director search policies to CEOs considering the results of the Comptroller's campaign and the current social climate. We also note that the Comptroller's Office is not the only shareholder focusing on the implementation of Rooney Rule policies. The Midwest Investors Diversity Initiative, a 14-member alliance co-led by the Illinois State Treasurer's Office and Segal Marco Advisors, recently announced that it obtained commitments from 32 companies to adopt Rooney Rule policies for every open board seat through engagements over the past four years.

The vast majority of these proposals reached a vote prior to George Floyd's death and the resulting societal focus on racial inequality and systemic racism. Accordingly, we expect the submission, and passage, of proposals focused on diversity, equity and inclusion will likely accelerate in the 2021 proxy season. Indeed, the New York City Comptroller's Office in July announced a letter writing campaign focused on 67 S&P 100 companies who issued supportive statements on racial equality, asking that they publicly disclose the composition of their workforce by race, ethnicity and gender. Other proponents such as Trillium, Calvert and the Interfaith Center for Corporate Responsibility have also been focused on this topic. BlackRock indicated in a June announcement outlining its strategy for racial equity and inclusion, that it will be "refreshing" its expectations regarding companies' management and disclosure of human capital issues and sustainable social practices.

Workforce Diversity

36 proposals submitted during the 2020 proxy season addressed workforce diversity and inclusion. 12 of these proposals reached a vote, with four receiving majority support—at Fortinet, Inc., Fastenal Company, Genuine Parts Company and O'Reilly Automotive, Inc. The Fortinet proposal represented a new approach to this topic seeking a report assessing the company's diversity and inclusion efforts, including the board's (i) process for assessing the effectiveness of its diversity and inclusion programs, and (ii) assessment of program effectiveness. The other proposals all specifically sought reporting on the diversity of the respective company's workforce based on gender and the Employer Information Report EEO-1 racial and ethnic categories. In the case of Genuine Parts and O'Reilly Automotive, the proposals also requested broader reporting on policies, performance and improvement targets (taking into account SASB-aligned metrics) related to material human capital risks and opportunities.

Also focused on the topic of board and workforce diversity, the National Center for Public Policy Research, a conservative think tank, this season submitted nine proposals relating to "ideological" diversity. Three of these proposals reached a vote, receiving support receiving support ranging from 1% to 1.6%.

Gender and Racial Pay Disparity

Consistent with 2019 proposals, the majority of pay gap proposals voted upon in 2020 focused on reporting of unadjusted pay gaps, aimed at addressing not just whether equal pay exists but also equal opportunity, rather than information adjusted for seniority, geography and other factors. At least 7 of the 17 proposals voted upon this season were filed or co-filed by Arjuna Capital, which expanded its request this season to seek information on both gender and racial pay gaps, rather than gender pay gaps alone. Likely as a result of this shift in focus, support for these proposals decreased significantly during 2020 from an average of 21% during 2019 to 14% during 2020. Specifically, ISS recommended voting in favor of only three of these proposals due to concerns regarding how a racial pay gap ratio would be calculated. In comparison, it recommended votes in favor for 13 of the pay gap proposals voted on during 2019.

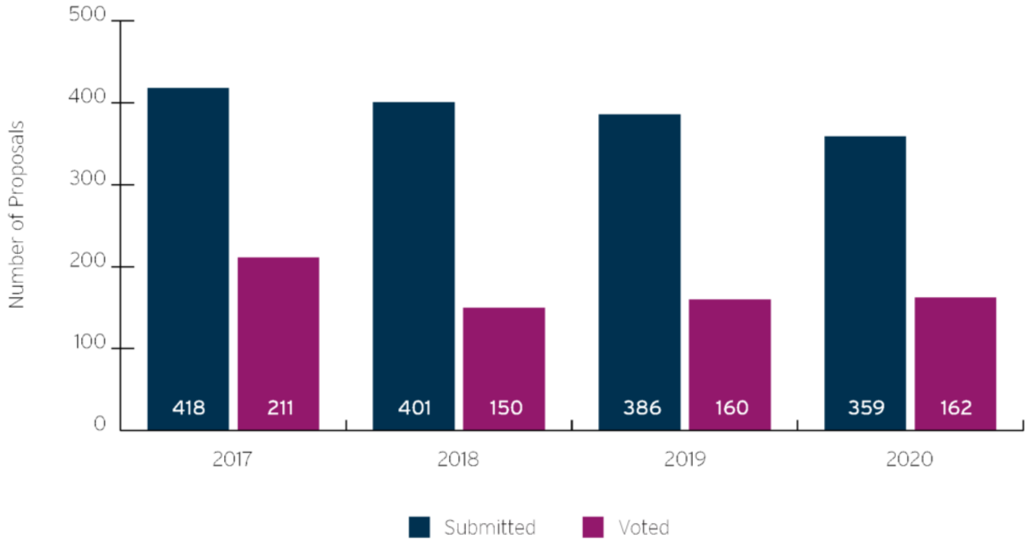
Voluntary agreements to publicly disclose unadjusted pay gap information continued to be rare during 2020, with only two companies agreeing to do so—MasterCard and Starbucks. In light of the current social climate, this may be another area ripe for expanded focus during the 2021 proxy season.

In 2020 six employment-related mandatory arbitration proposals were submitted (a slight increase from the five submitted during 2019). Two of these proposals reached a vote, and while ISS recommended votes in favor of both proposals and support for the proposals differed substantially, with one receiving majority support of 51% at Chipotle and the other, at Alphabet, receiving just over 16% support. This disparity can be accounted for in part due to Alphabet's dual class structure.

Lobbying and Political Contributions

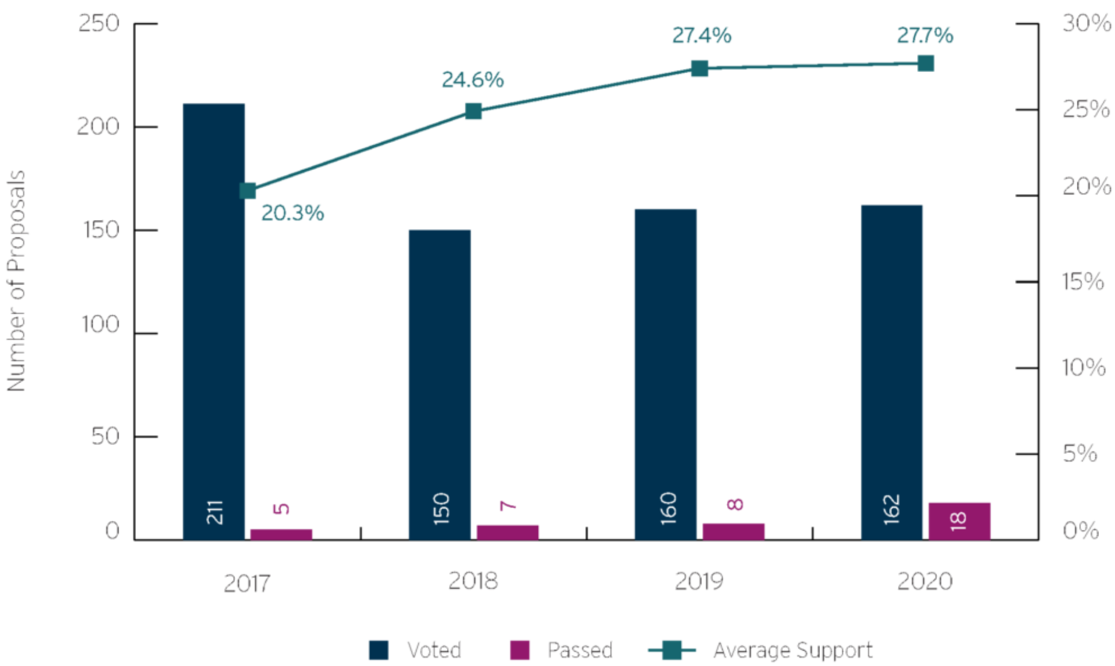
During the 2020 proxy season proposals submitted seeking reporting on lobbying and political contributions decreased to 76, as compared to 101 in 2019. While the number of political contributions proposals decreased notably, the number of lobbying proposals increased slightly. Figure 17 illustrates the number of each of these proposals that reached a vote between 2017 and 2020. Part II of the Annual Corporate Governance Review will provide further analysis of institutions' voting decisions on these proposals.

Environmental and Social Proposals Submitted vs. Voted, 2017-2020

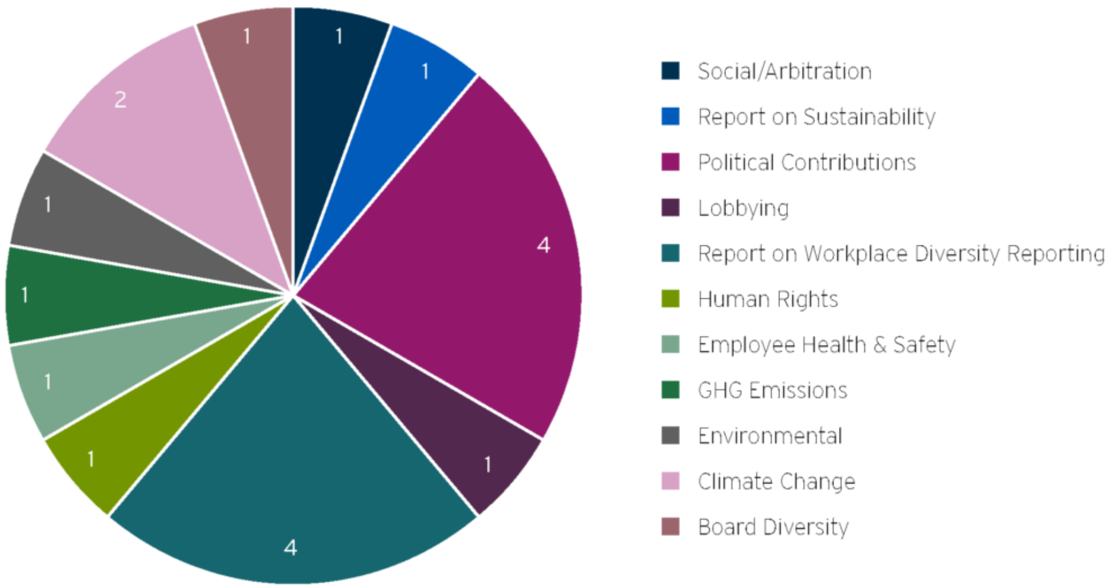


	2017	2018	2019	2020
Environmental Submitted	129	123	92	87
Environmental Voted On	67	41	26	25
Social Submitted	289	278	294	272
Social Voted On	144	109	134	137

Environmental and Social Proposals Voted vs. Passed & Average Support, 2017-2020



Passing Environmental and Social Proposals, 2020

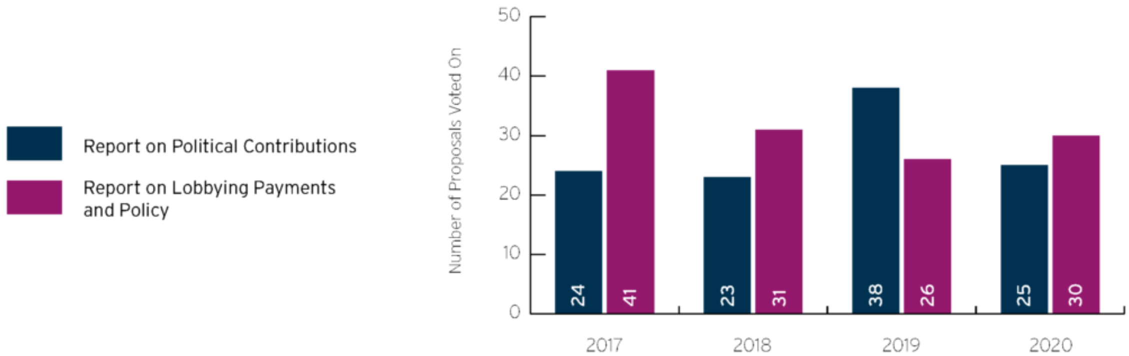


Proposals Voted Upon Relating to Select Social Issues, 2017-2020

Average % of Shareholder Support

	2017	2018	2019	2020
Board and Employment Diversity (EEO) Proposals	23%	32%	21%	28%
Gender/Racial and Employment Pay Disparity Proposals	10%	16%	21%	14%

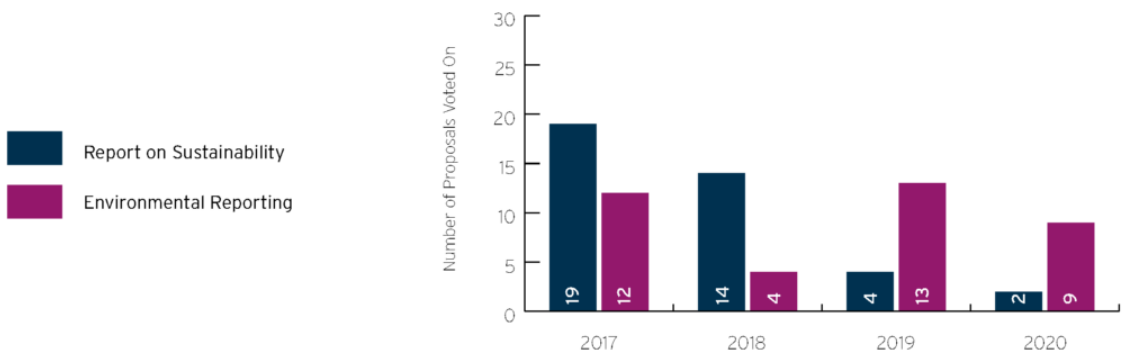
Proposals Voted Upon Relating to Select Social Issues, 2017-2020



Average % of Shareholder Support

	2017	2018	2019	2020
Report on Political Contributions	25%	31%	35%	40%
Report on Lobbying Payments and Policy	25%	26%	30%	32%

Proposals Voted Upon Relating to Select Environmental Issues, 2017-2020

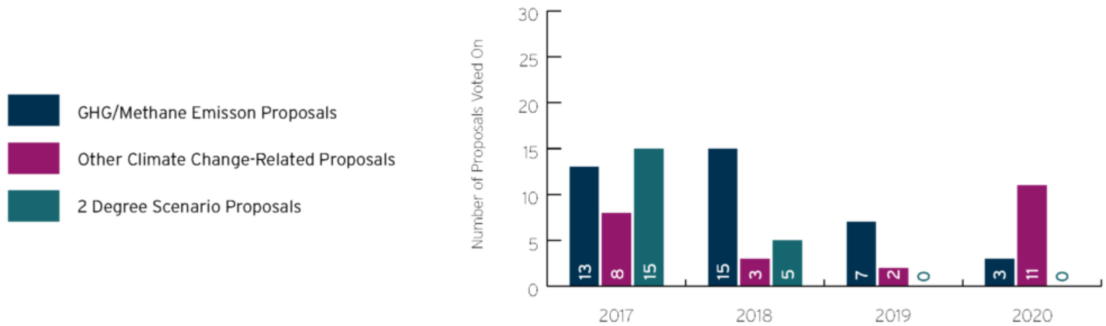


Average % of Shareholder Support

	2017	2018	2019	2020
Report on Sustainability*	25%	29%	36%	45%
Environmental Reporting**	21%	25%	19%	22%

**Sustainability proposals include sustainability-, renewable energy-, and recycling-related*
***Environmental proposals also include pollution-related proposals*

Proposals Voted Upon Relating to Select Environmental Issues, 2017-2020



Average % of Shareholder Support

	2017	2018	2019	2020
GHG/Methane Emisson Proposals	26%	30%	33%	47%
Other Climate Change-Related Proposals	19%	21%	30%	28%
2 Degree Scenario Proposals	42%	40%	NA	NA

Director Elections

The investor spotlight continued to shine on director elections this proxy season. Compared to director support experienced during 2019, aggregate votes in favor of directors decreased only slightly year-over-year. Average support of director elections has hovered close to 96% over the past four years. In 2020, 19 directors received less than 50% support, of which four failed to be elected due to a majority voting standard.

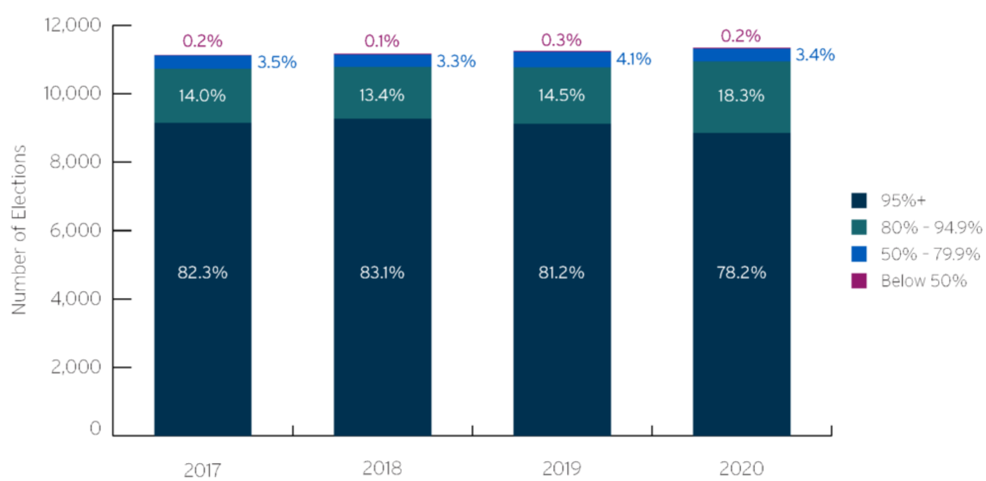
This year, additional investor focus on director elections came from State Street Global Advisors. In January, State Street announced that, among its engagement priorities for 2020, the firm will consider voting against board members at companies in the S&P 500 with R-Factor™ scores in the bottom tenth percentile of their industries that cannot articulate how they plan to improve their score. Beginning in 2022, this voting action will extend to all companies within its portfolio whose R-Factor™ score places them in the bottom 30th percentile of their industries. According to State Street, its R-Factor™ rating system measures the performance of a company's business operations and governance as it relates to ESG topics that are financially material to the company's industry (based on applicable SASB standards).

BlackRock has also sharpened its focus on certain factors when evaluating its support of director elections. Specifically, the firm announced that it will expect portfolio companies to provide disclosure aligned with the TCFD framework and SASB standards prior to year-end. BlackRock believes that this disclosure will provide more comparable, financially material information to the market. The firm intends to use this TCFD- and SASB-aligned disclosure to assess portfolio investments and inform its engagements with portfolio companies. Additionally, BlackRock's policies have been updated to state that the firm may make voting decisions regarding the election of relevant directors based on the disclosure or management of climate matters and when considering whether to support a range of shareholder-related proposals. Indeed, BlackRock recently announced that globally it voted against 53 companies it deemed to be dragging their feet on climate change and that it has placed an additional 191 companies “on watch” for voting action in the next 12 months if their practices do not improve. Other large asset managers such as Neuberger Berman and T. Rowe Price are also considering ESG criteria when evaluating whether to support director elections. Accordingly, we expect that we may see a decrease in director support beginning in the 2021 proxy season, particularly if BlackRock holds true to its mandate that all its portfolio companies produce SASB- and TCFD-aligned reporting by year end.

Additional board-related topics that appear to influence investors to vote against directors up for election are:

- Overboarding—Investor policies have become stricter on the maximum number of boards on which directors may serve. Consequently, investors are voting against directors who they believe serve on an excessive number of boards
- Composition—Continued focus on board composition as it relates to racial, and gender diversity, skill sets, and other factors that, in the investors view, ensures the board is composed appropriately
- Responsiveness and Accountability—Boards are expected to be responsive to shareholder votes and specific investor This expectation has also led to increased support for proposals seeking to separate the roles of board chair and CEO, as discussed below

Support for Director Elections, 2017-2020



	2017	2018	2019	2020
Average Shareholder Support*	96.3%	96.4%	96.0%	95.9%
Total Voted	11,128	11,160	11,245	11,336
Total Below 50% Support*	21	16	29	19
Total Failed**	4	5	6	4

*Vote calculations count abstentions as AGAINST votes

**Due to plurality vote standards or vote standards that do not include abstentions as AGAINST votes, not all director votes below 50% support failed

Executive Compensation

Say-on-pay vote results for 2020 saw a slight decline in average support experienced within the S&P 500, with approximately 90% of votes cast in favor (excluding abstentions) of these proposals, compared to 91% support last year. In addition, approximately 74% of S&P 500 companies received 90% or higher shareholder support compared to approximately 79% of companies in 2019. S&P 1500 companies fared slightly better this year, with approximately 91% average votes cast in favor and 75% of the companies receiving greater than 90% vote support. 2020 results for the S&P 1500 companies were comparable to those in 2019 in terms of average support, although a higher proportion—78%—received greater than 90% vote support last year.

Ten S&P 500 companies failed to receive majority support for their say-on-pay proposals in 2020. Although Intel Corporation received more votes in favor than against, its say-on-pay proposal failed marginally with 49.7% support as abstentions counted and as votes and had the same effect as votes against the proposal. Among these ten companies, while most received vote support exceeding 40%, QUALCOMM Inc. and CVS Health Corp. received only 17.9% and 24.4% votes favorable votes, respectively. At QUALCOMM, special equity awards in consecutive years and the magnitude of CEO annual cycle long-term incentive awards likely contributed to the lack of support for the executive compensation program. At CVS Health the concerns related to the compensation committee accelerating the grant of the CEO’s performance stock units for 2020 to August 2019 and accelerating the grant of three additional years of performance units to the general counsel likely contributed to the results.

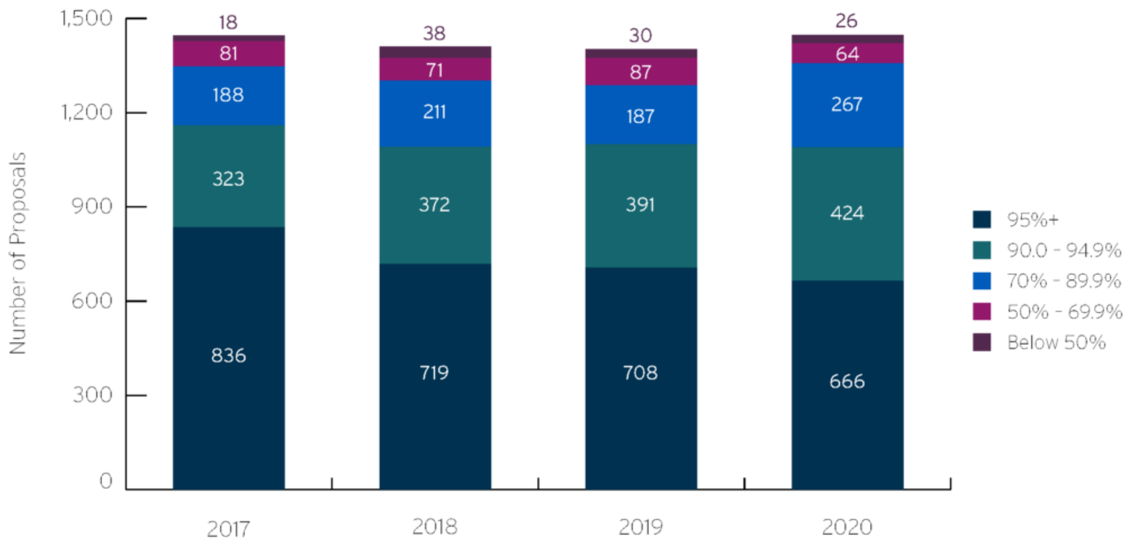
The failure rate for S&P 1500 companies fell to 1.7% in 2020 (26 companies) compared to 2.1% in 2019 (30 companies). The S&P 1500 companies with “red zone” results, i.e. those receiving between 50% to 70% [12] vote support also decreased from 6.2% in 2019 to 4.4% in 2020. The S&P 500 companies falling in the “red zone” decreased slightly from 5.5% in 2019 to 5.2% in 2020.

ISS recommended voting against at a higher percentage of S&P 500 companies in 2020 with 11.8% of say-on-pay proposals garnering a negative recommendation compared to 10.7% in 2019. This was in contrast to S&P 1500 companies, where ISS’s negative recommendations declined from 10.4% in 2019 to 8.3% in 2020. The decline in negative ISS recommendations for the S&P 1500 index was due to small- and midcap companies faring better under ISS analysis in 2020 compared to 2019. Negative ISS vote recommendations at S&P 500 companies and S&P 1500 companies in 2020 arguably reduced shareholder support by 28.1% and 30.7% respectively.

The main reason for ISS’s against vote recommendations continues to be CEO pay-for-performance misalignment. Large discretionary compensation and use of performance goals that were not sufficiently rigorous contributed to misalignment concerns at many companies where ISS recommended against say-on-pay proposals.

[12] Support below 70% is the threshold at which ISS expects increased responsiveness to shareholders. Glass Lewis’s threshold is higher, at 80%.

Support for Say-on-Pay, 2017-2020



	2017	2018	2019	2020
Average Shareholder Support*	91.8%	90.5%	90.6%	90.7%
Total Voted	1446	1411	1403	1447
Total Below 50% Support*	18	38	30	26
Total Failed	18	35***	30	25**

*Vote calculations count abstentions as AGAINST votes
**GameStop passed with over 50% support as voting requirement did not include abstentions as AGAINST votes
***Customers Bancorp, PetMed Express and Jefferies Financial passed with over 50% support as voting requirement did not include abstentions as AGAINST votes

The complete publication, including footnotes, is available here.

ISS Updates its Voting Policies

Posted by Pamela Marcogliese, Maj Vaseghi, and Doru Gavril, Freshfields Bruckhaus Deringer LLP, on Sunday, December 6, 2020

Editor's note: Pamela Marcogliese, Maj Vaseghi, and Doru Gavril are partners at Freshfields Bruckhaus Deringer LLP. This post is based on a Freshfields memorandum by Ms. Marcogliese, Ms. Vaseghi, Mr. Gavril, Elizabeth Bieber and Kelsey MacElroy.

On November 12, Institutional Shareholder Services ("ISS") published its annual policy updates in its 2021 global proxy voting guidelines, which are effective for shareholder meetings held on or after February 1, 2021. Social and environmental issues, board diversity, shareholder litigation rights and COVID-19 recovery era policies emerged as ISS' main areas of focus for its policy updates. Below is a summary of ISS' key updates for U.S. companies:

Social and environmental issues

Governance failures: material environmental and social risk oversight

ISS will recommend withhold votes against directors, committees or the entire board for, among other things, a material risk oversight failure, and this year will include in its list of examples as to what constitutes a material risk oversight failure the oversight of environmental and social issues, including climate change.

Mandatory arbitration

After an increase in shareholder proposals requesting reports on the use of mandatory arbitration in employment claims by companies in 2019 and 2020, ISS' new policy provides it will recommend voting for shareholder proposals requesting such reports on a case-by-case basis, taking into account the company's existing policies, public standing with respect to any controversies and the company's disclosure of policies compared to its peers.

Sexual harassment

ISS unveiled a new policy recommending a case-by-case evaluation of shareholder proposals requesting reports on the actions taken by a company to prevent sexual harassment or on the risks posed by the company's failure to take such actions. The analysis is also based on the company's existing policies, whether there have been any recent controversies and the company's disclosure of policies compared to its peers.

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Board diversity

Racial, ethnic and gender diversity

In light of recent social unrest and in response to increased investor focus on racial and ethnic diversity in the boardroom, ISS will recommend withhold votes starting in the 2022 proxy season for the chair of the nominating committee or individual directors on a case-by-case basis if the boards of companies in the Russell 3000 or S&P 1500 do not have apparent racially or ethnically diverse directors. Similar to the roll-out of the gender diversity policy, a company without racially and/or ethnically diverse directors on the board in the preceding year may not receive a negative recommendation if the company makes a firm commitment to appoint at least one racially and/or ethnically diverse director within a year. With respect to its gender diversity policy exceptions, ISS also noted that for boards lacking any female directors, a withhold vote may not be warranted if the company had a female director in the preceding year and makes a commitment to restoring gender diversity within the following year. ISS noted that in their 2020-2021 Global Policy Survey almost 60% of investors indicated that boards should reflect the broader society and a company's customer base, which ISS views as a signal of equality and good governance.

Shareholder rights and defenses

Advance notice requirements for shareholder proposals / nominations

For its case-by-case review of proposals regarding advance notice, ISS revised its view on a reasonable deadline for shareholder notice of a proposal/nomination to align with the advance notice window in most bylaws. These typical advance notice provisions provide a 90-120 day window prior to the anniversary of the previous year's meeting, and have the window open for at least 30 days. The policy does not apply to shareholder proposals submitted under Rule 14a-8 of the Exchange Act or to nominations via proxy access bylaws. ISS' view reflects its recognition of the need for a balance between allowing shareholders flexibility to address developing concerns relatively close to a meeting through the proposal process while also providing sufficient time for shareholders to review the proposals prior to a meeting.

Shareholder litigation rights

In response to the *Sciabacucchi* case in the Delaware Supreme Court that upheld the validity of federal forum selection clauses with respect to federal securities law claims, ISS will generally recommend a vote for proposals that specify the district courts of the United States as the exclusive forum for federal securities law claims, but will vote against proposals that designate a particular federal district court. In addition, ISS will generally recommend votes for charter or bylaw provisions specifying Delaware as the exclusive forum for state law matters, but will review provisions specifying states other than the state of incorporation as an exclusive forum on a case-by-case basis, including the company's rationale for the forum, disclosure of past harm for duplicative lawsuits in multiple jurisdictions, the breadth of the provision, such as its applicability to various types of lawsuits, and other company governance provisions.

COVID-19 recovery era considerations

Poison pills

ISS will recommended withhold votes for directors at companies that adopt poison pills with a deadhand or slowhand feature, designed, in each case, to limit the ability of a future board to amend or redeem a poison pill and prevent shareholders who replace the board from accepting an offer that would otherwise trigger the pill. ISS noted that this change was made in consideration of the handful of companies that adopting short-term poison pills during the COVID-19 pandemic. While ISS was fairly lenient last year in its approach to recently-adopted poison pills, it noted this year that it may make withhold vote recommendations even if the pill has expired at the time of the annual meeting.

Virtual shareholder meetings

After the 2020 proxy season where many companies switched to a virtual meeting on short notice with limited impact on shareholder engagement, ISS will support virtual shareholder meetings and recommend voting for management proposals allowing virtual shareholder meetings, so long as the proposals do not preclude in-person meetings. Such proposals retain flexibility for a company to hold shareholder meetings by either virtual-only, in-person or hybrid. However, companies are encouraged to provide disclosure regarding the reasons and circumstances to hold virtual-only meetings and provide information on comparable shareholder rights and participation opportunities of virtual meetings compared with in-person meetings. Shareholder proposals for virtual-only meetings will be evaluated on a case-by-case basis.

Other board changes

Gender, race and ethnicity pay gaps

ISS updated its existing policy regarding proposals to provide reports regarding a company's gap policies and initiatives on the basis of gender, race or ethnicity to clarify that ISS compares such information against a company's industry peers and to account for considerations related to jurisdictional restrictions on the categorization of employees by race and/or ethnicity.

Board refreshment—age / term limits

While ISS is still, in principle, against the idea of arbitrarily limiting service on a board due to age or tenure, it recognizes that these mechanisms can assist boards in refreshment, and as a result, will review proposals to implement term limits on a case-by-case basis. ISS will consider a number of factors in its decision-making for management proposals, including (i) the rationale for the proposed term limit, (ii) the robustness of the company's board evaluation process, (iii) whether the limit permits a range of director tenures, (iv) whether the limit would disadvantage independent directors against non-independent directors, and (v) whether the board will impose the limit evenly, without the option to waive in a potentially discriminatory manner. With respect to shareholder proposals on the topic, ISS will consider (i) the scope of the proposal and (ii) evidence of problematic board issues and governance failures combined with, or contributed to by, the lack of board turnover.

Director classification

ISS will not consider employees, including employee representatives, to be an "executive director". Only executives will be considered executive directors. ISS does not expect this change to affect any voting recommendations, but noted that there is the potential to interplay with overboarding policies and how investors think about assessing executive roles.

Independence

ISS will consider directors who receive pay that is on par with pay for Named Executive Officers for multiple years to be classified as non-independent.

Source: ISS Upcoming Policies 2021.

Glass Lewis and ISS Issue Final 2021 U.S. Voting Policies

Posted by Andrea K. Wahlquist, Sabastian V. Niles, and Justin C. Nowell, Wachtell Lipton Rosen & Katz, on Monday, December 7, 2020

Editor's note: Andrea K. Wahlquist and Sabastian V. Niles are partners, and Justin C. Nowell is an associate at Wachtell Lipton Rosen & Katz. This post is based on their Wachtell memorandum.

Glass Lewis recently released its 2021 U.S. Voting Policies, which heighten focus on board diversity and related disclosures, board tenure and refreshment, and environmental and social risk oversight. The new policies also address incentive compensation plans and shareholder proposals. The new policies generally become effective for shareholder meetings held on or after January 1, 2021. ISS also recently released its final U.S. Voting Policies, which track previously issued draft policies and become effective for shareholder meetings held on or after February 1, 2021.

Glass Lewis

Notable updates to Glass Lewis' voting policy guidelines include:

Board Gender Diversity. Glass Lewis reaffirmed its commitment to board gender diversity and will now generally recommend voting against the nominating committee chair of a board that has fewer than two female directors, starting with shareholder meetings held after January 1, 2022. In the interim, Glass Lewis will apply its existing guideline of a minimum of one female board member for meetings held in 2021 and will flag companies if their boards have fewer than two female directors. Although Glass Lewis' voting policy guidelines did not adopt a board diversity policy that goes beyond gender or disclosure (see below), it would not be surprising to see a voting policy that addresses ethnic and/or racial diversity on boards in the future. This is particularly true given ISS' adoption of such an approach and enhanced scrutiny from investors on boards lacking racial and ethnic diversity.

Disclosure of Director Diversity and Skills. Beginning in 2021, Glass Lewis' reports on S&P 500 companies will assess company disclosure in its proxy statement relating to board diversity, skills and director nomination process, including: (1) a board's current percentage of racial/ethnic diversity; (2) whether a board's definition of diversity explicitly includes gender and/or race/ethnicity; (3) whether a board has adopted a policy requiring women and minorities to be included in the initial pool of candidates when selecting new director nominees, otherwise known as the "Rooney Rule"; and (4) board skills disclosure.

Board Refreshment. Beginning in 2021, Glass Lewis will note instances where the average tenure of non-executive directors is 10 years or more, and no new independent directors have joined the board in the past five years. Glass Lewis would include cautionary language in its research reports but would not recommend negative voting action (*i.e.*, "Withhold" or "Against" votes) solely for insufficient board refreshment.

Environmental and Social Risk Oversight. Glass Lewis stresses the importance of ensuring the sustainability of companies' operations, as insufficient oversight of material environmental and social issues can present risks that can harm stakeholder interests. Beginning in 2021, Glass Lewis will note as a concern for S&P 500 companies any lack of clear disclosure in their proxy statements and governing documents (*e.g.*, committee charters) regarding board-level oversight and accountability with respect to environmental and social issues. After 2021, Glass Lewis will begin recommending votes against the governance committee chair of companies that fail to provide explicit disclosure concerning the board's role in overseeing these issues. This change reflects a compromise that affords shareholders meaningful disclosure while providing companies the flexibility to determine the best structure of oversight for themselves.

Short- and Long-Term Incentives. Glass Lewis notes that companies should provide clear disclosure as to the rationale for any pandemic-related changes to short-term incentive plans (*e.g.*, increasing payouts, lowering performance goals or pro-rating performance periods). Absent extraordinary circumstances, significantly reducing the percentage of long-term incentives that are performance-based may cause Glass Lewis to recommend against a company's say-on-pay proposal. Companies that may have modified their short-term and/or long-term incentive plans in light of the pandemic would be well-advised to include robust disclosure regarding the changes that were made, as well as the rationale for, and impact of, each change, as compared to the original plans.

Shareholder Proposals. Glass Lewis has also released its 2021 ESG Initiatives, which revise its recommendations on certain proposals involving: (1) diversity (*i.e.*, EEO-1) reporting; (2) management-proposed ESG resolutions; and (3) climate change. In general, Glass Lewis will take a case-by-case approach, making recommendations based on a variety of factors (*e.g.*, how existing disclosure compares to peers and material impact on shareholders), and will typically vote in favor of proposals that require enhanced disclosure.

ISS

As addressed in our prior memos (here and here), ISS' updated policies focus on board diversity, as well as environmental and social risk oversight, and include updated approaches regarding forum selection clauses addressing state law or federal securities law claims. These final proxy voting policies largely track ISS' previously issued draft policies, which reflect ISS' willingness to be flexible when companies explain with specificity and context the scope and rationale for their decisions. It is also worth noting that these policies do not reverse any of its prior guidance as to how it expects to evaluate pandemic-related adjustments to compensation programs.

* * * * *

As we have noted over this year, the pandemic has accelerated the focus on ESG related issues impacting all aspects of the business of public companies. It will be important for companies to remain nimble in these areas and proactively address (and, where appropriate, discuss in external disclosures and reporting) foreseeable ESG-related risks, and actions to be taken in respect of these risks, in order to avoid adverse recommendations from Glass Lewis and ISS.

BlackRock's 2021 Proxy Voting Guidelines Prioritize ESG Actions

Posted by Allie Rutherford and Rob Zivnuska, PJT Camberview, on Tuesday, January 12, 2021

Editor's note: Allie Rutherford and Rob Zivnuska are partners at PJT Camberview. This post is based on a PJT Camberview memorandum by Ms. Rutherford, Mr. Zivnuska, James Hamilton, and Eric Sumberg. Related research from the Program on Corporate Governance includes The Illusory Promise of Stakeholder Governance by Lucian A. Bebchuk and Roberto Tallarita (discussed on the Forum here); Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee by Max M. Schanzenbach and Robert H. Sitkoff (discussed on the Forum here); and Companies Should Maximize Shareholder Welfare Not Market Value by Oliver Hart and Luigi Zingales (discussed on the Forum here).

Key Takeaways

- BlackRock released proxy voting guidelines and stewardship expectations for 2021 that reflect its continued commitment to integrate ESG throughout its investment and stewardship functions and provide greater transparency around its efforts
- Key guideline changes focus on climate risk, human capital management, diversity and stakeholder interests and provide a more clear path for BlackRock to vote against management when its expectations are not met
- BlackRock announced plans to engage with over 1,000 companies globally on climate risk and is prioritizing engagement with approximately 150 companies on material social risks associated with addressing the needs of key stakeholders
- BlackRock is among a number of investors who are taking a more assertive approach to ESG, including a new coalition of asset managers representing $9 trillion of AUM committing to investments aligned with net-zero carbon emissions by 2050; these actions signal the increased marketwide focus and momentum on ESG and the importance for companies to consider investor perspectives as they enhance practices and disclosures

Last week, BlackRock released its 2021 proxy voting guidelines for the U.S. and other major markets along with updated global principles and a new summary document outlining its stewardship expectations for the coming year. BlackRock began the year by providing a comprehensive roadmap for how it planned to realign its investment approach, engagement priorities and voting transparency with its policy positions on sustainability risk. These updated materials demonstrate how BlackRock intends to pair higher expectations for corporate responsiveness across a number of topics, including diversity, equity and inclusion and environmental risk, with a greater willingness to vote against management where these expectations are not met.

The Stewardship Expectations Report provides context for some of the policy changes that BlackRock intends to undertake in 2021, which include doubling the number of carbon-intensive companies with which it will engage and being more likely to support environmental and social-focused shareholder proposals. BlackRock intends to release updated engagement priorities and supporting key performance indicators in early 2021, as well as new commentaries outlining its perspectives on companies' impacts on people and natural capital (defined as the environment beyond climate).

Market Context and Impacts for Companies

BlackRock recently outlined the sustainability-focused actions it took in 2020 and the progress it has made in integrating ESG into assets under management, creating new sustainable investment strategies and climate risk tools and taking a more comprehensive approach to engagement and transparency on stewardship. Within this context, BlackRock's 2021 guidelines signal that while its expectations for companies continue to grow beyond just disclosure and into concrete efforts to decarbonize and diversify, stewardship is just one of the ways in which it is integrating ESG into its investment approach.

Within the stewardship context, BlackRock's new guidelines are indicative of how the broader investor landscape continues to evolve. BlackRock is not alone among investors placing new pressures on companies to enhance their ESG disclosures and practices and signaling an increasing willingness to use their vote to express their views. State Street Global Advisors wrote to boards in late summer setting forth its engagement strategy and expectations on board and workforce diversity and this week Vanguard published new expectations for board diversity in 2021. A number of investors have recently announced new initiatives that advance ESG priorities:

- Last week, a new coalition of asset managers representing $9 trillion of AUM including UBS Asset Management, Wellington Management and Fidelity International committed to investments aligned with net zero carbon emissions by 2050, Macquarie Asset Management announced plans to manage its portfolio in line with net zero carbon emissions by 2040 and the New York State Common Retirement Fund set a similar 2040 commitment for its portfolio. These moves come on the heels of several company commitments, many of which were driven by engagement with investor coalitions such as the Climate Action 100+ (which now counts BlackRock and State Street among its nearly 550 investors with an estimated $52 trillion of AUM) to reach similar emissions goals
- In addition, a number of new policies and proposals on gender, racial and ethnic diversity have recently been announced. Several investors have begun campaigns to compel companies to publish their workforce demographics in line with the U.S. Equal Employment Opportunity Commission's EEO-1 Survey, Legal and General Investment Management and Goldman Sachs Asset Management have enacted tougher board gender and ethnic diversity policies, a number of states have implemented or are considering mandates on board gender or racial and ethnic diversity and Nasdaq has proposed a 'comply-or-explain' board diversity listing standard

Companies seeking to address these trends should apply an investor lens to identifying and disclosing progress on their ESG priorities. While investors are pushing for more information upon which to make investment and stewardship decisions, they are also implementing proprietary ESG investment models, and deepening the integration of ESG expertise in stewardship and portfolio management teams. Companies will be well served to take control of their own narrative and use disclosures and engagement discussions to communicate how they are identifying and addressing material ESG topics.

BlackRock 2021 U.S. Proxy Voting Guidelines

BlackRock has traditionally published its proxy voting guidelines in the first months of the year, making the early release of the 2021 guidelines a change in approach. Notable updates to its U.S. proxy voting guidelines include:

Climate Risk: Building on themes described in Chairman and CEO Larry Fink's January 2020 letter to CEOs, together with the BlackRock Investment Stewardship (BIS) team's mid-year "Our Approach to Sustainability" report, expectations on climate risk have been clarified. BlackRock expects companies to "articulate how they are aligned to a scenario in which global warming is limited to well below 2° C and is consistent with a global aspiration to reach net zero GHG emissions by 2050." This expectation includes disclosure along the TCFD and SASB frameworks, inclusive of how companies will consider the challenges of adapting to a low-carbon economy within their existing strategy and emissions reductions efforts. BlackRock may now support shareholder proposals on climate risk that align with its stated expectations. In 2021, BlackRock will expand its universe of carbon intensive companies with which it will engage on climate risk from 440 companies to over 1,000 companies globally, representing 90% of global scope 1 and 2 emissions.

Human Capital Management (HCM): HCM has been a key focus area for BlackRock and the topic now has its own section in the proxy voting guidelines. BlackRock outlines its view on the importance of HCM to business continuity, innovation and long-term value creation and also notes its expectation of board oversight. In 2021, BlackRock will expect disclosure of workforce demographics, such as gender, race, and ethnicity in line with the EEO-1 Survey, along with steps being taken to advance diversity, equity, and inclusion. Where BlackRock believes disclosures or practices fall short of market or peer practice, it may vote against members of the appropriate committee or support related shareholder proposals.

Board Composition: BlackRock updated its policies on board composition by noting that it encourages boards to disclose demographics related to board diversity, including gender, ethnicity, race, age, and geographic location, as well as milestones to achieve "multi-faceted racial, ethnic, and gender representation." BlackRock will also consider average board tenure when evaluating board refreshment processes and may now oppose boards that appear to have an "insufficient mix" of short-, medium- and long-tenured directors.

Key Stakeholder Interests: A new section outlines BlackRock's expectations for overseeing and mitigating the legal, regulatory, operational, and reputational risks that may come from poorly managed stakeholder relationships, inclusive of employees, business partners, clients and consumers, government and regulators and communities in which companies operate. In 2021, BlackRock will prioritize engagement with approximately 150 companies whose key stakeholders may be impacted by adverse business practices or insufficient management of 'social' sustainability risks. While there is no stated voting action attached to this new guideline, BlackRock expects board oversight and appropriate due diligence regarding these risks.

Company Responsiveness: BlackRock made significant changes to its expectations for acknowledging and responding to vote outcomes for shareholder proposals, director elections, compensation and other ballot items. New policies include:

- For shareholder proposals, previously BlackRock expected companies to *implement* proposals that received *majority* support – it now expects companies to *consider* proposals that get *substantial* support. Based on the accompanying Stewardship Expectations Report, substantial appears to be generally defined as any shareholder proposal that receives support of more than 30% of votes cast. Noting that developments in 2020 have informed its approach, BlackRock will now support shareholder proposals where it agrees with the intent to address a material business risk and determine that management could improve in managing and disclosing that risk. Citing the need for "urgent action on many business relevant sustainability issues," BlackRock indicates it will be more likely to support proposals without waiting to assess the effectiveness of engagement. Under the revised guideline, boards that fail to demonstrate responsiveness should anticipate votes against independent directors
- BlackRock has changed the threshold at which it expects companies to respond to relatively low director votes, now expecting responsiveness when a director does not receive support from at least 75% of shares voted (up from 70%), though it notes that this applies primarily in cases where BlackRock voted against the director

BlackRock made a number of other substantive changes, some of which may affect voting behaviors and impact vote support for management proposals, including:

- The overboarding guideline of a maximum of two total boards for public company CEOs has been expanded to include all public company executives (the overboarding guideline for non-executive directors remains unchanged at four total boards)
- BlackRock is more likely to support shareholder proposals related to corporate political activities if it identifies a misalignment between the company's stated positions on policy matters material to its strategy and the positions taken by industry groups of which it is a member. This approach is explained in a separately updated commentary which outlines BlackRock's perspective on activities and disclosure related to political spending and lobbying. This document includes insight into the type of information it expects companies to disclose such as the purpose of the company's contributions and engagement in lobbying, how the activities align with strategy and or goals of public participation, and board oversight for monitoring such activities
- A new section on virtual shareholder meetings outlines BlackRock's expectations that shareholders should be afforded meaningful opportunities to participate and interact with the board and management and be allowed to voice concerns and provide feedback without undue censorship

Finally, there are a number of more narrowly targeted refinements to guidelines, including:

- The guideline on director attendance has been clarified to include multi-year patterns of poor attendance or single year attendance issues with no disclosed rationale
- Ownership stake and the holding period of the dissident are additional factors that will be considered in the evaluation of contested director elections

- Further guidance on factors that will be considered in mergers, acquisitions, asset sales, and other special transactions, including the explanation for the economic and strategic rationale of the transaction and the degree that it enhances long-term shareholder value
- Removal of language stating that BlackRock will normally support advisory proposals on golden parachutes, indicating that it may be less supportive of such proposals

CEO's Letter on SSGA 2021 Proxy Voting Agenda

Posted by Cyrus Taraporevala, State Street Global Advisors, on Wednesday, January 13, 2021

Editor's note: Cyrus Taraporevala is President and CEO of State Street Global Advisors. This post is based on his 2021 letter to board members.

I hope this letter finds you and your colleagues safe and healthy. Each year, State Street Global Advisors engages with investee companies such as yours about issues of importance to investors that we will be focusing on in the coming months. We do so for a simple reason: as one of the world's largest investment managers, we have a fiduciary responsibility to our clients to maximize the probability of attractive long-term returns.

Of course, 2020 was no ordinary year. From a global health crisis that has taken the lives of nearly 2 million people, to a global conversation about racial justice, to continued long-term risks around the threat of climate change, the past year has cast a stark light on systemic vulnerabilities and reinforced the connections we see across sustainability, inclusion, and corporate resiliency.

As such, **our main stewardship priorities for 2021 will be the systemic risks associated with climate change and a lack of racial and ethnic diversity**. In particular, I want to explain how we intend to use our voice—and our vote—to hold boards and management accountable for progress on providing enhanced transparency and reporting on these two critical topics.

Continuing to Raise the Standard for Progress on ESG Issues

Certainly, we have all come a long way since we first wrote to investee companies several years ago about the need to understand better how environmental, social, and governance (ESG) issues impact long-term value. From the need for periodic board refreshment to ensure effective, independent and diverse board leadership, to being among the first large investment managers to support climate-related shareholder proposals, to aligning culture with corporate strategy, our stewardship has helped companies make measurable progress on key issues.

Engagements with companies such as yours have provided investors with the enhanced data and disclosure needed to make informed investment decisions. Last year, we wrote you about R-Factor™—our transparent scoring system based on the Sustainability Accounting Standards Board (SASB) framework, which focuses on financially-material, industry-specific ESG risks. We also announced that starting in 2020 we would be voting against companies in the bottom 10% of R-Factor™ scores that could not articulate a plan to improve their score. We will also be communicating with companies with underperforming scores that have not shown improvement in the coming year.

The Resilience of ESG-Aware Companies

This past year demonstrated the value of this work to investors. As Harvard Business School professor and State Street Associates research partner George Serafeim found "companies with strong ESG characteristics experienced less negative stock returns during the market collapse, relative to competitors … [including industries] most affected by COVID-19." Indeed, companies which proactively managed other systemic risks were often better prepared to face the uncertainty of the pandemic. Companies which invested in employee safety, reinforced technology infrastructure, or studied climate impact were often more resilient as the pandemic threatened frontline workers, forced millions of people to work remotely, and disrupted global supply chains.

Elevating Our Focus on Climate Risk

As such, we will continue to engage with companies to understand their approaches to mitigating and managing the physical and transitional impacts of climate change. Since 2014, we have engaged with more than 600 companies across multiple industries on climate-related issues. Ahead of the United Nations Climate Change Conference (COP26) in Glasgow in November, policymakers are assessing progress on climate change action since the Paris meeting in 2015. Additionally, many jurisdictions are signaling their intentions to make climate risk disclosure mandatory, using the reporting framework launched in 2017 by the Taskforce on Climate-related Financial Disclosures (TCFD). A growing number of investors are also focused on net-zero carbon emissions goals and want to understand how companies are managing their transition risks. Since 2018, we have asked all of our portfolio companies to use the TCFD framework and have engaged with boards on climate risk oversight, including their plans for the transition to a lower carbon world.

As a signatory to Climate Action 100+, we look forward to sharing our experience and insights on climate stewardship with other members. In 2021 we will focus on specific companies especially vulnerable to the transition risks of climate change. Further, we will continue our ongoing engagement with companies in other sectors that, while not as carbon intensive, also face risks such as the physical impacts of climate change.

Proactively Addressing Racial and Ethnic Diversity

As we continue to learn more about climate transition plans and monitor how the market reacts, investors cannot ignore the social issues—the "S" in ESG—that have taken center stage over the past year. Last spring, we shared guidance that the focus of our engagements would shift to issues such as employee health, serving and protecting customers, and ensuring the overall safety of supply chains. Further, while Fearless Girl elevated the issue of gender diversity on boards and in senior leadership, in the wake of protests against racial injustice last spring, it was clear we needed to expand our focus to consider financial risks related to racial and ethnic diversity as well.

Research has shown the positive impacts diverse groups can have on improved decision making, risk oversight, and innovation,[1] as well as how management teams with a critical mass of racial, ethnic, and gender diversity are more likely to generate above-average profitability.[2] Likewise, companies that promote workforce diversity and inclusion through transparent hiring, promotion, and wage practices have seen improved productivity,[3] revenues,[4] and market share,[5] while homogenous boards and workforces tend to refrain from challenging prevailing views.[6]

The preponderance of evidence demonstrates clearly and unequivocally that racial and ethnic inequity is a systemic risk that threatens lives, companies, communities, and our economy—and is material to long-term sustainable returns. This is why in August we shared with you an update on how our diversity engagements had expanded to include discussions of race and ethnicity.

As we indicated in this guidance, our primary challenge as investors is the lack of publicly available racial and ethnic diversity data. While most companies in the United States are required by regulators to track racial and ethnic diversity, disclosure at the board level is sparse[7] and only 6% of Russell 1000 companies actually share detailed data publicly on their employees' gender and ethnic identities.[8]

To build on our previous guidance—and to ensure companies are forthcoming about the racial and ethnic composition of their boards and workforces—we are instituting the following proxy voting practices, which are outlined in our new Guidance on Enhancing Racial and Ethnic Diversity Disclosure:

- In 2021, we will vote against the Chair of the Nominating & Governance Committee at companies in the S&P 500 and FTSE 100 that do not disclose the racial and ethnic composition of their boards;
- In 2022, we will vote against the Chair of the Compensation Committee at companies in the S&P 500 that do not disclose their EEO-1 Survey responses; and
- In 2022, we will vote against the Chair of the Nominating & Governance Committee at companies in the S&P 500 and FTSE 100 that do not have at least 1 director from an underrepresented community on their boards.

Of course, disclosure is just a starting point. Building on the more than 70 engagements we have held with companies on racial and ethnic diversity since August, our investee companies should

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[1] Janis, I. (1972). "Groupthink: Psychological studies of Policy Decisions and Fiascoes." Boston: Houghton Mifflin.

[2] McKinsey & Company. (2018). "Delivering through Diversity." Retrieved from https://www.mckinsey.com/~/media/mckinsey/business%20functions/organization/our%20insights/delivering%20through%20diversity/delivering-through-diversity_full-report.ashx

[3] Garnero, A, Kampelmann, S. and Rycx, F. (2013, September). The Heterogeneous Effects of Workforce Diversity on Productivity, Wages, and Profits. Centre Pour La Recherche Economique et Ses Applications Document de travail no 1304, pp. 4-5.

[4] Global Diversity and Inclusion: Fostering Innovation Through a Diverse Workforce. Retrieved from https://www.forbes.com/forbesinsights/innovation_diversity/index.html

[5] Kelly Services: Diversity must help bottom line to be sustainable. (2013, November 03). Retrieved from https://www.crainsdetroit.com/article/20131103/NEWS/311039959/kelly-services-diversity-must-help-bottom-line-to-be-sustainable

[6] Janis, I. (1972). "Groupthink: Psychological studies of Policy Decisions and Fiascoes." Boston: Houghton Mifflin.

[7] Smith, J. (2019, July 23). Five takeaways from the 2019 proxy season. Retrieved from https://www.ey.com/en_us/board-matters/five-takeaways-from-the-2019-proxy-season

[8] A Small Fraction of Corporations Share Diversity Data, but Disclosure is Rapidly on the Rise. Retrieved from https://justcapital.com/news/a-small-fraction-of-corporations-share-diversity-data-but-disclosure-is-rapidly-on-the-rise/

be prepared for thorough engagements on these and related subjects in the coming year, and we will analyze shareholder proposals accordingly.

When it comes to racial and ethnic diversity, every company is on a journey, and we all have work to do. That includes us at State Street. To that end, we are committed to elevating our own commitment to racial and ethnic diversity. In addition to disclosing the racial and ethnic composition of our board and our EEO-1 data this year, we are also advancing 10 actions to eliminate racial inequity in our organization, including tripling our Black and Latinx leadership and increasing our spend with minority businesses over the next three years. Our board will hold our senior management accountable for our progress.

Toward a More Sustainable and Inclusive Future

As long-term investors, we will always take a broad view of sustainability as it relates to better business outcomes. While none of us knows with certainty how the new year will unfold, we continue to believe that working with boards such as yours on a range of environmental, social, and governance best practices will help create a more resilient, sustainable, and inclusive future for companies, economies, and societies. We wish you the very best and look forward to speaking to you in the coming year.

The 2021 Boardroom Agenda

Posted by Debbie McCormack and Robert Lamm, Deloitte LLP, on Tuesday, February 2, 2021

Editor's note: Debbie McCormack is a managing director and Robert Lamm is an independent senior advisor at the Center for Board Effectiveness, Deloitte LLP. This post is based on their Deloitte memorandum.

Introduction: A year of consequence

It seems likely that 2020 will be viewed as one of the most consequential years in recent memory. In addition to dealing with an ongoing global pandemic and the massive economic and social dislocations it caused, the United States has had to address natural disasters such as major hurricanes and wildfires, racial unrest, and a lengthy and challenging political campaign, among other things.

While the challenges of any year often influence boardroom agendas for the following year, the impact of 2020 on 2021 board agendas will almost certainly be extraordinary. At the same time, boards will need to deal with many perennial areas of board oversight, including strategy, financial reporting, compliance, and culture.

This post discusses some of the many issues, old and new, that boards will likely have to contend with in the coming year.

Risk: Crisis management, disruption, and business continuity

Crisis management, disruption, and business continuity have long been key elements of risk management and related board oversight. However, the meanings of these terms and the severity of the challenges they posed in 2020 entail a much broader range of considerations. For example, the issues contemplated by the term "crisis management" have often been short-term and/or relatively limited in scope, such as the sudden death or incapacity of an executive or damage to a production facility.

In contrast, the global COVID-19 pandemic began in the first quarter of 2020, has continued, and seems likely to remain a challenge through a significant portion of 2021. Both the severity and duration of the pandemic have caused many businesses to suffer drastic downturns and, in some cases, to fold. In addition, those developments, coupled with the sudden, dramatic, and long-term switch to remote work, have had chain reactions, affecting supply chains, oil prices, and commercial real estate, among other things. The pandemic has also exacerbated traditional areas of risk oversight; for example, it has led to increased incidences of cyberattacks and other cyber risks.[1]

As a result, boardroom agendas in 2021 are likely to include a renewed focus on how to survive a crisis. This focus may include looking backward by conducting postmortems to assess how the business addressed the pandemic, as well as looking forward to determine where existing plans need improvement, updating playbooks to address a broader variety of crises, and engaging in wargaming exercises.

As part of this process, boards should consider evaluating how they performed during the crisis: Was the board engaged in the pandemic response and related challenges? Did directors provide the necessary levels of support for management? Did they become too engaged in day-to-day crisis management rather than oversight? Are additional skill sets needed on the board?

Workforce strategies and well-being

Driven by a number of factors, ranging from the pandemic and its threat to workplace health and safety, to the growing investor and regulatory focus on human capital management, workforce strategies will remain spotlighted on 2021 boardroom agendas.

One major area of board oversight flowing from the pandemic will be whether, when, and how the workforce can return to offices and other facilities. Some companies have announced that all or major segments of the workforce will continue to work remotely indefinitely; others have started to bring some members of the workforce back into company facilities, in some cases on a rotating basis, so that social distancing can be maintained; and still others appear to be adopting a hybrid approach or deferring decisions for the time being. Interestingly, this area has not been one over which boards have exercised much, if any, oversight in the past; decisions as to which employees work where have been appropriately left to management. However, in the wake of the pandemic, two expected topics on the board's agenda are (1) As virtual work appears here to stay to some extent, how do we help our workforce stay connected? and (2) How does the workforce safely return to the workplace, and in what type of office or facility configuration? Focusing on these and related topics can demonstrate that boards are concerned about the health and well-being of the workforce.

The health and well-being of the workforce, including the C-suite, is a new challenge arising from the pandemic. Prolonged uncertainty regarding the efficacy, safety, and availability of a COVID-19 vaccine, continued isolation, the economic downturn and job insecurity, ongoing social unrest, and environmental emergencies continue to test the mental and emotional health and well-being of workers. Studies show that the average American workday increased 40% during COVID-19,[2] as work and home life blend together. Fourteen percent of women and 11% of men are considering job resignations due to COVID-19–related work-family conflicts,[3] and adult anxiety

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[1] *On the board's agenda*, "Cyber: New challenges in a COVID-19–disrupted world," November 2020, https://www2.deloitte.com/content/dam/Deloitte/us/Documents/center-for-board-effectiveness/us-otba-oct-cyber-v7.pdf.

[2] *Business Facilities*, "U.S. Employees Working More Hours During COVID-19 Pandemic," March 23, 2020.

[3] *HBR*, "The Pandemic Has Exposed the Fallacy of the 'Ideal Worker,'" May 11, 2020.

and depressive disorders reported have increased by 300%.[4] Boards are likely to consider a longer-term focus on whether their businesses are enabling or facilitating workforce health, both physical and mental, since the start of the pandemic. This includes board oversight of company measurements illustrating both value creation and risk mitigation, such as the ROI from workplace mental health programs, and the financial impact of improved attrition rates.[5]

The Securities and Exchange Commission (SEC) adopted new rules in 2020 that, for the first time, will require companies to provide disclosures on human capital management. In the past, changes in disclosure requirements have often generated new areas of board focus; there is reason to believe the same phenomenon will occur here as the board determines if the board or a committee will review the required disclosures and underlying data about employees, contractors, and others.

The Deloitte *2021 Global Human Capital Trends* survey found a continuing disconnect between executives and workers when it comes to prioritizing well-being in work transformation efforts. Both executives and individual workers answered the same question: "What are the most important outcomes you hope to achieve in your work transformation efforts in the next one to three years?" Workers told us that the top three objectives should be 1) improving quality, 2) increasing innovation, and 3) improving worker well-being. Improving well-being was the second-to-last outcome identified by executives, with only "increasing social impact" receiving fewer votes.[6]

Diversity, equity, and inclusion

Concerns about racial justice constituted another major disruptor in 2020, increasingly resulting in calls for American society, including its business community, to acknowledge and address systemic racism. And it appears that businesses are responding. A September 2020 survey published by Deloitte and the Society for Corporate Governance noted that "most companies and/or their boards have taken, or intend to take, actions in response to recent events surrounding racial inequality and inequity; 71% of public companies and 65% of private companies answered this question affirmatively." [7]

One significant area of the focus on racial justice is the board itself—i.e., whether specific racial and/or ethnic groups are underrepresented on America's boards of directors. For example, in September 2020, the *New York Times* reported as follows on an analysis performed by Institutional Shareholder Services:

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[4] US Centers for Disease Control and Prevention (CDC), "Mental Health, Substance Use, and Suicidal Ideation During the COVID-19 Pandemic," June 24–30, 2020.

[5] How CFOs Can Bridge Value Creation and Employee Well-being," https://deloitte.wsj.com/cfo/2020/08/14/how-cfos-can-bridge-value-creation-and-employee-well-being.

[6] *2021 Global Human Capital Trends* survey, December 2020, https://www2.deloitte.com/us/en/insights/focus/human-capital-trends.html?id=us:2em:3na:4di6935:5awa:6di:011221&ctr=PIcta3&sfid=0033000001NIj1zAAD

[7] Deloitte Center for Board Effectiveness, "Diversity, Equity, and Inclusion," https://www2.deloitte.com/us/en/pages/center-for-board-effectiveness/articles/diversity-equity-and-inclusion.html.

"The boards of the 3,000 largest publicly traded companies remain overwhelmingly white. Underrepresented ethnic and racial groups make up 40 percent of the U.S. population but just 12.5 percent of board directors, up from 10 percent in 2015…

"Black directors make up just 4 percent of the total, up from 3 percent in 2015, while Black women make up just 1.5 percent of the more than 20,000 directors included in the analysis, which goes beyond other surveys that included only the 500 largest public companies."[8]

In response to similar studies and reports, many companies have ramped up their efforts to increase racial diversity on their boards, including pledges to add board members from underrepresented communities.[9] In addition, California has enacted a law requiring California-based companies to add directors from underrepresented communities, similar to the law regarding gender diversity adopted by California a few years ago, and Nasdaq has filed a proposal with the SEC that would require listed companies to have at least one director who self-identifies as female and one director who self-identifies as Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, two or more races or ethnicities, or LGBTQ+.[10] The California bill impacts over 600 companies; if adopted, the Nasdaq proposal would impact over 3,000 companies.

Risk oversight will be one overarching reason boards focus on diversity, equity, and inclusion (DEI) in 2021. Stakeholders, including investors, workers, and customers, continue to demand attention to DEI to address both reputational and cultural risk for the company and its workforce. Value creation is a second reason boards may address DEI this coming year. Workers are asking if the company they work for is performing on the issues that they care about, which can keep the employee engaged for the long term. Finally, metrics or key performance indicators will likely be the focus of the board; 55% of the respondents of a recent *Board Practices Quarterly* survey said they have already established metrics to support diversity and inclusion strategy, performance, and execution, and 45% indicated they intend to take similar action.[11] Given these trends, diversity, equity, and inclusion efforts and outcomes at all levels are likely to be critical items on board agendas throughout and beyond 2021.

Actions for the board to consider:

- Build capabilities around DEI, including inclusive leadership capabilities to govern more inclusively.
- Infuse DEI into every committee in order to model how the organizations can manage all business practices through lenses of diversity, equity, and inclusion.

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[8] "Diversity Push Barely Budges Corporate Boards to 12.5%, Survey Finds," *New York Times*, https://www.nytimes.com/2020/09/15/business/economy/corporate-boards-black-hispanic-directors.html. Prior studies have shown that the level of board diversity varies inversely with market capitalization. See https://www.corporatesecretary.com/articles/boardroom/31526/small-cap-board-diversity-lags-sp-500-morningstar-says.

[9] AB979, *Los Angeles Times*, September 30, 2020.

[10] *Wall Street Journal*, https://www.wsj.com/articles/nasdaq-proposes-board-diversity-rule-for-listed-companies-11606829244.

[11] Deloitte Center for Board Effectiveness, "Diversity, Equity, and Inclusion."

- Mitigate risk in terms of championing mitigations and interventions to inequities that exist today and have resulted in bias and inequitable outcomes for some facets of the workforce.

Liquidity

Without diminishing the importance of diversity, equity, and inclusion or the other matters discussed above, they can be rendered less relevant or even meaningless if a company has to furlough or lay off employees, or possibly shut down, due to liquidity concerns. As the pandemic continues to rage, many businesses, and in some cases entire industries, have been forced to take these and other actions as revenues slowed down to a trickle or dried up entirely, reviving the saying “cash is king.”

The range of actions taken by companies has included conserving cash by delaying or eliminating planned expenditures; stretching out required payments; seeking to renegotiate leases and other contractual obligations, as well as credit lines and other borrowing arrangements; and, in some cases, simply defaulting. On the other hand, many companies have been able to take advantage of loans available under the Paycheck Protection Program provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and/or have been able to modify existing loan agreements or enter into new ones, given the current low-interest-rate environment.

This view on liquidity and cash preservation has unduly impacted certain companies’ dividend strategies. As the pandemic seems likely to extend into at least the early part of 2021, boards are almost certain to remain vigilant about overseeing management actions to preserve and, where possible, increase liquidity.

Culture

Corporate culture is a perennial topic on the boardroom agenda; it is a core matter that impacts all aspects of a business. Indeed, it encompasses many of the areas discussed above, such as workforce strategies; well-being; and diversity, equity, and inclusion. Culture also has a major impact on business disruption and continuity; a culture that does not encourage agility, adaptability, and resilience may make it much harder for a company to rebound from a disruption than a culture that fosters those qualities.

As great a challenge as it may be for boards to help managements develop, maintain, and enhance a strong, positive culture in “normal” times, an event such as the pandemic makes that challenge far greater. How can a company maintain its culture when all or a significant portion of its workforce is working remotely? The challenge of personal human connection to support the culture of the workforce is a key component of job satisfaction and engagement. Can a workforce remain cohesive when, at least until a major portion of the workforce is vaccinated and immunized, some employees must come to a company facility, risking exposure to COVID-19, while others are able to remain sheltered by working remotely? Even as, hopefully, the pandemic subsides, having the board understand the sentiment of the workforce and how management is leading will be more important than ever; boards will need to remain sensitive to the importance of, and challenges associated with, maintaining, a strong culture.

Corporate purpose

Corporate purpose may not have appeared on many boardroom agendas until 2019, when the Business Roundtable published its "Statement on the Purpose of a Corporation,"[12] in which the CEOs of 181 companies agreed that companies should act for the benefit of all stakeholders rather than only stockholders. Despite the ensuing debate between advocates of "stakeholder" versus "stockholder" primacy and the uncertainty surrounding the viability of the Statement under various state corporation laws, it has gained sufficient traction so as to legitimize a new term—"purpose-driven strategy"—representing an evolution of corporate strategy rather than an implication that purpose and strategy are separate matters.

As a result, boards are increasingly considering integrating purpose into core business strategy and subscribing to stakeholder capitalism by considering all of a company's constituencies, or stakeholders (i.e., workers, customers, suppliers, and regulators in addition to shareholders) when making decisions, even when no one constituency may control a decision or when stockholder concerns generally prevail. In fact, the presence on the boardroom agenda of issues such as workforce well-being; diversity, equity, and inclusion; and "enhanced" environmental, social, and corporate governance (ESG) (discussed below) seems to confirm that "purpose-driven strategy" may be here to stay.

The COVID-19 pandemic has arguably influenced this evolution. For example, for various reasons, including branding and reputation concerns driven by the confluence of unprecedented social, economic, and global health disruption and accelerating stakeholder expectations for the role of business in society, many companies have felt the need to demonstrate that their employees are, in fact, their greatest assets by actions such as continuing to provide benefits for furloughed workers or taking pay cuts at the senior level so that more people can remain employed. Some companies have adopted an activist stance on social purpose mission and values, including providing opportunities for shareholders and investors "to provide a clear statement of intent to the company about the importance of sticking to its plans…"[13]

Environmental, social, and governance (ESG)

Many boards have addressed ESG concerns for years. Companies have published reports on how they address environmental and social issues, and annual proxy statements have increasingly discussed not only the company's governance structure and practices (the "G" in ESG), but also how the board oversees "E" and "S."

As 2021 approaches, ESG is entering new areas of board consideration, most notably in the development and application of ESG-based compensation metrics, designed to incentivize management to improve performance in areas ranging from diversity, equity, and inclusion to reductions in greenhouse gas and other emissions. At the present time, many of these metrics may be rudimentary—for example, achieving a specified increase in the number or percentage of underrepresented communities' employees at the managerial level, or reducing carbon emissions by a specified amount. However, it is likely that, over time, the metrics will become more

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[12] https://opportunity.businessroundtable.org/ourcommitment.

[13] Unilever Allows Climate Input: Company first to give shareholders a say on emissions plan, through advisory vote; Wall Street Journal December 15, 2020, Section B page 5

nuanced, for example by comparing a company's performance in an area against that of its peers. The use of these metrics requires oversight by the board, as well as the compensation committee, to determine whether the metrics are appropriate for business as well as compensation purposes and whether their achievement can properly be viewed by investors and others as "stretch" goals rather than low bars.

As the use of ESG metrics in executive compensation increases, investors and others are seeking to obtain assurance that performance against these arguably less mature metrics has been accurately determined and disclosed. Like the underlying use of metrics, assurance with respect to these metrics is in its infancy, but increasingly more important as a tool to promote quality and credibility with respect to the measurement and reporting of key metrics used to incentivize corporate behavior. Consequently, boards and committees are likely to monitor them carefully in the coming year.

Conclusion: A robust agenda

As noted at the beginning of this *On the board's agenda*, the above is a discussion of just some of the items expected to appear on the 2021 boardroom agenda. There are many more, both old and new, including oversight of strategy; cyber; changes in financial reporting and disclosure; compliance; addressing geopolitical challenges; potential regulatory changes in light of 2020 election results; and other areas of risk management, including extending existing enterprise risk management processes to include third parties. To be sure, 2021 is likely to be a very interesting year, with a robust board agenda.

2021 Proxy Season Preview and Shareholder Voting Trends (2017-2020)

Posted by Matteo Tonello, The Conference Board, Inc., on Thursday, February 11, 2021

Editor's note: Matteo Tonello is Managing Director of ESG Research at The Conference Board, Inc. This post relates to 2021 Proxy Season Preview and Shareholder Voting Trends (2017-2020), an annual benchmarking study and online dashboard published by The Conference Board and ESG data analytics firm ESGAUGE, in collaboration with leadership advisory and search firm Russell Reynolds Associates and Rutgers Law School Center for Corporate Law and Governance.

2021 Proxy Season Preview and Shareholder Voting Trends (2017-2020) builds on a comprehensive review of resolutions submitted by investors at Russell 3000 companies to provide insights into the new season of annual general meetings (AGMs). The data and analysis include trends in the number and topics of shareholder proposals, the level of support received by those proposals when put to a vote, and the types of proposal sponsors.

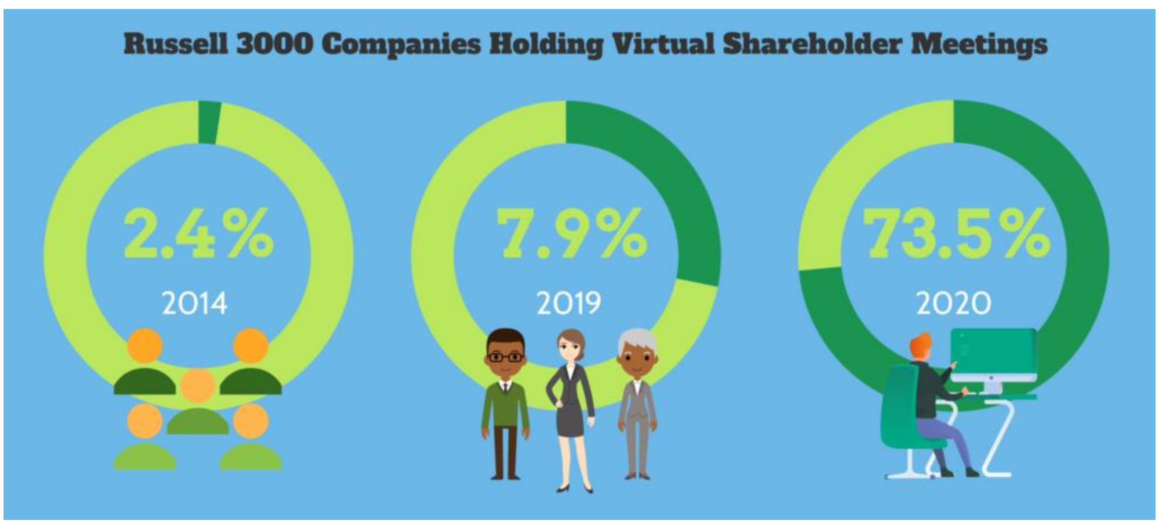
In particular, this post provides insights for what's ahead in four key areas that promise to be the focus of investor attention in 2021: virtual shareholder meetings, environmental issues, human capital management, and board diversity.

The historical analysis across a large index of companies such as the Russell 3000 helps to plot the trajectory of shareholder demands and to gain helpful insights into the voting season ahead.

The COVID-19 pandemic is likely to make virtual shareholder meetings a matter of necessity even in the 2021 proxy season. Many lessons can be learned from the experience of the last year, and companies should ensure they adopt technologies and protocols to safeguard shareholder participation.

The COVID-19 pandemic has disrupted economic activities around the world, forcing organizations to rapidly reconsider the way to conduct their business and manage their workforce. These effects have extended to the shareholder voting season in the United States, as lockdowns and other restrictive measures on public gatherings adopted by State and local governments required to either postpone shareholder meetings or hold them virtually.

Many companies had been testing virtual shareholder meeting technologies over the last few years, and statistics on the use of this format in lieu of the traditional physical meeting show that it tripled from 2014 to 2019 alone—from 2.4 percent to 7.7 percent of all AGMs in the Russell 3000. But the number of virtual meetings surged during the 2020 voting season to a record level that was unimaginable only a few months before. According to proxy disclosure information tracked by ESGAUGE, as of November 10, only 25 percent of Russell 3000 2020 meetings were held at a physical location and 73.5 percent were moved to an online platform (only 1.2 percent disclosed a hybrid approach, where a physical meeting compliant with rules on social distancing and gatherings was complemented by virtual attendance). The share of 2020 virtual-only meetings in the S&P 500 was even higher (81 percent).



Despite the logistical and technological challenges posed by this monumental shift, the proxy season was successfully executed. Shareholder proposal volume was in line with what The Conference Board and ESGAUGE recorded in prior recent years, and average support level actually inched up among larger companies of the S&P 500 index. The credit goes to the prompt collaboration of the many parties involved in the process—not only companies and investors but also solicitation firms, proxy advisors, regulatory bodies, and the providers of virtual meeting technology. Proxy advisors and institutional investors, traditionally concerned that depriving investors of a physical gathering venue could impair shareholder democracy, recognized the inevitability of the shift to a virtual meeting platform and “the compelling advantages for both companies and shareholders” in the current circumstances. The SEC provided guidance to assist issuers dealing with delays in printing and mailing proxy materials or facing the need to reschedule meetings so that they could be planned for remote attendance. Some States (including New York, New Jersey, California, and Massachusetts) restricting corporations' ability to hold virtual meetings promptly eased regulations to accommodate these new needs and announced initiatives for legislative reform.

Insights for what's ahead. Companies should be mindful that the opposition to virtual meetings traditionally shown by some large institutional investors and proxy advisors could resurface when the health crisis ends. In fact, the Council of Institutional Investors (CII), which has generally opposed virtual-only meetings in favor of a hybrid approach where shareholders can choose how to attend, urged companies to "make it clear that this decision is a one-off, tailored for current circumstances."

Companies should therefore learn from "mass experiment" of virtual shareholder meetings that took place during the 2020 proxy season and apply those lessons as they begin to prepare for the 2021 AGMs. Advance planning is key. In particular, it is important for corporate secretaries and legal departments to:

- Monitor applicable State laws and stock exchange listing standards, and consider updating organizational documents to ensure the company has the latitude it needs to convene virtual meetings, adjourn them, or postpone them—whether in response to the evolution of the pandemic or the technical difficulties experienced in the remote setting.
- Ensure that any technical or administrative shortcoming experienced at the last round of meetings is properly documented, together with the solution (to be) implemented to address it in the future. Technologies continue to evolve as vendors are also rising to the occasion and making use of feedback to improve their platforms.
- Engage with investors to underscore their commitment to shareholder participation and the measures the company has adopted (or intends to adopt) to facilitate the virtual meeting experience—especially during the Q&A session. It is particularly important to ensure clarity in proxy statements and other documents disseminated to shareholders on the procedures that should be followed to attend the meeting and ask questions.

Guidelines for Conducting Virtual Meetings

Companies may find it useful to review guidelines published by the 2020 Multi-Stakeholder Working Group on Practices for Virtual Shareholder Meetings—an initiative involving public companies and investor representatives, including several members of The Conference Board. According to such guidelines, virtual meetings should provide:

- Basic information about the meeting known to the company, which may include a list of attendees, the number of shares represented at the meeting, and preliminary vote counts.
- A live audio and video feed of all key company representatives in attendance, including, at a minimum, the chair, CEO, any lead/presiding director, chairs of key board committees and the corporate secretary.
- A comprehensive Q&A tool allowing shareholders to: a) submit a question; b) track its prioritization in the queue; and c) present the question virtually, either by phone or webcam.

- Instructions on how to access written responses to unanswered shareholder questions, which should made available within a reasonable time of the meeting's conclusion.

Source: Report of the 2020 Multi-Stakeholder Working Group on Practices for Virtual Shareholder Meetings, Rutgers Law School Center for Corporate Law and Governance, Council of Institutional Investors, and Society for Corporate Governance, December 10, 2020.

In 2020, several climate-related resolutions voted at some large US companies gained majority support and passed. Companies that have not yet done so should consider the benefits of a process to gather information on their carbon footprint, design an emission-reduction strategy, and address the business risks resulting from global warming.

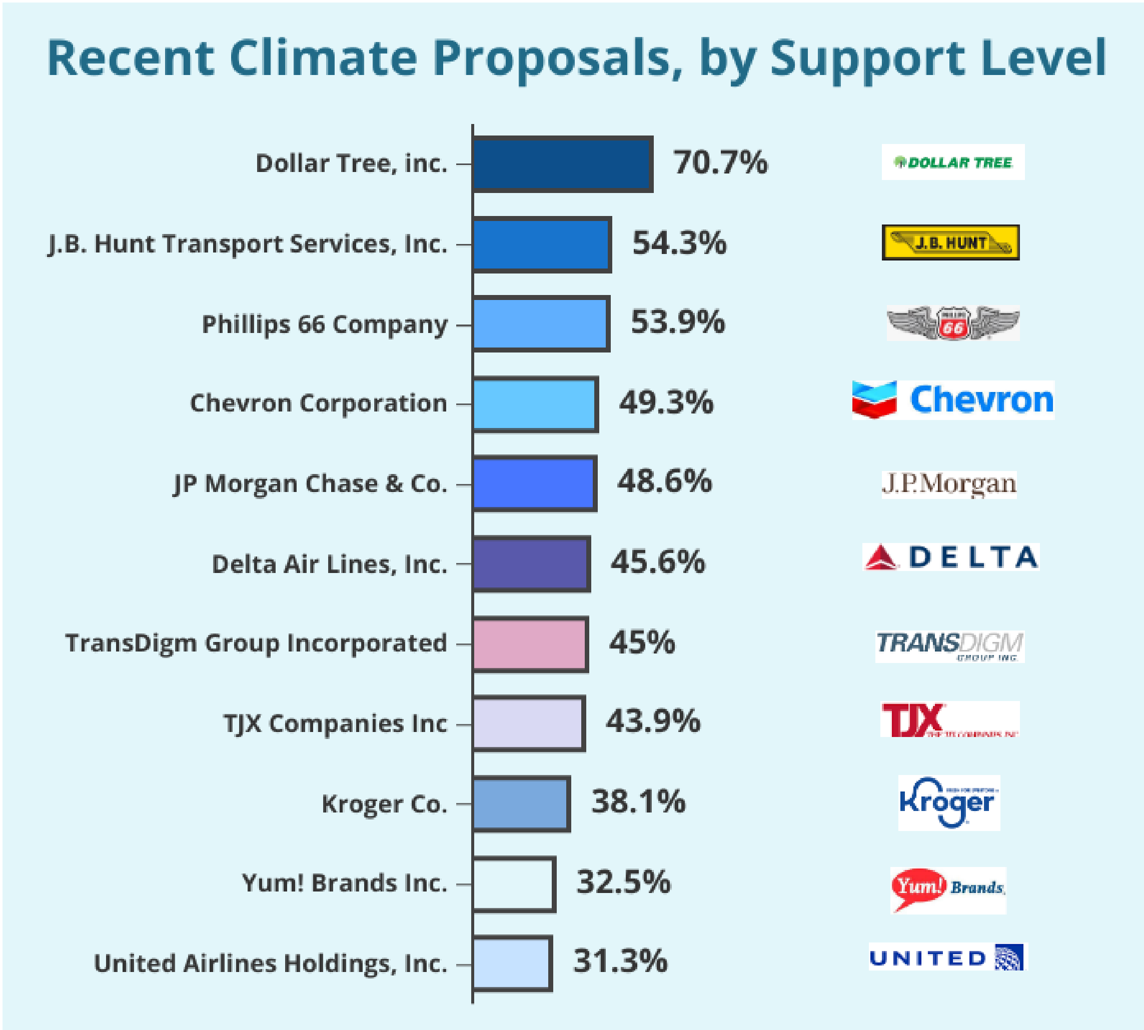
Climate change has solidified as one of the top ESG priorities for investors of US public companies. All large institutional shareholders have moved it to the front and center of their voting policies and stewardship guidelines. Typically, requests for disclosure on climate-related issues range from the company's current carbon footprint to the mitigation targets it set to align with the standards of the Paris Agreement; and from the impact that rising temperatures can have on business operations to the risks resulting from maintaining the current levels of gas emissions. In some cases, companies are being asked to issue sustainability reports that comply with disclosure frameworks, such as the guidelines issued by the Global Reporting Initiative (GRI) or the Sustainability Accounting Standard Board (SASB)—which dedicate extensive sections to environmental performance metrics—or by the Task Force on Climate-related Financial Disclosures (TCFD).

In the Russell 3000, in the examined 2020 period, shareholders filed 75 proposals on climate-related issues and voted on 24 of them. Many of the filings were made at larger companies that are also included in the S&P 500 index (61 filed proposals in 2020, of which 19 were voted). They specifically target carbon-intensive sectors such as industrials (six voted proposals) and energy (five voted proposals), but with a few notable exceptions (for example, a proposal at Dollar Tree (Nasdaq: DLTR), a discount retailer) revealing that scrutiny of environmental practices is extending to all types of business. The most prolific proponent on this topic is shareholder advocacy non-profit As You Sow, which alone filed 24 resolutions. Other frequent sponsors include Mercy Investment Services, an investment fund affiliated to a religious group (seven proposals), and investment adviser Trillium Asset Management (four resolutions).

Thanks to the endorsement of larger institutions such as BlackRock, Vanguard, and State Street, support levels for climate-related proposals has been increasing, from 24.1 percent in 2019 to 31.6 in 2020. Most importantly, while none of these types of proposals passed in 2019, four of those that went to a vote in 2020 received majority support: A proposal at J. B. Hunt Transport Services, Inc. (Nasdaq: JBHT) seeking a report on whether and how the company plans to reduce its contribution to climate change and align its operations with international goals (54.3 percent of *for* votes); a resolution demanding that Phillips 66 (NYSE: PSX) assess the business risks of expanding petrochemical operations and investments in areas increasingly prone to climate change-induce storms, flooding, and sea level rise (53.9 percent support); the request for Chevron (NYSE: CVX) to disclose details of its climate lobbying activities and explain how they align with its carbon-reduction strategy (which received 49.3 percent of *for* votes and 7.8 percent of abstentions, versus 42.9 percent of *against* votes); and the demand for greenhouse gas emission (GHG) targets at Dollar Tree, which made headlines for setting the record support level of any climate-related proposal ever put on a voting ballot (70.7 percent of votes cast).

At energy company Enphase Energy (Nasdaq: ENPH), shareholders approved a resolution that does not specifically refer to climate change but calls for the annual publication of a report on ESG performance and specifically cites waste, water reduction, and product-related environmental impact for the significant risks they pose to the business (51.8 percent support). Finally, later in the season, in mid-October 2020, a proposal calling for Procter & Gamble (NYSE: PG) to cull forest degradation and deforestation from the company's supply chain passed with a remarkable 67 percent of votes cast in favor—an interesting development illustrating how the COVID-19 pandemic has shone a spotlight on the intersection of environmental and social practices (specifically, environmental and human health), whether speaking about the genesis of diseases or the disparate impact that they can have on disadvantaged populations.

In addition to majority-supported proposals, figures on withdrawals (there were 51 in the examined 2020 period alone) are an indication of the extent of the private corporate-investor engagement that is taking place on issues of environmental sustainability. For example, a resolution filed by As You Sow at Southern Company (NYSE: SO) was withdrawn after the company announced its commitment to net-zero carbon emission targets in line with the milestones of the Paris Agreement. There is also evidence that engagement preempts the filing of shareholder resolutions in the first place, and can be critical to the voting outcome of certain proposals: For example, a resolution on water resource risks that went to a vote in 2020 at poultry producer Sanderson Farms (Nasdaq: SAFM) was not supported by one of the company's largest investors and failed to pass because the company had privately agreed to publish a SASB-aligned sustainability report.



What Is Driving Environmental Disclosure

In the last few months alone, many signals have been pointing to a building momentum behind climate change and environmental disclosure. They come from leading institutional investors and proxy advisors but also from the business community itself.

- In January 2020, BlackRock, the largest asset management company worldwide, joined Climate Action 100+, an initiative of more than 500 investors calling on companies to improve environmental governance, curb emissions, and become more transparent on climate-related risks and opportunities. The announcement followed a long list of other prominent signatories (including CalPERS, CalSTRS, Fidelity, J.P. Morgan Asset Management, and the pension funds of the City and State of New York) to what the United Nations has identified as one of the most consequential global initiatives to combat global warming.
- In March 2020, ISS announced the launch of a new specialty voting policy on climate-related factors. Under the new policy, the proxy advisor will recommend adverse votes on the re-election of board members in situations where the company appears (based on signals such as inadequate disclosure, norm violations, or the assessment of sector-

specific materiality metrics) to have “failed to sufficiently oversee, manage or guard against material climate-change related risks.” In November 2020, Glass Lewis followed suit with a similar revision to its voting policies for S&P 500 companies, where the inadequate disclosure of environmental issues will first be noted as a concern in research reports and then, starting in 2022, trigger a recommendation to vote against the governance committee chair. In March 2020, BlackRock voted against the reelection of the chair of the audit committee of energy company National Fuel Gas (NYSE: NFG) because “[t]he company maintains very limited disclosure of climate risk and does not produce SASB or TCFD-aligned reporting…”

- C-suite attention to climate change and environmental sustainability is also increasing. In September 2020, just ahead of Climate Week, the Business Roundtable, a group of CEOs from some of the largest US corporations, issued a public statement supporting the commitment to slash US GHG emissions 80 percent below their 2005 levels (or what is required of the country, under the Paris Agreement, to help limit global temperature rise to 2 degree Celsius above pre-industrial measures). To achieve this target, the advocacy group reversed its earlier position on carbon pricing and endorsed legislation that would establish an economy-wide cap-and-trade system on the environmental impact of companies.

Insights for what’s ahead. In light of these developments, if they have not yet done so, companies can consider the following:

- **Competence at the top**. Companies should consider whether the board of directors and C-suites have sufficient expertise in relevant environmental matters. In a public statement issued in June 2020, Vanguard, the second largest shareholder in the world, outlined its new expectation that boards, in particular, become “purposefully composed of individuals who are competent on climate matters.” While this recommendation certainly applies to carbon-intensive businesses, for which environmental sustainability has a specific strategic significance, the contribution to the oversight role of the board coming from a recognized leader in the field can be a driver of innovation even in other sectors of the economy.
- **Quality of internal controls**. Companies should consider the periodic assessment of the quality of the internal control process used to oversee the business’ environmental impact, identify areas of vulnerability, and capture new opportunities. This task is critical as much as it can be incredibly arduous to perform, especially across large operations. In the last decade alone, many US companies have made tremendous progress in the development of sustainability programs, which often include environmental efficiency milestones. However, there is not yet a consistent body of empirical knowledge from which companies can draw common lessons, given the limited availability of reliable data across business sectors and the difficulty of reconciling the variety of commercial ESG rating services that have become available over the years. Furthermore, authoritative research has shown that at least 30 percent of an organization’s environmental impact is driven by firm-specific factors rather than industry membership—if so, each company would be carrying a level of “hidden liabilities” that, if adequately measured and priced by the market, could potentially erode some of its value. For this reason, and until the field is better codified, companies cannot underestimate the importance of internal control process improvements. On this front, in the next couple of years it will be interesting to monitor the legislative developments in the European Union, which is considering

requiring boards of directors and senior management teams to carry out—as part of their legal duty of care—"due diligence" to identify, prevent, mitigate and account for actual or potential environmental impacts in their own operations and supply chains.

- **Environmental disclosure enhancements, with a specific attention to the intersection between environmental and social impact**. Finally, companies should consider how to enhance the disclosure of environmental issues in sustainability reports and SEC filings. To be sure, one of the main difficulties is to make sense of the competing sets of standards that have been multiplying over the years, which helps to explain the attempts to promote a reconciliation and consolidation process in the field led by organizations such as the World Economic Forum and The Conference Board. Prompted by these initiatives, in the fall of 2020, five major standard-setting institutions (the Carbon Disclosure Project, the Climate Disclosure Standards Board, and the International Integrated Reporting Council, in addition to GRI and SASB) issued a joint statement of the intent to work together toward a single framework of widespread adoption. Ultimately, in the next couple of years, this consolidation process may be further accelerated by the Climate Plan of the new Biden Administration, which includes directing the SEC by executive order to require "public companies to disclose climate risks and the greenhouse gas emissions in their operations and supply chains."

Amid an unprecedented health crisis and public protests over racial and social injustice, the focus on human capital management (HCM) practices has reached a tipping point. Companies are called to strengthen internal policies and expand disclosure on the subject.

HCM resolutions have dramatically grown in prominence in the 2020 proxy season, as the COVID-19 health crisis and the social unrest following the death of George Floyd called the attention of business leaders to issues of workforce welfare and equality. With the adoption of new SEC rules on the disclosure of material human capital metrics and the public stance assumed by many prominent institutional shareholders, HCM matters are expected to continue to take center stage in the coming AGM seasons.

Across the Russell 3000, in the examined 2020 period, shareholders filed 63 proposals on HCM issues and voted on 34 of them. Investor requests in this area ranged from board to workforce diversity (12 and 16 filed proposals, respectively, of which four and 11 went to a vote) and from the disclosure of gender pay equity (12 proposals, all voted) to the adoption of employee arbitration policies (nine proposals, of which two were voted). As observed for proposals on climate change disclosure, the majority of these submissions are made at larger companies that also belong to the S&P 500 index; however, we have recorded proposals on board and workforce diversity targeting smaller businesses, with annual revenue under $1 billion. While environmental resolutions primarily target carbon-intensive industries, the sector analysis shows a wider distribution of HCM proposals across business types and a specific focus on sectors, such as retail and industrials, that were hit hard by the pandemic and reported massive layoffs or furloughs. Hedge fund Arjuna Capital, shareholder advocacy non-profit As You Sow, and the public retirement funds managed by the Office of the New York City Comptroller are the main proponents of these types of requests. To be sure, shareholder resolutions are just one of the tactics used under the Boardroom Accountability Project 3.0 by the NYC Comptroller's Office, which, since October 2019, has also sent tens of letters to large US public companies that had not yet disclosed a diversity search policy requesting the consideration of women and other racially/ethnically diverse candidates for board directors as well as chief executive officer positions. Many of the companies targeted by this new iteration of the Boardroom Accountability Project adopted and publicly disclosed CEO/board diversity search policies before the proposals were even included in their proxy statements.

Average support levels for HCM-related shareholder proposals remain well below the 50-percent mark, even though votes recorded in the last few years show an upward trajectory for some of the sub-types. In particular, the highest support averages are seen among proposals on diversity (38.2 percent for those on workforce diversity, up from 28.6 percent in 2017; and 36.8 percent for the diversity of boards of directors, significantly up from the 18.3 percent tallied in 2018). Overall, seven of the shareholder resolutions voted on the HCM-related categories tracked by The Conference Board and ESGAUGE received majority support and passed during the 2020 proxy season, compared to only four in the same period in 2018 and three in 2017:

- At air freight and logistics company Expeditors International (Nasdaq: EXPD), a member of the S&P 500 index, 52.7 percent of votes cast by shareholders approved a proposal requesting that the initial list of candidates used by the company to select director nominees and CEO successors include qualified female and racially/ethnically diverse individuals. At Tennessee-based National Healthcare Corporation (AMEX: NHC), a proposal on the publication of a report detailing the concrete steps the company is taking to enhance board diversity passed with 57.9 percent of votes and only 2.2 percent of abstentions.
- The demand for transparency on metrics pertaining to workforce diversity and inclusion was approved at four companies: Two in the consumer discretionary sector (Genuine Parts Company (NYSE: GPC), with as much as 74.4 percent of votes cast; and O'Reilly Automotive (Nasdaq: ORLY), with 64.9 percent support level); one at industrial and capital good supplier Fastenal Company (Nasdaq: FAST), with 57.7 percent support level; and one at cybersecurity technology developer Fortinet (Nasdaq: FTNT), with 69 percent support level. The proposals at GPC and ORLY, in particular, requested that the company's reporting comply with the disclosure standards that SASB sets on the matter.
- Shareholders of Chipotle Mexican Grill, Inc. (NYSE: CMG) supported a proposal regarding the preparation of a report on the use of contractual provisions requiring employees to arbitrate employment-related claims—including the proportion of the workforce subject to such provisions; the number of recent employment-related arbitration claims initiated and decided in favor of employees; and any changes in policy or practice the company has made, or intends to make, as a result of California's ban on agreeing to arbitration as a condition of employment. The proposal passed with 50.5 percent of votes cast in favor.

Instead, all of the 12 voted resolutions to demand transparency on employee pay gaps across gender and other minorities failed, just like in earlier years, with an average 2020 support level of only 12.6 percent of votes cast. Similarly, proposals to strengthen corporate policies to prevent sexual harassment received a 19.1 percent average support level (up from 12.4 percent in 2018) and none of the four voted in 2020 passed. Amazon (Nasdaq: AMZN) was the recipient of a proposal requesting information on how the company is overseeing employee health and safety in its facilities in light of heightened risk posed the COVID-19 pandemic; but the resolution, filed by an investment fund affiliated to the International Brotherhood of Teamsters, was omitted from the voting ballot after the company was granted no-action relief from the SEC.

Why Will
HUMAN CAPITAL MANAGEMENT
Matter More Than Ever in 2021?

The COVID-19 health crisis and the social unrest following the death of George Floyd called the attention of business leaders to issues of workforce welfare and equality

63	7	4
In the U.S., shareholders filed **63** proposals on HCM issues in the 2020 proxy season alone	HCM Proposals passed in 2020	In 2019 there were only four

Investors at Genuine Parts Company (GPC) voted for a proposal demanding more transparency on metrics of **Diversity and Inclusion**

At air freight company Expeditors International, a proposal for the inclusion of **female and racially diverse board nominees** was approved by 52.7% of votes cast

Following its 2020 shareholder meeting vote, Chipotle will be reporting on the use of contractual provisions requesting employees to **ARBITRATE** employment-related claims

At Amazon, requests for disclosure of **health & safety** practices also made headlines

With the adoption of new SEC rules on human capital metric disclosure and the public stance assumed by many prominent institutional shareholders, HCM matters are expected to continue to take center stage in 2021

ESGAUGE INTANGIBLES AI

Access the report and online dashboard at:
conferenceboard.esgauge.org/shareholdervoting

Insights for what's ahead. In its August 26, 2020 amendments regarding the modernization of Regulation S-K, the SEC requires U.S. public companies to disclose "a description of the registrant's human capital resources, including the number of persons employed by the registrant, and any human capital measures or objectives that the registrant focuses on in managing the business (such as, depending on the nature of the registrant's business and workforce, measures or objectives that address the development, attraction and retention of personnel)." Rather than prescriptive, the rule is principle-based and relies on the notion of materiality, which varies from business to business; its practical effect on corporate disclosure will only be measured over time.

Since the passage of the new SEC rules, advisory firms and business associations have started to formulate guidance on how companies should approach their disclosure of material HCM practices. For example, the World Economic Forum, in collaboration with Willis Towers Watson, has released a human capital accounting framework to enable boards of directors and management to track how their investment in people translates into better business outcomes. The Conference Board also recently convened a working group on HCM oversight, engaging with more than 100 executives from publicly held and private corporations as well as representatives from institutional investors and professional service firms. In December 2020, the group released recommendations that will prove quite valuable to corporations in the coming proxy voting seasons. The following insights draw on those and other resources:

- Companies should clarify and strengthen **the role of the board of directors and its committees** in the oversight of HCM. This exercise includes reviewing committee charters and governance principles to ensure they clearly assign responsibilities. It also extends to assessing HCM performance and examining, with a critical eye, the company's workforce policies so as to eradicate bias that may affect the process for the selection, promotion, and compensation of employees and their managers. In recent years, boards have sought to add directors with specific areas of expertise that are relevant to their business, such as technology and finance. As HCM oversight is increasingly elevated to the board level, directors should consider including HCM skills to their matrices and, as part of their periodic self-assessment, evaluate if they should obtain additional expertise in the field—whether directly by recruiting a new board member or through board education or the engagement of outside experts.
- With a large majority of their costs estimated to be tied up in people, companies should maintain **data on human capital** and its performance to ensure it matches the business' strategic needs. Key HCM metrics—from diversity and inclusion to learning and innovation, and from employee litigation and arbitration to health and safety—should be collected and verified through internal processes and controls, and then regularly reported to the board so that it remains apprised of strengths and can focus on how to address gaps and vulnerabilities. A set of HCM metrics is ideally composed of quantitative and qualitative indicators—quantitative to allow for setting, tracking, and holding management accountable for achieving goals, and qualitative to ensure the link with business strategy and provide the proper context. This evaluation should also encompass corporate culture as a whole, which the board of directors should understand through more direct interactions with the workforce and beyond what's contained in employee engagement survey results.
- What stakeholders want to know is whether a business has the right workforce to meet current and emerging strategic needs, and whether the company is mitigating HC-related risks (including bias, discrimination, health-related risks, and an otherwise unsuitable

work environment) that could undermine its value. As they prepare for more thorough HCM reporting, companies should monitor the undergoing process for the harmonization and consolidation of existing **ESG disclosure frameworks**. The SEC views information as material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment or voting decision. Until a single, widely accepted framework emerges, companies should inform this notion of materiality of HCM metrics by assessing the relevance of such metrics to the pursuit of the business strategy. For this purpose, they can draw from any of the currently available reporting standards that suit the objective of effectively communicating to the public on those metrics. In recent years, large institutional investors have gained deep knowledge of existing reporting standards: Therefore, engagement with those investors on HCM matters offer an opportunity to discuss the rationale for the choice of a certain disclosure standard and receive helpful feedback.

- As mentioned, the new SEC rules do not include a definition of “human capital” or a list of metrics to disclose. As a result, as they start to develop, HCM disclosures under the rules will be tailored to individual businesses and influenced by what peer companies also report. We expect **peer benchmarking** in this area to grow, which is why in 2021 The Conference Board, in collaboration with ESGAUGE and other prominent knowledge partners, plans to extend its ESG Advantage Benchmarking Platform to the HCM field. HCM is a complex topic and it is realistic to expect that its disclosure will evolve and improve over time. Learning from peers will be part of this improvement process and can contribute, incrementally, to the development of the field. Peer benchmarking enables organizations to track material disclosures within industries and company size groups, using comparative analysis to inform their own reporting process. Companies should consider reviewing peer disclosures on HCM practices and remain apprised of available resources to streamline and automate the analysis.


ESGAUGE
People First
2021 Inaugurates a New Era in Human Capital Management Disclosure
As they prepare for more thorough HCM reporting, companies should monitor the undergoing process for the harmonization and consolidation of existing ESG disclosure frameworks.
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Access the report and dashboard at conferenceboard.esgauge.org/shareholdervoting

The Call for Board Diversity

The issue of diversity of board members deserves a few additional notes. The scrutiny of gender and racial/ethical diversity practices will continue to intensify, driven by multiple factors.

More and more institutional investors are following the lead of prominent asset managers such as State Street, Vanguard, and BlackRock, moving diversity to the front and center of their corporate stewardship initiatives. We also mentioned the Boardroom Accountability Project already, and how consequential it has been in the few months since its official launch.

In February 2020, proxy advisor ISS started to implement a new adverse voting recommendation against the chair of the nominating committee of companies with no female board members; only a few months later, the firm announced its plan to extend in 2022 the voting policy to situations where the board has no apparent racially or ethnically diverse board member.

While legislative initiatives have stalled in the U.S. Congress in the last few years and may be rekindled under the auspices of the new Biden Administration, in September 2020, the State of California has doubled down on its requirement of a female quota for public company boardrooms by amending its Corporations Code so that one and three directors (depending on the size of the board) would be selected from an underrepresented community by the end of 2022. On gender diversity, the States of New Jersey, Massachusetts, and Washington have followed the California model and introduced their own legislative proposals setting a female quota for public company boardrooms.

Finally, in December 2020, Nasdaq filed a proposal with the SEC to adopt new listing rules that would expect most of its listed company to disclose consistent statistics on the diversity of their board of directors and to have (or explain why they do not have) at least two diverse directors—one who self-identifies as female and one who self-identifies as either an underrepresented minority or LGBTQ+.

For all of these reasons, boards should make gender and racial/ethnical diversity an integral part of the ongoing board (and CEO) succession planning process. While this is particularly important for those smaller companies where diversity is still lacking, even companies with some diversity in their top leadership should avoid the risk of being complacent on this important topic and of adopting a check-the-box, compliance approach. Where more stringent prescriptions (such as the one set for California-based companies) do not apply, the efforts to improve diversity may include: requiring a diverse slate of candidates for each open position; ensuring that nominating committees, which take the lead in the director recruitment process, are diverse; and considering diversity when making board and committee leadership appointments to help leverage their networks.

Other trends to watch in 2021

Director elections. Average support levels in director re-elections has gradually declined in recent years: in the Russell 3000, for example, it went from 98.2 percent of votes cast in 2017 to 94.8 percent in 2020. Only seven directors in the entire index failed to receive majority support in 2017, while the number climbed to 53 in 2020 alone. Similarly, the number of directors who received less than 70 percent of votes cast was only 83 in 2017 and rose to 319 in 2020. While these numbers are hardly noticeable if one looks at the big picture (almost 16,000 directors were up for re-election in the Russell 3000 in 2020), they are part of a trend that was not observed before. In particular, it can be attributed to the position publicly assumed by many large investment institutions and by proxy advisors to intensify their scrutiny of board composition and refreshment and to increase board accountability on key ESG issues. Companies should no longer take investor confidence in their nominees for granted and must persuasively articulate the reasons for their board composition choices.

Political contributions and lobbying activities. Over the last few years, investors have increasingly been focusing on political contributions and lobbying expenditures of corporations, demanding more transparency on these issues. Five resolutions that went to a vote in 2020 passed, while a dozen more barely missed the majority support threshold. In the 2020 proxy season, in particular, there has been renewed scrutiny of the alignment between companies' public statements (in particular in sensitive ESG areas such as diversity, racial justice, and environmental protection) and the political and lobbying activities of its industry associations. Companies that have not yet done so should consider adopting a statement of purpose and ensuring that their strategy, governance, and risk management (including their contributions to support political candidates or to pursue public policies advancements) are informed by and consistent with such purpose.

Close Scrutiny of Political Contributions

Investors are increasingly scrutinizing lobbying expenditures of corporations, including whether they are aligned with their public statements on key social and environmental issues.

Shareholder Resolutions

Five shareholder resolutions that went to a vote in 2020 passed, while a dozen more barely missed the majority support threshold. They include two on the disclosure of lobbying activities—at Alaska Air Group and McKesson Corporation.

Public Statements

In the 2020 proxy season, in particular, there has been renewed scrutiny of the alignment between companies' public statements (in particular in sensitive ESG areas such as diversity, racial justice, and environmental protection) and the political and lobbying activities of its industry associations.

Recommendation

Companies that have not yet done so should consider adopting a statement of purpose and ensuring that their strategy, governance, and risk management (including their contributions to support political candidates or to pursue public policies advancements) are informed by and consistent with such purpose.

CEO/board chair separation. This is the governance-related topic to watch in the next proxy season. In 2020, unprecedented votes led to the approval of proposals on the appointment of an independent board chair at Baxter International (NYSE: BAX) and Boeing Company (NYSE: BA), with many other similar resolutions receiving the support of more than 40 percent of votes cast and average support level rising to 34.4 percent (it was 29.1 the year before). As the demand for the separation of CEO and board chair positions continues to grow, companies should review their board and committee leadership and ensure investors are persuaded about the independence of critical governance and oversight functions.

Say-on-pay votes and other compensation issues. While average support for say-on-pay management proposals in the Russell 3000 index remained strong in the 2020 season at 90.1 percent, 47 companies failed to received majority support and 115 companies failed to reach at least 70 percent support—the threshold below which proxy advisor ISS begins to scrutinize companies' responsiveness to shareholder concerns. Of course, these votes refer to pre-COVID-19 compensation decision. It remains to be seen how investors and proxy advisory firms will evaluate the compensation changes made in response to the global pandemic. The Conference Board and ESGAUGE have been tracking such changes in a public, live database.

SEC no-action letters. Companies continue to seek permission from the SEC to exclude from the voting ballot shareholder proposals relating to ESG matters. The trend was confirmed from an analysis of 2020 SEC no-action letters and is expected to continue in the coming years, especially as the volume of proposals in the environmental and social sphere rises. Out of the 237 requests for no-action relief submitted by Russell 3000 companies in the examined period of the 2020 voting season, 27 were related to environmental issues (15 of them were granted by the SEC) and 46 to human right and social (including human capital) issues (16 granted). The most common bases for requesting exclusion were that the proposal related to the ordinary business of the company (and would therefore translate into an attempt at micromanaging the company) or that it had been substantially implemented already.

The complete publication, including footnotes, is available here.

Volatile Transitions: Navigating ESG in 2021

Posted by Subodh Mishra, Institutional Shareholder Services, Inc., on Wednesday, February 24, 2021

Editor's note: Anthony Campagna is Managing Director and Duncan Paterson is Associate Director at ISS ESG, the responsible investment arm of Institutional Shareholder Services. This post is based on their ISS ESG memorandum. Related research from the Program on Corporate Governance includes The Illusory Promise of Stakeholder Governance by Lucian A. Bebchuk and Roberto Tallarita (discussed on the Forum here); Companies Should Maximize Shareholder Welfare Not Market Value by Oliver Hart and Luigi Zingales (discussed on the Forum here); and Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee by Max M. Schanzenbach and Robert H. Sitkoff (discussed on the Forum here).

Key Takeaways

- The forecast recession and "long ascent" of global economic recovery after COVID-19 will require a strong commitment and decisive action from financial markets.
- While the global economic downturn has been a time of significant stress for all investors, the willingness of international governments to couple stimulus programs with sustainability objectives offers a clear opportunity for responsible investors to play a leading role in the recovery.
- Regulatory pressure will be a key driver for responsible investment practices in 2021, with significant initiatives in the European Union coming into force, and governments in Asia making strong commitments to Net Zero targets.
- While the term ESG is broadly accepted in responsible investment markets, the range of issues that responsible investors are called upon to consider daily continues to expand. The topics covered in this paper are framed in three broad conceptual groupings: Planetary Boundaries, Inclusion and Stewardship.
- ISS ESG has identified 10 of the key global trends that we believe responsible investors will be focusing on through 2021, both in terms of impacts on portfolio risk/returns, and in terms of time spent managing policies and stakeholder relationships.
- This year we have also prepared a regionally-focused paper for each of the Americas, EMEA, Asia and Australia/New Zealand, highlighting risks about which the local teams in each region are speaking with their own networks.

Overview

As the world seeks to reconcile the impacts of the first, second and subsequent waves of COVID-19, investors and market participants usher in 2021 with equal measures of optimism and consternation. While working with uncertainty has been a modus operandi of the industry since its inception, 2020 tested the resolve of even the most seasoned Environmental, Social and

Governance (ESG) investor: the oft-prophesied Black Swan event collided with already intensifying ecological, economic and socio-political pressures, paralyzing companies, cities and democracies across the world. In this climate, the role of the responsible investor emerges with renewed purpose.

The International Monetary Fund has outlined a “long and difficult ascent” for the global recovery, predicting the most severe recession since the Great Depression. While the recovery is projected to be “disproportionate and uneven,” the financial market is expected to play a pivotal role. For responsible investors, that role entails both damage control and an altered scope of investment opportunity concerned with restoring stability. As nations attempt to recover their economies, implementing policies to shield their borders and industries against further systemic disruptions, the need emerges for investor vigilance across industries employing vulnerable communities or operating in regions with weak employee protections.

Simultaneously, knee-jerk and protectionist reactions from governments and regulatory bodies threaten to jeopardize the significant gains of the last two decades of ESG activism and policy reform, particularly in the areas of climate change and ecological management. Compounded by civil and geopolitical tensions cultivated in the aftermath of pandemic restrictions, the investment landscape of 2021 is characterized on the one hand by fragility, and on the other by the urgent need for decisive and committed action. For asset owners and asset managers, such action includes the capacity to:

- engage in support of labor, human rights, and health and safety protections of employees in global supply chains;
- advocate against premature withdrawals from or reversal of climate change policies on global, regional and national levels;
- bolster the potential of a green recovery in ailing economies; and
- utilize active ownership strategies that hold companies to account for decisions that disrupt or exploit already volatile and biased economic and social structures.

While such levers have always been available to investment actors, they take on new meaning and uses in a world bracing for widespread recession and ongoing systemic dysfunction.

Responsible investors also have an unprecedented opportunity to call other market players to the table. The downturn initiated by COVID-19 has brought to light the potential for ESG-savvy investments to buoy economic markets in times of crisis, with ESG funds overall outperforming the S&P500 in 2020. Proof that investors globally were taking note, the U.K.’s Investment Association reported that responsible investments in 2020 enjoyed an almost four-fold increase from 2019.

Such trends are supported by the findings of the 2020 ISS Asset Owner’s Stewardship Survey, which identified an increasing focus of asset owners on stewardship activities that work to hold companies accountable for ESG risks—particularly in those sectors weakened by COVID-19. Furthermore, the ISS ESG Asset Manager’s survey conducted in Q3 of 2020 found that 62.5% of the asset managers surveyed reported an increased focus on social issues due to the pandemic, with 44% expecting future ESG ratings to increase the value attributed to issues such as workplace safety, treatment of employees, diversity and inclusion, and supply chain labor dynamics. Overall, more than a third (37.5%) of asset managers reported plans to hire more ESG-related staff to manage the expected increase in workload.

Regional Developments

Regional trends in ESG risks emerge as a confluence of several macro trends endured through 2020. Stoppages in the manufacturing of consumer staples and consumer discretionary goods exacerbated labor and human rights, modern slavery and occupational health and safety in key supplier countries. The global surge in demand for health care and personal protective equipment highlighted frictions in wealth disparity and social inequality on the one hand, and weaknesses in waste disposal processes and plastic pollution risks on the other. As these risks unfolded alongside increasing rates of climate change and refugee migration, civil society in several regions grew increasingly unstable, bringing concerns around governance, accountability, and the urgency for climate change action into sharp focus.

Americas

Following the widespread Black Lives Matter protests that gripped the country and ripped across global headlines, the election of Joe Biden in the U.S. has been seen as an encouraging sign of progress towards the restoration of economic and social stability in the United States. Biden's hallmark $1.7 trillion plan to fuel a "green recovery" from COVID-19 suggests enhanced potential for the nation to achieve the goals of the Paris Agreement. Other ESG-related by the Trump presidency are also expected to be revised.

Meanwhile in the region's south, the Amazon rainforest fires and enhanced measures to protect biodiversity in Brazil remain high on the ESG radar. The Bolsonaro government faces a threat of divestment by major European investors—including divestment from government bonds—if ESG risks facing the Amazon rainforest regarding deforestation, mining and beef production are not addressed.

Such actions are consistent with a greater demand for ESG-aligned investments across the Latin American region, where demand for ESG-investment has tended to outstrip supply. Encouraging developments include Mexico's issuance of the country's first ESG-themed ETF, which drew over $450 million within two months of issue, as well as the new entry of two of the country's largest pension funds to PRI membership. Where this momentum can stimulate genuine action, the Latin American region is considered to have strong gains to observe from implementing a "green recovery" from COVID-19, with Chile already leading the way in the development of significant renewable energy capacity.

In our regional ESG Themes and Trends 2021 paper for the Americas, we drill down into four key ESG topics:

- Topic 1: ESG's Hidden Asset—All That Cash
- Topic 2: Climate Change—The Other Global Pandemic
- Topic 3: Biodiversity Developments in 2021
- Topic 4: Diversity & Inclusion—One Step Forward, Two Steps… Forward

Asia

ESG developments in the Asia Pacific region have largely been characterized by a surge in green finance and increased regulatory commitments regarding ESG issues. Some notable developments include commitments by the Japanese government to become carbon neutral by 2050 and bolster $2 trillion in green business and investment, and the Indian Government's introduction of a landmark Stewardship Code outlining six principles that include the mandatory requirement to monitor and engage with investee companies on ESG risks. China will also implement mandatory environmental reporting by companies in 2021—delayed from 2020 due to the pandemic, while the Hong Kong Stock Exchange implemented mandatory ESG disclosure rules regarding board disclosure, climate change and ESG reporting.

Despite these significant moves by several governments within the region, the short- to medium-term impacts of COVID-19 on supply chain production across several countries in the region have highlighted concerns regarding employee welfare. An ILO policy brief released in June 2020 found that employees in Asia and the Pacific represented those at highest risk of losing their job. While the ILO urges large-scale support for enterprises and enterprise workers, ISS ESG research has highlighted emerging risks of violation and abuse of modern slavery regulations, coupled with weak enforcement, across the region.

Increased attention flowing to the "S" aspect of ESG as a result of the COVID-19 pandemic is also likely to lead to scrutiny of the traditionally low levels of diversity observed within Asian companies. International and regional investors are likely to be taking a more proactive approach in their engagement strategies in the coming year.

These and other issues are examined in more detail in our dedicated Asian edition of the ESG Themes and Trends 2021 research series Specific topics covered include:

- Topic 1: The Shift Towards a Mandatory Climate Risk Disclosure Regime in Asia—Will There Be a Resulting ESG Data Boom?
- Topic 2: China—Climate and the Five-Year Plan
- Topic 3: Supply Chains in Crisis—Why Transparency Is Vital to "Build Back Better"
- Topic 4: Japan—Diversity Beyond the Boardroom

Australia & New Zealand

Investors in Australia and New Zealand continue to lead in their integration of ESG, with the Responsible Investment Association Australasia reporting responsibly managed assets under management growing by 17% year on year, and now representing 37% of total managed assets.

Incidents like the destruction of the 46,000-year-old Juukan Gorge caves in Western Australia by mining giant Rio Tinto have raised investor doubts about the practices of the important resources industry, however. The region has also made headlines for Australia's lagging legislative action on climate change and emissions reductions, which are seen as particularly tone deaf given the widespread acknowledgement that the devastation of the 2019 bushfires was worsened due to climate change. Nevertheless, members of the Australian Sustainable Finance Initiative have forged ahead with a series of ambitious recommendations that seek to align financial market practices with the targets of the Paris Agreement and other global initiatives.

As noted above, some of the largest Asian markets for Australian resources are committing to Net Zero targets—given national policy support for the export of fossil fuelintensive commodities, how well prepared is the Australian economy for some of these key markets drying up?

The New Zealand Government, following its Zero Carbon Act of 2019, declared a climate emergency in December 2020, and has proceeded with strategies that aim to achieve climate neutrality by 2050. Most notably, in September 2020 the New Zealand Government mandated climate-related financial disclosures for all publicly listed companies, large insurers, banks and investment managers—a move that demarcated the island nation as the first jurisdiction in the world to require compulsory climate change reporting.

The local ISS ESG research team has prepared a regionally focused ESG Themes and Trends 2021 paper. Topics covered in this analysis include:

- Topic 1: Bang! And the Reputation Is Gone—Indigenous Inclusion in the "Never Again" Era
- Topic 2: Portfolio Disclosure—This Time for Sure!
- Topic 3: Water Stress—Still a Big Deal in 2021
- Topic 4: Buy Now, Pay Later—Investor Dilemmas Around Consumer Credit

Europe, Middle East & Africa

In the European Union, the EU Green Deal has put forward plans to cut a further 55% of emissions by 2030, with an aim to achieve climate neutrality by 2050, and further measures expected to be announced in June 2021. Several pieces of sustainable finance legislation are being fine-tuned or are coming into force. The EU Taxonomy Regulation for example, is intended to ensure that designated environmentally sustainable economic activities genuinely contribute to climate change mitigation and adaptation and thus to the transition to a low-carbon economy.

In the Middle East, issuance of green and sustainable bonds increased by 50% during 2020 correlating with increasing legislative actions in the region aimed towards a green recovery. The 2019 INVESCO Global Sovereign Asset Management survey also found almost 60% of 139 sovereign investors and central bank reserve managers in the region reported incorporation of a top-down ESG strategy—an encouraging sign for a region often lagging in performance against traditional ESG benchmarks.

With an eye firmly focused on the "S" of ESG, the African Development Bank won accolades after its issuance of a $3 billion "Fight COVID-19″ bond, which aims at remedying the social impacts of the pandemic. Social bonds and green bonds are a key means through which a "green recovery" is anticipated for African nations, as evidenced by ongoing growth in the issuance of sustainable bonds and social bonds since 2019. Companies and investors working in African countries will also be increasingly impacted by the changes to the Equator Principles which came into effect July 2020 and dictate greater alignment with the UN Guiding Principles on Business and Human Rights, the Recommendations of the Task Force on Climate-related Financial Disclosures, and adherence to the International Finance Corporation's standards regarding Free, Prior and Informed Consent.

ISS ESG's team in EMEA has pulled together their top three ESG Themes and Trends for 2021. The topics covered are:

- Topic 1: The EU Sustainable Finance Disclosure Regulation
- Topic 2: Mandatory EU Human Rights Due Diligence—A Game Changer for the European Market
- Topic 3: Biodiversity—A Major Linchpin for Investors in 2021

Summary

The issues and developments highlighted above are but small parts of the increasingly complex and diverse global ESG landscape that greets investors in 2021. With the impacts of the pandemic still looming over most economies in the world, responsible investors face a balancing act of maintaining momentum on climate change action, while becoming instrumental actors in the recovery and redevelopment of localized economies.

In the process, a sea of "red flag" issues across labor and human rights; biodiversity and resource scarcity; wealth disparity and income inequality; and governance and accountability, demand immediate attention and investor mobilization. Fortunately, ESG investors are now seen to be ahead of the pack, and in prime position to utilize their reputations to garner greater mainstream buy-in towards sustainable business practice. As such, 2021 offers responsible investors an opportunity to truly live up to their potential, aiding in the delivery of a socially and environmentally sustainable global recovery.