

2021 Proxy Season Review: Part 1

Rule 14a-8 Shareholder Proposals

July 27, 2021

Shareholders submit 733 proposals for meetings in the first half of 2021, the highest number since S&C began tracking submissions

Social/political proposals:

- Proposals on workforce diversity, EEO-1 reporting and limiting mandatory employment arbitration receive near or over 50% average support
- Social/political proposals comprise 40% of submissions for H1 2021 meetings, with the number increasing 39% compared to H1 2020
- Main drivers of growth are dramatic increases in submissions on employee-related diversity, equity and inclusion (DEI) and social capital management issues (93% and 43%, respectively)
- Proposals on political spending and lobbying decline, comprising 22% of social/political proposals (compared to 30% in H1 2020)
- When voted, social/political proposals receive 30% average shareholder support (compared to 28% in H1 2020)

Governance proposals:

- Board diversity proposals receive 59% average support
- Continuing a five-year trend, the number of governance proposals further declines (38% of proposals compared to 46% in H1 2020)
- Almost three-quarters of governance proposals relate to structural governance issues, with focus on proposals to amend existing shareholder rights (e.g., written consent, proxy access and special meetings)
- As has been the case in prior years, a majority of governance proposals go to a vote (72%) and voted proposals continue to receive high support (40%)
- Prevalence of board composition proposals decreases meaningfully (26% of H1 2021 governance submissions compared to 31% in H1 2020, when many companies announced their commitment to board diversification efforts)

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Environmental proposals:

- When voted, environmental proposals receive higher average shareholder support (41%) and the percentage of majority-supported proposals increases significantly (to 36% from 16% in H1 2020)
- Environmental proposals increase 40% over H1 2020, comprising 16% of submissions
- Nearly three-quarters of submissions in this category relate to climate

Compensation proposals:

- Consistent with prior years, very few 2021 submissions are compensation proposals (7% of all H1 2021 submissions), and no compensation proposal gains majority support
- Despite a 17% decrease in the total number of compensation submissions, proposals for compensation linked to environmental performance metrics increase by 29%

INTRODUCTION

Our annual proxy season review memo summarizes significant developments relating to the 2021 U.S. annual meeting proxy season. This year, our review comprises two parts: Rule 14a-8 shareholder proposals and compensation-related matters. This is Part 1, and we expect to issue Part 2 over the next weeks. We will also host in September our annual webinar to discuss 2021 proxy season developments.

The Rule 14a-8 shareholder proposals we discuss are those submitted to and/or voted on at annual meetings of the U.S. members of the S&P Composite 1500, which covers over 90% of U.S. market capitalization, at meetings held on or before June 30, 2021. We estimate that around 90% of U.S. public companies held their 2021 annual meetings by that date.

The data on submitted, withdrawn and voted-on shareholder proposals derive from ISS's voting analytics with respect to about 733 known shareholder proposals submitted this year to U.S. members of the S&P Composite 1500.¹ We have supplemented the ISS data with information published by proponents on their websites and other independent research. The number of proposals submitted includes proposals that were withdrawn before or after being included in a company's proxy statement (usually following engagement with the company) or excluded from a company's proxy statement through the SEC no-action process. The data on submitted proposals understate the number of proposals actually submitted, as it generally does not include proposals that were submitted and then withdrawn unless either the proponent or the company voluntarily reported the proposal to ISS or on its website.

For a discussion of U.S. proxy contests and other shareholder activist campaigns, see our publication, dated December 2, 2020, entitled "[2020 U.S. Shareholder Activism Review and Analysis](#)."

More generally, for a comprehensive discussion of U.S. public company governance, disclosure and compensation, see the [Public Company Deskbook: Complying with Federal Governance and Disclosure Requirements](#) (Practising Law Institute) by our colleagues Bob Buckholz and Marc Trevino, available at 1-800-260-4754 (1-212-824-5700 from outside the United States) or <http://www.pli.edu>.

¹ Certain proxy advisory firms, including ISS, publish voting policies on an annual basis. Institutional investors, such as Blackrock or Vanguard, also publish voting policies each proxy seasons. The 2021 voting policies of some of the most prominent players are available at: <https://www.issgovernance.com/policy-gateway/voting-policies/> (ISS); <https://www.glasslewis.com/voting-policies-current/> (Glass Lewis); <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf> (BlackRock); [2021 proxy voting summary.pdf](https://www.vanguard.com/2021-proxy-voting-summary.pdf) (vanguard.com) (Vanguard); <https://www.ssga.com/library-content/pdfs/ic/proxy-voting-and-engagement-guidelines-us-canada.pdf> (State Street).

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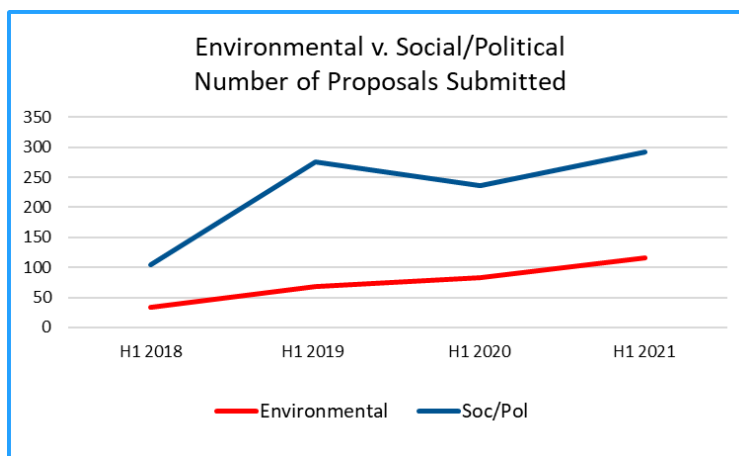
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PART 1. RULE 14A-8 SHAREHOLDER PROPOSALS

A. OVERVIEW OF SHAREHOLDER PROPOSALS

Against the backdrop of an unusual past year—including a global pandemic, a heated U.S. presidential election and the intensifying spotlight on representation and social justice issues, shareholders submitted 733 proposals for meetings in the first half of 2021, the highest number since we began tracking submissions in 2017. Reversing a multi-year downward trend, the overall number of 2021 submissions to date has not only surpassed the number of submissions for this period last year (657), but also for full-year 2020 (706) and full-year 2019 (722). Consistent with category-specific trends from previous years, submissions on environmental and social/political topics (“ESP”) continued to increase and represent the majority of proposals submitted for the first time (comprising 56% of all submissions for H1 2021 compared to 45% for full-year 2020). The prevalence of both governance and compensation submissions continued to decrease (comprising 38% and 7% of all submissions for H1 2021, respectively, compared to 46% and 8% for full-year 2020, respectively).

Given the large number of ESP proposals, we have separated environmental proposals and social/political proposals into their own categories in this year’s proxy season review memo. The separation allowed us to more clearly observe differences in year-over-year growth trends and growth drivers in each of the categories. Environmental proposals, driven by a dramatic 77% increase in proposals relating to climate, increased more significantly than any other category in 2021 (by 29% over full-year 2020), although environmental proposals still represented only 16% of total submissions. In comparison, although social/political proposals increased less dramatically (by 27%), they became, for the first time, the largest category (40% of total submissions). While social capital management (SCM) represented 42% of social/political proposals (increasing 43% over full-year 2020), employee-related DEI proposals increased by a staggering 94% over full-year 2020, comprising 30% of social/political proposals.



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The following table and charts summarize the Rule 14a-8 shareholder proposals submitted in 2020 full-year and 2021 year-to-date, the number voted on and the rate at which they passed:²

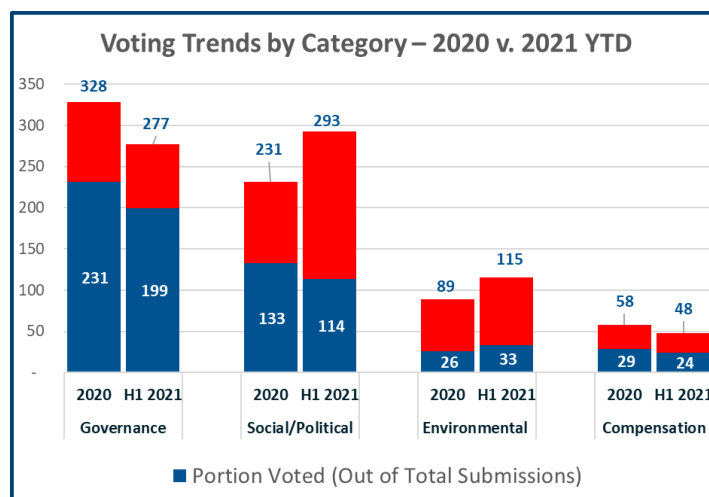
SUMMARY OF 2020–2021 SHAREHOLDER PROPOSALS

<i>Type of Proposal</i>	<i>Shareholder Proposals Submitted</i>		<i>Shareholder Proposals Voted On</i>		<i>Average % of Votes Cast in Favor</i>		<i>Shareholder Proposals Passed</i>	
	<i>2021 YTD</i>	<i>2020</i>	<i>2021 YTD</i>	<i>2020</i>	<i>2021 YTD</i>	<i>2020</i>	<i>2021 YTD</i>	<i>2020</i>
Social/Political	293	231	114	133	30%	28%	18	12
<i>Social Capital Management</i>	123	86	55	38	17%	19%	1	1
<i>Employee-Related DEI</i>	89	46	17	25	47%	24%	6	3
<i>Political Spending/Lobbying</i>	64	76	36	60	41%	35%	9	6
<i>Non-DEI Human Capital Management³</i>	17	23	6	10	27%	23%	2	2
Governance-Related	277	328	199	231	40%	34%	36	29
<i>Structural Governance</i>	201	195	155	157	44%	37%	34	25
<i>Written Consent</i>	72	65	65	60	40%	36%	7	4
<i>Special Meetings</i>	36	44	30	40	38%	41%	5	5
<i>Proxy Access</i>	31	19	24	14	32%	33%	0	1
<i>Other Structural</i>	62	67	36	43	62%	37%	22	15
<i>Board Composition</i>	72	103	44	67	28%	26%	2	3
<i>Misc. Governance⁴</i>	4	30	0	7	-	31%	0	1
Environmental	115	89	33	26	41%	32%	12	5
<i>Climate-Related</i>	85	48	28	14	41%	33%	11	3
<i>Sustainability</i>	30	41	5	12	36%	31%	1	2
Compensation-Related	48	58	24	29	20%	23%	0	1
Total	733	706	370	419				

² In this publication, when we refer to a proposal as “passing,” we mean that it received the support of a majority of votes cast, regardless of whether this is the threshold for shareholder action under state law or the company’s bylaws. We refer to proposals that have been excluded through the SEC no-action process as “excluded.” Unless stated otherwise, we refer to proposals withdrawn by the proponent either before or after the mailing of a company’s proxy materials, as well as proposals which are not presented by the proponent at the shareholder meeting, as “withdrawn” (in cases where a proposal is not included in the proxy or presented, but it is unclear whether the proponent has withdrawn the proposal, we adopt ISS’s catch-all categorization of the proposal as “not in proxy or not presented”).

³ For our 2021 analysis, we separated DEI from the broader HCM subcategory used in prior-year memos. This decision was due to the high number of DEI proposals this year (as discussed below). The 2021 non-DEI HCM proposals include other employee-related issues, such as proposals relating to (i) mandatory arbitration of employee-related claims, (ii) harassment issues and (iii) various other human capital management issues, such as paid sick leave and workplace safety.

⁴ The “Miscellaneous Governance” proposals in 2021 included requests to disclose a report on external costs from underwriting equity offerings (at Goldman Sachs and J.P. Morgan Chase), strengthen the target company’s balance sheet and provide specific guidelines for virtual shareholder meetings, all of which were excluded through the SEC no-action process.



B. WHO MAKES SHAREHOLDER PROPOSALS

On September 23, 2020, the SEC amended Rule 14a-8. For the first time since 1998 and 1954, respectively, the SEC increased (i) the share ownership requirements for Rule 14a-8 proposal submissions and (ii) shareholder support thresholds for resubmissions.⁵ The amendments call for new thresholds for resubmissions—requiring higher minimum shareholder approval rates (between 5% and 25%, depending on the number of times the proposal has been submitted in the preceding five years). These amendments were not effective for the 2021 proxy season and are currently under review by the SEC.⁶

Despite the rise of new ESP-focused groups in recent years, a familiar cast of frequent proponents continued to drive the voting agenda at U.S. public companies. The top 10 proponents account for more than two-thirds of shareholder proposals submitted to U.S. S&P Composite 1500 companies.⁷ The following table shows the top shareholder proponents in 2021 and the types of proposals submitted:

⁵ For more information regarding the modernization, see our publication, dated September 30, 2020, entitled “[SEC Modernizes Shareholder Proposal Requirements.](#)”

⁶ See <https://www.sec.gov/news/public-statement/gensler-proxy-2021-06-01>.

⁷ It is worth noting that data based on the named filer of a shareholder proposal do not reveal the robust activity from investor coalitions (such as the Interfaith Center on Corporate Responsibility), which submit proposals through individuals and member/affiliated organizations. It appears that the concentration of proposals would be even higher if aggregated at the coalition level. In addition, data based on the named filer of a shareholder proposal understate the high level of proactive engagement between companies and shareholders that prefer to effect change through letter-writing campaigns and private engagement, as further discussed below.

	<i>Primary or Secondary Filers⁸</i>	<i>Total</i>	<i>% of All Proposals</i>	<i>S/P</i>	<i>Governance</i>	<i>Environmental</i>	<i>Compensation</i>
1	John Chevedden	168	23%	14	153	0	1
2	As You Sow Foundation	76	10%	33	0	41	2
3	NYC Comptroller/NYS Common Retirement Fund	58	8%	34	9	7	8
4	Kenneth Steiner	51	7%	0	51	0	0
5	James McRitchie/Myra Young	50	7%	24	24	1	1
6	Mercy Investment Services	26	4%	11	2	11	2
7	Sisters of St. Francis	22	3%	14	3	3	2
8	Green Century Capital Management	21	3%	1	0	20	0
9	Calvert Research & Management	19	2%	18	0	1	0
10	National Center for Public Policy Research	18	2%	15	3	0	0
	Trillium Asset Management	18	2%	11	2	3	2

- **Individuals.** The same set of prolific individual investors that has been most active over the past few years (John Chevedden, Kenneth Steiner and James McRitchie/Myra Young) remained the most prolific proponents in 2021. These individuals often submitted proposals jointly as co-filers and, excluding overlaps, they were responsible for 175 distinct proposals, or 24% of all proposals submitted this year (compared to 29% in 2020 and 31% in 2019). The clear focus of the group was on corporate governance, with 85% of their submissions committed to governance issues. However, the number of their ESP-related proposals (mostly political/lobbying or corporate purpose) reached a three-year high (28 compared to their combined 13 ESP-related proposals in 2020 and 20 in 2019).
- **Social Investment Entities.** Social investors, including institutions with a mandate to make “socially responsible” investments or advance social causes, led 214 proposals in the 2021 season. Social investors continued to be the main drivers of ESP proposals, submitting 190 (47%) of all ESP-related proposals. Environmentally focused entities As You Sow Foundation and Green Century Capital Management submitted slightly over half of all environmental proposals. On the other hand, while the entities that have submitted high numbers of social proposals in the past years (e.g., Trillium Asset Management and Arjuna Capital) remained active in engaging with companies on social topics, they submitted fewer formal proposals this year.⁹
- **Public Pension Funds.** Public pension funds and related entities lead-filed 77 proposals thus far in 2021, a 48% increase compared to the same period last year. Around 50% of their proposals were on social issues, with the rest relatively evenly split across environmental, governance and executive compensation issues. The New York City and State Comptrollers and their affiliated pension funds were the most frequent proponents in this group, submitting

⁸ Based on ISS records of the named sponsors of shareholder proposals, which we have supplemented with information published by proponents on their websites and other independent research.

⁹ The number of proposals submitted by “anti-ESP” entities remained low this year (19 compared to 13 last year). This year, these entities once again focused on “true diversity” proposals (i.e., proposals seeking to shift companies’ diversity efforts away from diversity based on race, gender and other self-identified demographic characteristics towards diversity of ideological perspectives). In addition, these groups focused on corporations’ charitable contributions. Most of their proposals were excluded by the companies through the SEC no-action process. The most active anti-ESP proponent was the Free Enterprise Project of the National Center for Public Policy Research (NCPFR), a conservative shareholder activist initiative.

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75% of all public pension and related entity proposals. Workplace diversity was their top concern in 2021.

- **Religious Organizations.** This year, religious organizations continued to submit a meaningful number of proposals (52 as lead filer), focusing on ESP proposals—especially human right issues—as they have in past years. Many of the active religious organizations were affiliated with the faith-based investor coalition, the Interfaith Center on Corporate Responsibility (ICCR), and often co-filed proposals. Mercy Investment Services and the Sisters of St. Francis were the most active member organizations.
- **Labor Unions.** Labor unions, including Teamsters and Service Employees International Union, lead-filed 25 proposals this year. ESP proposals remained the most common ones, accounting for just over half of all proposals by labor unions.

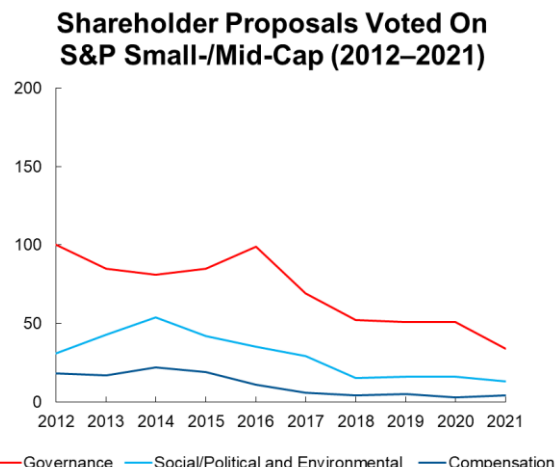
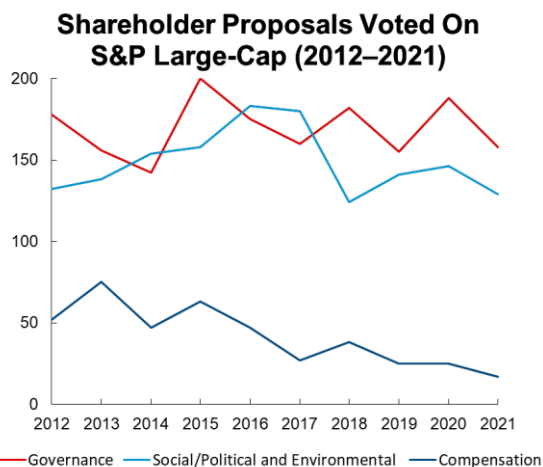
C. TARGETS OF SHAREHOLDER PROPOSALS

Traditionally, large-cap companies have received the vast majority of shareholder proposals.¹⁰ In 2021 so far, S&P 500 companies received nearly 87% of proposals voted on, on par with 2020 (86%). This year, companies that employed front-line workers and those that manufactured COVID-19-related products were the targets of many shareholder proposals.

The following graphs show the frequency of proposals, by category, voted on at large-cap companies compared to small- and mid-cap companies. The higher numbers at large-cap companies are not adjusted for the fact that the small-/mid-cap graph includes twice as many companies.

As has been the case in recent years, proponents submitted Rule 14a-8 proposals at companies across a variety of industries, including companies in the retail/consumer goods (16% of total submissions), manufacturing (15%), utility and energy (15%), healthcare/pharmaceuticals (14%), financial services (13%) and technology (12%) sectors in 2021. Proponents tended to focus on social issues in the retail/consumer goods and technology sectors, on environmental issues in the utility and energy sector, and on a mixture of governance and ESP issues in the financial services, healthcare/pharmaceutical and manufacturing sectors.

¹⁰ In this publication, we use “large-cap” to mean U.S. S&P 500 companies; “mid-cap” to mean the next largest U.S. S&P 400 companies; and “small-cap” to mean the next largest U.S. S&P 600 companies.



D. SHAREHOLDER PROPOSALS ON SOCIAL/POLITICAL MATTERS

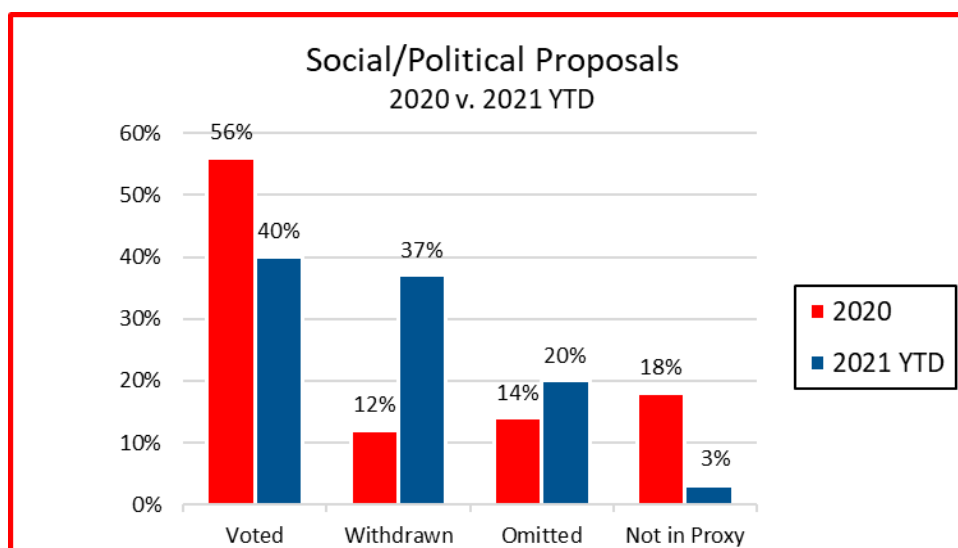
1. Overview

	SOCIAL/POLITICAL							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	2021 YTD	2020	2021 YTD	2020	2021 YTD	2020	2021 YTD	2020
Social Capital Management	123	86	55	38	17%	19%	1	1
<i>Civil Rights, Human Rights and Racial Justice</i>	43	34	20	14	30%	25%	1	0
<i>Corp. Purpose</i>	29	7	16	5	3%	7%	0	0
<i>Other Social Capital Management¹¹</i>	51	45	19	19	17%	18%	0	1
Employee-Related Diversity, Equity and Inclusion	89	46	17	25	47%	24%	6	3
<i>EEO-1 Reporting and EEO Policies</i>	42	15	3	5	70%	25%	2	1
<i>Workforce Diversity</i>	32	15	8	6	49%	39%	3	2
<i>Wage Gaps – Gender and Racial</i>	8	14	5	13	22%	15%	0	0
<i>Management Diversity</i>	7	2	1	1	94%	45%	1	0
Political Spending/Lobbying	64	76	36	60	41%	35%	9	6
Non-DEI Human Capital Management	17	23	6	10	27%	23%	2	2
<i>Mandatory Arbitration</i>	3	10	2	2	56%	34%	2	1
<i>Harassment</i>	2	4	1	4	22%	19%	0	0
<i>Paid Sick Leave</i>	6	0	0	0	-	0	0	0
<i>Other Human Capital Management¹²</i>	6	9	3	4	9%	22%	0	1
Total	293	231	114	133				

¹¹ The “Other Social Capital Management” proposals in 2021 included access to products designed to combat COVID-19 for consumer goods and pharmaceutical/medical device companies, risks of child exploitation for technology and social media companies, charitable contributions and animal safety measures. These proposals are generally industry- or company-specific.

¹² The “Other Human Capital Management” proposals in 2021 included employee involvement in corporate governance and risk oversight and employee safety issues in franchise operations.

2. Increased Withdrawal Rate



Social/political proposals were three times more likely to be withdrawn this year compared to last year. Of the 293 social/political proposals submitted, 37% were withdrawn (compared to 12% in 2020), most of which related to EEO-1 reporting and political spending/lobbying. A large proportion of the withdrawn EEO-1 reporting proposals (54%) were submitted by New York City Comptroller.

3. Increased Shareholder Support

Fewer proposals went to a vote (39% in 2021 compared to 58% in 2020), but average shareholder support for social/political proposals increased year-over-year from 28% to 30%, driven by an almost doubled support rate for employee-related DEI proposals. Pass rate also increased (16% of voted proposals passed in 2021 compared to 9% in 2020), including nine political proposals (up from six in 2020) and six employee-related DEI proposals (up from three in 2020). ISS supported all but two of the proposals that passed. The two proposals that passed without ISS support related to political spending disclosures (at The GEO Group and Exxon Mobil), each of which passed despite ISS's negative recommendation.

4. Social Capital Management (SCM)

Proposals in the SCM category, which focuses on corporate impact on stakeholders other than employees and shareholders, increased by 43% compared to full-year 2020. In addition to dramatic increases in proposals that relate to corporate purpose, 2021 also saw the emergence of new categories of civil rights, human rights and racial justice proposals in direct response to the events of the past year.¹³

¹³ Other SCM proposals cover topics such as corporate charitable contributions and public health costs of a company's products (e.g., opioids, tobacco and sugar).

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Forty-two percent of all social/political proposals in 2021 were SCM proposals. The two most prevalent SCM proposal topics in 2021 were (i) civil rights, human rights and racial justice proposals (35% of SCM proposals) and (ii) corporate purpose proposals (24%).

a. Civil Rights, Human Rights and Racial Justice

Shareholder proponents submitted 43 proposals in 2021 on civil rights, human rights and racial justice issues, representing a 26% increase in these proposals compared to full-year 2020. These proposals went to a vote slightly more frequently, and received moderately higher average shareholder support, than in 2020. Two types of proposals were submitted in meaningful numbers for the first time this year: (i) racial equity audit proposals and (ii) requests for human rights due diligence procedures.

i. Racial Equity Audits

Twelve companies received racial equity audit proposals in 2021, including six banks (Bank of America, Citibank, Goldman Sachs, J.P. Morgan Chase, Morgan Stanley and Wells Fargo), two institutional investors (BlackRock and State Street), and four other companies in industries that attracted for various reasons media attention in 2020 (Amazon, Amgen, CoreCivic and Johnson & Johnson).¹⁴ The content of these proposals was largely identical (stating that the Black Lives Matter movement has galvanized the movement for racial justice and equality, and urging companies to commission audits on their impact on civil rights and DEI),¹⁵ despite being brought by different proponents. CtW Investment Group, which focused solely on banks this year, brought three of its four proposals on this topic to a vote (its proposals at Bank of America, Citigroup and J.P. Morgan Chase received 27%, 39% and 41% of votes cast, respectively; it withdrew the proposal at Morgan Stanley after Morgan Stanley agreed to conduct workforce and leadership racial equity reviews and discuss racial equity-related practices before its 2022 annual meeting).¹⁶ The Service Employees International Union and its affiliated entities (SEIU) submitted this proposal (either alone or with ICCR or social investment entities) to five companies in different industries, reaching a vote at Goldman Sachs (31% of votes cast), State Street (37%) and Wells Fargo (13%); proposals at BlackRock and CoreCivic were withdrawn after the companies agreed to conduct racial equity audits. The rest of these proposals were brought by Newground Social Investment, the New

¹⁴ A slightly different proposal, submitted at Abbott Labs, Intel, Charles Schwab, Chubb, PayPal, Monster and Foot Locker, requested the companies to report on policies and practices related to achieving racial justice and/or equity.

¹⁵ Some of these proposals noted that companies such as Facebook, Airbnb and Starbucks have proactively engaged third-party auditors to assist with the identification, prioritization and implementation of improvements of corporate practices that are (or could be perceived) to be discriminatory or racist or that could contribute to increasing inequality.

¹⁶ See <https://ips-dc.org/while-professing-blm-support-wall-street-banks-reject-racial-equity-audits/>. In its SEC filings, each of the other banks noted that it was recommending shareholders vote against the racial equity proposals because they were already making significant progress on racial equity issues. See https://about.bankofamerica.com/annualmeeting/static/media/BAC_2021_ProxyStatement_ADA.612694a6.pdf (Bank of America), <https://www.citigroup.com/citi/investor/quarterly/2021/ar21p.pdf> (Citigroup) and <https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/investor-relations/documents/proxy-statement2021.pdf> (J.P. Morgan Chase).

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York State Common Retirement Fund/ICCR and Trillium Asset Management at Amgen (withdrawn), Amazon (receiving only 18% of votes cast despite being the only racial equity audit proposal supported by ISS) and Johnson & Johnson (receiving 34% of votes cast), respectively.¹⁷

ii. Human Rights Due Diligence

Seventeen companies received proposals to report on human rights due diligence processes. Although proposals that relate to reporting on human rights policies and practices have been submitted for several years, this was the first year that proposals on companies' internal due diligence processes for assessing human rights impacts were submitted in meaningful numbers. Each proposal cites as a supporting factor the United Nations Global Compact, directing businesses to conduct human rights due diligence to meet the corporate responsibility expectations.¹⁸ ISS recommended voting for five of the six management-opposed proposals that went to a vote (including a proposal to Tyson Foods), which received moderate shareholder support (between 18% and 35%). A management-supported proposal at Wendy's received 95% of votes cast.

b. Corporate Purpose

Evolving from proposals in previous years that requested companies to publicly adopt a "corporate purpose" statement, proponents such as Harrington Investments, Arjuna Capital, James Ritchie, Myra Young and The John Bishop Montgomery Trust submitted a meaningful number of proposals (18 compared to one in 2020) this year, demanding companies to amend (or consider amending) their charters to become public benefit corporations.¹⁹ Nine additional proposals this year (and five in 2020) requested companies review and report on the Business Roundtable's 2019 statement on the Purpose of a Corporation without expressly calling for such a charter amendment. The recipients of these proposals included high-profile companies such as Alphabet, Amazon, 3M, WalMart and J.P. Morgan Chase. When calling for companies to become public benefit corporations, proponents cited the impact of the particular

¹⁷ The Johnson & Johnson proposal stated that Black Americans have experienced disparate outcomes specifically in the healthcare sector. See <https://sec.report/Document/0000200406-21-000011/jnjproxy2021.htm>.

¹⁸ United Nations Global Compact: Human Rights, available at <https://www.unglobalcompact.org/what-is-gc/our-work/social/human-rights#:~:text=They%20must%20act%20with%20due,impacts%20related%20to%20their%20business.&text=The%20UN%20Global%20Compact%20promotes,on%20Business%20and%20Human%20Rights>.

¹⁹ A public benefit corporation is a specific type of Delaware general corporation formed to pursue a business purpose, which also pursues one or more express public benefits in addition to its for-profit business. For more information about Delaware public benefit corporations, visit <https://www.delawareinc.com/public-benefit-corporation/>.

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corporation²⁰ or categories of corporations²¹ in arguing that the companies had a social responsibility to commit to public benefit purposes. These proposals received low support in 2020 (averaging 7% of votes cast); in 2021, the support for these proposals dropped to 3%, and ISS did not recommend in favor of any.

5. Employee-Related DEI²²

In the wake of George Floyd's death, the national attention on employee-related DEI and related social matters has intensified. This year, proposals submitted on employee-related DEI matters nearly doubled, with most of the proposals focusing on workforce diversity disclosure. These proposals centered around disclosure of statistics and/or policies in three key areas: (i) EEO-1 reporting and policies (47% of employee-related DEI proposals); (ii) workforce diversity (36%); and (iii) gender or racial wage gap (9%). Average shareholder support for employee-related DEI proposals was higher than any other subcategory of social proposals (47%), buoyed by institutional investor policies that are in favor of transparency on employee-related DEI (including BlackRock, State Street and Vanguard).²³ ISS supported 71% of employee-related DEI proposals this year.

a. Standardized DEI Reporting

Instead of demanding comprehensive ESG disclosures based on the Sustainability Accounting Standards Board ("SASB") framework (which include employee-related DEI metrics), shareholder attention in 2021 focused on disclosure of EEO-1 reports. The EEO-1 Component 1 report is a mandatory annual data collection that requires all U.S. private sector employers with 100 or more employees to submit demographic workforce data, including data by race/ethnicity, sex and job categories, to the U.S. Equal Employment Opportunity Commission ("EEOC"). While EEO data are collected on an individual company basis, it is only available to the public on an aggregated basis.²⁴ Forty-two proposals this year requested public disclosure of these reports, representing approximately 14% of all social/political proposals submitted. Most of these proposals were withdrawn before a vote (in many instances, after the company

²⁰ For example, the proposal at Alphabet addressed the far-reaching impact of the company's actions on the general public before concluding that the company had social responsibilities as a result. Specifically, the proposal noted that Alphabet has the "capacity to link people around the globe, which 'provides potential to contribute to religious persecution, put democracy at risk, and undermine vaccination.'" Therefore, according to the proposal, "such threats to freedom, democratic principles, and public health should be prioritized, even at a sacrifice to return." See Alphabet's DEF 14A, available at https://www.sec.gov/Archives/edgar/data/0001652044/000130817921000256/lgoog2021_def14a.htm.

²¹ The proposal at 3M referenced \$2.2 trillion in annual social and environmental costs created by listed companies and noted that 3M had social responsibilities to minimize this impact.

²² This section does not address board diversity proposals, which are discussed below in Section E.2.

²³ See BlackRock Investment Stewardship, Proxy voting guidelines for U.S. Securities, January 2021, available at <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf>; Vanguard, Summary of the proxy voting policy for U.S. portfolio companies, 2021, available at http://about.vanguard.com/investment-stewardship/portfolio-company-resources/2021_proxy_voting_summary.pdf; State Street, Proxy Voting and Engagement Guidelines, 2021, available at <http://www.ssga.com/library-content/pdfs/ic/proxy-voting-and-engagement-guidelines-us-canada.pdf>.

²⁴ EEO -1 DATA COLLECTION, <https://www.eeoc.gov/employers/eEO-1-data-collection> (last visited June 22, 2021).

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agreed to publish its EEO-1 report),²⁵ and only three such proposals made it to a vote.²⁶ Of these three proposals, two passed with overwhelming support (at DuPont and Union Pacific, with approximately 84% and 86% support, respectively), and one (at Charter Communications) failed to pass although still receiving fairly high support (41%). Moody's Corporation and American Express Company were able to exclude their EEO-1 proposals with SEC no-action relief. In their letters to the SEC, the companies emphasized that such data did not paint a complete picture of their diversity efforts, with Moody's committing to release data that, in its view, would present a more accurate picture of diversity at the company, and American Express releasing an interim employee-related DEI progress report, which provides disclosures on company diversity in its workforce and includes a 2020 EEO-1 Report.

b. Workforce and Management DEI

Almost all of the other employee-related DEI proposals were requests for disclosure of diversity and inclusion efforts or diversity statistics through one-time or annual workforce diversity reports.²⁷ The proposals asked for companies to provide not only a general qualitative disclosure on their DEI programs but a more granular and quantitative disclosure of the metrics and trends related to the companies' promotion, recruitment and retention of protected classes of employees. In many cases, the proponent focused on the company's stated commitment to DEI (in proxy statements or the company's website disclosures) and requested that the company provide evidence to demonstrate concrete and measurable DEI progress. Of the eight workforce DEI proposals that went to a vote, three passed. The voted proposal at IBM, which was the only company whose management recommended in favor of the disclosure-related workforce diversity proposal,²⁸ received 94% of votes cast, while the other two proposals passed with 81% and 60%.

Given the shareholder support for employee-related DEI disclosure proposals, if a company is willing to provide quantitative employee-related DEI disclosures, it will be a strategic decision whether settling in advance of a vote or letting the proposal go to a vote with a management supporting statement will be the most effective method of demonstrating alignment with shareholders on workplace diversity issues. In

²⁵ Calvert Research and Management ("Calvert") wrote to 100 of the largest companies asking them to release EEO-1 reports by January 2021. They heard back from three-fourths of the companies, with 27 agreeing to release the report. See Eaton Vance, Insights: Our efforts to increase transparency on diversity data, *available at* <https://institutional.eatonvance.com/viewpoints.php?post=our-efforts-to-increase-transparency-on-diversity-data&sku=37731>.

²⁶ ISS recommended in favor of all three EEO-1 reporting proposals: the Calvert proposals at Charter Communications and Union Pacific received about 41% and 86% of votes cast, respectively, and the New York City Comptroller proposal at DuPont received 84% of votes cast.

²⁷ Three proposals were related to diversity policies, including proposals at Amazon and Activision Blizzard to adopt a "Rooney Rule"-based diverse candidate search policy for new hires, and a proposal at Walt Disney to strengthen board oversight of workforce equity issues. In addition, the number of wage gap disclosure proposals further declined in 2021, following the notable decline in shareholder support that wage gap proposals received in 2020.

²⁸ See IBM, 2021 Notice of Annual Meeting & Proxy Statement 81, *available at* https://www.ibm.com/annualreport/assets/downloads/IBM_Proxy_2021.pdf (the IBM board "discussed [the] proposal and determined that it aligns with IBM's goals of a diverse and inclusive workforce").

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addition to monitoring peer response to employee-related DEI shareholder proposals, companies should closely monitor developments at the SEC on diversity reporting requirements, which are part of the SEC's corporate workforce disclosure agenda, as Chairman Gensler indicated this past May.²⁹

Two anti-ESP proposals were submitted this year (by NCPPR) requesting a report on the risks of omitting viewpoint and ideology from target company's EEO policies, but both were excluded through the SEC no-action process on the "ordinary business" basis.

6. Non-DEI Human Capital Management (HCM)³⁰

Last year, the SEC clarified that human capital management disclosure mandated by Regulation S-K Item 101(c)(2)(ii) includes "human capital measures or objectives that the registrant focuses on in managing the business," citing "measures or objectives that address the development, attraction and retention of personnel" as an example of potentially required disclosures. Companies have taken varied approaches to comply with the new Item 101(c)(2)(ii) requirements, with some providing detailed disclosures and other providing high-level descriptions only. In May 2021, SEC Chair Gensler announced that the SEC is working on a new rule that would require additional human capital management disclosure.³¹ Rulemaking on human capital management disclosures and corporate board diversity (discussed below) is anticipated by October of this year.³² Focal areas in this category, other than employee-related DEI (which is discussed above as a separate category) include #MeToo-related topics addressed in previous years (such as mandatory arbitration of employment-related claims and workplace harassment), and a new proposal asking for reporting on the feasibility of paid sick leave as a standard employee benefit. These new proposals (six in total) were made in response to COVID-19; none went to a vote.

7. Political Spending/Lobbying³³

For H1 2021 meetings, political spending/lobbying proposals declined (by 16%), continuing the trends from last year. Of the 64 proposals submitted, 63 requested that companies disclose their political spending, expenses and/or policies, including contributions to candidates, lobbying expenditures and related policies. The one other proposal asked Best Buy to evaluate and report on how its lobbying efforts align with racial equity goals but was withdrawn.

²⁹ See Katanga Johnson, *U.S. SEC Chair Planning New Workforce Data Disclosures for Public Companies*, REUTERS (May 14, 2021), available at <https://www.reuters.com/business/sustainable-business/us-sec-chair-planing-new-workforce-data-disclosures-public-companies-2021-05-13/>.

³⁰ We categorize ESP proposals addressing employee-related interests under "human capital management," and those addressing non-employee and non-shareholder stakeholder interests under "social capital management."

³¹ Miriam Robin, *Gensler: Human Capital Disclosure Requirements on the Way*, INTELLIGIZE (May 18, 2021), available at <https://www.intelligize.com/gensler-human-capital-disclosure-requirements-on-the-way/>.

³² Dean Seal, *SEC Maps Out Gensler's Regulatory Ambitions Over Next Year*, REAL CLEAR ENERGY (June 16, 2021), available at https://www.realclearenergy.org/2021/06/16/sec_maps_out_genslers_regulatory_ambitions_over_next_year_781380.html.

³³ This section does not address climate-related lobbying proposals, which we categorize as environmental proposals and that are discussed above in Section F.

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Consistent with prior years, many of the companies that received a political proposal this year were high-profile American brands (such as Disney, Boeing, Netflix and Amazon) or companies in sectors that attract public attention (such as the healthcare, pharmaceutical, technology, banking and energy sectors).

Around half of all submitted political proposals reached a vote in 2021, and of those that reached a vote, 25% passed (compared to 10% in 2020). In January 2021, in response to the armed insurrection at the United States Capitol, NYC's Comptroller called all certain public companies to (i) reassess their political spending practices and (ii) immediately suspend contributions.³⁴ Perhaps related to the public reaction to the violent storming of the U.S. Capitol, average shareholder support rose (from 35% in 2020 and 34% in 2019) to 41% in 2021. ISS supported 83% of the proposals that reached a vote.

The proposals submitted claim that publicly available data, or required disclosures under current regulatory systems, do not do an adequate job of telling the full story of the company's political and lobbying involvement and therefore intervention through the shareholder proposal is required. The proponents continue to cite the Supreme Court decision in 2010 *Citizens United* in the supporting statements for their proposals.

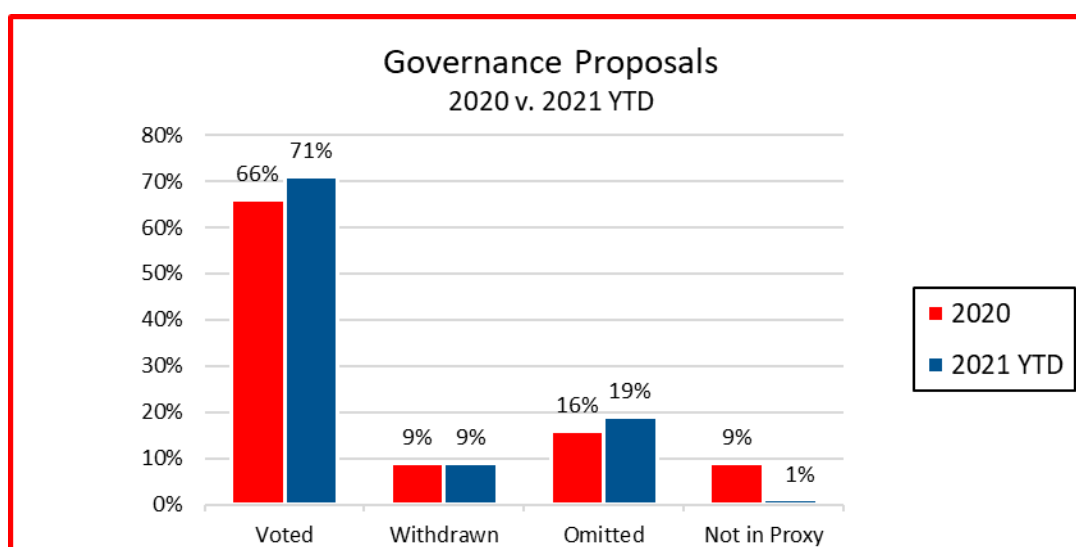
E. SHAREHOLDER PROPOSALS ON GOVERNANCE MATTERS

The number of submissions on governance matters fell this year with 277 proposals submitted (compared to 328 and 303 during the same period in 2020 and 2019, respectively). As in 2020, nearly three-quarters of governance proposals went to a vote (72% in 2021 and 70% in 2020). Reversing a downward trend that began in 2015, average shareholder support for governance-related proposals increased in 2021 (40%, compared to 34% in 2020). As was the case in 2020, structural governance proposals maintained center stage, representing approximately 73% of submitted governance proposals and 78% of those that were voted. In contrast, board composition proposals decreased in prevalence, representing only 26% of submitted governance proposals, and 22% of those that were voted.

³⁴ The press release from the Comptroller's office discussing the office's demand for suspension of political contributions was released on January 15, 2021 and can be found at <https://comptroller.nyc.gov/newsroom/comptroller-stringer-calls-on-major-u-s-companies-to-permanently-suspend-all-political-contributions-to-members-of-congress-that-perpetuated-false-dangerous-claims-of-election-fraud/>.

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	GOVERNANCE							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	2021 YTD	2020	2021 YTD	2020	2021 YTD	2020	2021 YTD	2020
Structural Governance	201	195	155	157	44%	37%	34	25
Written Consent	72	65	65	60	40%	36%	7	4
Adopt	57	60	50	55	40%	38%	6	4
Amend	15	5	15	5	41%	17%	1	0
Special Meetings	36	44	30	40	38%	41%	5	5
Adopt	9	4	6	3	57%	62%	4	2
Amend	27	40	24	37	33%	39%	1	3
Proxy Access	31	19	24	14	32%	33%	0	1
Adopt	2	4	1	2	5%	50%	0	1
Amend	29	15	23	12	33%	30%	0	0
Other Structural	62	67	36	43	62%	37%	22	15
Supermajority	24	21	15	11	87%	75%	15	9
Majority Voting	17	7	6	4	63%	22%	4	0
Dual Class	10	7	10	6	28%	28%	0	0
Declassify Board	7	14	3	5	88%	78%	3	5
Other Structural	3	1	1	1	3%	55%	0	1
Bylaw Shareholder Approval	1	17	1	16	3%	4%	0	0
Board Composition	72	103	44	67	28%	25%	2	3
Independent Chair	38	51	31	44	32%	35%	0	2
Board Diversity	17	30	3	7	59%	15%	2	1
Director Qualification	9	6	3	4	10%	9%	0	0
Emp. Director	8	16	7	12	8%	5%	0	0
Misc. Governance	4	30	0	7	-	31%	0	1
Total	277	328	199	231				



1. Structural Governance

Over the decade that we have been tracking Rule 14a-8 proposals for our proxy season review memos, certain “shareholder-friendly” structural governance measures have become widely adopted among the S&P 500. For example, majority voting has been adopted by over 85% of the S&P 500, annual election of directors (as opposed to classified boards) has been adopted by 84% of the S&P 500 and 71% of S&P 500 companies have eliminated supermajority voting.³⁵ In more recent years, certain governance-focused proponents have been primarily focused on special meetings, written consent and proxy access. While written consent has been adopted by 31% of the S&P 500, proxy access and special meeting rights have now been adopted by 81% and two-thirds of the S&P 500, respectively. This is due, at least in part, to the efforts of John Chevedden and other individual proponents who, each year, submit one or more identical proposals across a large number of (typically large-cap and/or high-profile) companies. In the first few years of submitting proposals on a topic, these proponents tend to focus on “adopt” proposals (i.e., proposals demanding a new right to be created). In subsequent years, their focus tends to shift to “amend” proposals (typically, seeking more shareholder-friendly requirements for exercising existing rights), often at the same companies that the proponent previously targeted with its “adopt” proposal.

Proponents also seemed to be guided by shareholder support rates from the prior year. For example, following low support in 2020 (averaging 4% across 17 proposals, all submitted by John Chevedden), proposals requesting shareholder approval of bylaw amendments have all but disappeared, with only one submitted this year.³⁶ Similarly, John Chevedden and Kenneth Steiner have recalibrated their “amend” written consent proposal this year, generally proposing companies adopt a 10% threshold for setting a record date³⁷ after the 3% threshold they proposed last year failed to win shareholder support. (Only one of the 3% written consent threshold proposals received over 20% support last year; in contrast, each of the 10% written consent threshold proposals received support of around 30% or higher, with an average support of over 41%.)

a. Shareholder Right to Act by Written Consent

As was the case last year, proponents submitted more proposals for written consent rights than they did on any other governance topic (26% of all governance submissions, up from 20% in 2020). Most went to

³⁵ Proposals related to majority voting in uncontested director elections, declassification of boards and elimination of supermajority voting provisions continued to be submitted and voted on at levels consistent with 2020 (48 submitted and 24 voted compared to 42 submitted and 20 voted in 2020). Proposals on these topics continued to receive very high levels of shareholder support (63% for majority voting in director elections, 88% for board declassification and 87% for elimination of supermajority voting provisions). With two exceptions, all such proposals passed this year.

³⁶ The proposal was brought by John Chevedden at AES Corporation and only received 2.5% shareholder support, with both ISS and Management recommending against. Chevedden brought the same proposal in 2020 at AES and the proposal received 17.5% support.

³⁷ Companies that received proposals to reduce the threshold to 10% include The Bank of New York Mellon, BorgWarner, International Business Machines, United Rental, Cadence Design Systems, International Paper Company, CVS Health, J.P. Morgan Chase, Newell Brands, Northrop Grumman, Home Depot, Equinix and Ryder Systems.

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a shareholder vote, and, again, very few passed.³⁸ Unlike special meeting rights, a large portion of the S&P 500 has resisted adopting written consent rights, with many companies³⁹ and certain major institutional investors⁴⁰ stating that giving shareholders the right to act by written consent in lieu of a meeting can frustrate the orderly and transparent debate and reduce the role that small shareholders have in corporate decision-making.

The vast majority of written consent proposals continued to be “adopt” proposals (79%).⁴¹ However, this year saw a three-fold increase in the number of “amend” written consent proposals (15 compared to five in 2020). Most of the “amend” proposals sought to lower the ownership threshold to set a record date to 10% from the more typical 20–25% threshold.⁴² Each of these proposals received support from ISS this year, whereas none of these proposals (which sought to set the threshold at 3%) received ISS support in 2020.

ISS recommendations carried significant weight with respect to both “adopt” and “amend” written consent proposals. ISS recommended against shareholder proposals to adopt written consent at Southwest Airlines, Kohl's and Edwards Lifesciences, which received only 9%, 9% and 17% support, respectively. ISS recommended in favor of all other proposals to adopt written consent, which had average shareholder support of approximately 40% across 50 proposals. Proposals to reduce the ownership threshold to 10% (all of which were supported by ISS) received 41% average support.

³⁸ Six of the seven proposals that passed were “adopt” proposals: at Texas Instruments (78% support), Baxter International (54% support), Quest Diagnostics (51% support), Xerox (79% support), FleetCor Technologies (58% support) and New York Community Bancorp (79% support). One was a proposal to reduce the written consent threshold from 20% to 10% at BorgWarner (50% support).

³⁹ See, e.g., Verizon's 2021 Proxy Statement, available at <https://www.verizon.com/about/sites/default/files/2021-Proxy-Statement.pdf> (highlighting that written consent seeks to solicit opinions of fewest possible shareholders, depriving others of the ability to evaluate proposals or express their views); see also Goldman Sachs 2021 Proxy Statement, available at <https://www.goldmansachs.com/investor-relations/financials/current/proxy-statements/2021-proxy-statement-pdf.pdf> (stating that “permitting shareholder action by written consent does not promote transparency and does not contain necessary shareholder protections”).

⁴⁰ See BlackRock, Proxy voting guidelines for U.S. Securities Investment Guidelines (Jan. 2021), available at <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf> (suggesting that BlackRock may oppose written consent proposals if the company already provides a special meeting right that it believes offers “a reasonable opportunity to raise issues of substantial importance”); see also Vanguard, Summary of the proxy voting policy for U.S. portfolio companies (Apr. 2021), available at https://about.vanguard.com/investment-stewardship/portfolio-company-resources/2021_proxy_voting_summary.pdf (stating that Vanguard “will generally support shareholder proposals to adopt this right if shareholders do not have the right to call a special meeting”).

⁴¹ When companies implement a written consent right today, the right is subject to a number of conditions, such as defined waiting periods, disclosure requirements, holding requirements and black-outs (similar to special meeting provisions discussed below). Notwithstanding this practice, no “adopt” written consent proposal addressed these provisions.

⁴² Companies that received proposals to reduce the threshold to 10% include The Bank of New York Mellon, BorgWarner, International Business Machines, United Rental, Cadence Design Systems, International Paper Company, CVS Health, J.P. Morgan Chase, Newell Brands, Northrop Grumman, Home Depot, Equinix and Ryder System.

b. Shareholder Right to Call Special Meetings

Proposals to either adopt or amend special meeting rights continued to receive relatively high levels of shareholder support, but were down slightly year-over-year (36 submitted and 30 voted, compared to 44 and 40, respectively, in 2020). Given that the ability to call special meetings is widespread among the S&P 500 companies, most of the special meeting proposals (27) focused on lowering the ownership threshold required to call a special meeting,⁴³ and only nine called for adoption of new shareholder special meeting rights. “Adopt” special meeting proposals continued to receive strong support, with four of six such proposals passing and the other two receiving about 35% support.⁴⁴ Average support for “amend” special meeting proposals also remained relatively high (33%, compared to 39% in 2020), suggesting that some governance-focused shareholders continue to be dissatisfied with the 20% or higher ownership threshold for calling a special meeting that has been adopted by at least 71% of S&P 1500 companies that provide special meeting rights. Five of these proposals, amending or adopting special meetings, passed (equal to 2020 proposals passed).⁴⁵

c. Proxy Access

The 2021 proxy season saw a reversal of the three-year decline in proxy access submissions (47 in 2018, 34 in 2019 and 19 in 2020). In 2021, 31 proxy access proposals were submitted, only two of which were “adopt” proposals (compared to four in 2020).⁴⁶ John Chevedden was the filer of 22 of the “amend” proposals. The average support for “amend” proposals remained strong at 33% (relative to 30% in 2020). No proxy access proposals passed this year, even though ISS supported each proposal.

2. Board Composition

The total number of board composition submissions fell significantly year-over-year. Submissions on independent board chair proposals fell from 51 in 2020 to 38, and submissions on board diversity also decreased significantly from 30 to 17. Proponents submitted a handful of director qualification⁴⁷ and

⁴³ In addition to ownership threshold requirements, many companies that provide for special meeting rights require “record” ownership of shares to call special meetings to eliminate uncertainty in ownership, limit special meeting requests in relation to the timing of the annual meeting or special meetings addressing a similar subject matter or place subject matter limitations on special meetings. Although most “amend” proposals address ownership thresholds, one submitted at Chevron this year called for a special meeting right without exclusions and exceptions for shareholders that did not apply to the board and management. Additionally, a proposal at Lincoln National sought to remove a one-year holding requirement. Both went to a vote, receiving 33% and 5% support, respectively.

⁴⁴ The “adopt” special meeting proposals that passed this year were Kellogg, Thermo Fisher Scientific, Dollar General and ServiceNow, which received 63%, 56%, 54% and 99% of votes cast, respectively.

⁴⁵ The “amend” special meeting proposal that passed was Colgate-Palmolive which received 51% of votes cast.

⁴⁶ The proposals were submitted at Essential Utilities by California Public Employee’s Retirement System and at ViacomCBS where the proponent was undisclosed. The one 2021 “adopt” proposal that went to a shareholder vote was at ViacomCBS, where Shari Redstone effectively controls approximately 80% of the voting shares. The proposal received only 5% support.

⁴⁷ Director qualification proposals in 2021 focused on disclosure of director skills and qualifications, including directors’ industry-specific backgrounds and human and/or civil rights experience. Three of the nine director qualification proposals—requiring disclosure of directors’ human and/or civil rights experience at Facebook,

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employee-director⁴⁸ proposals this year as they did last year, but the shareholder support in both categories remained low. Two board diversity proposals passed this year (discussed further below), but no other board composition proposals did.

a. Independent Chair

Submissions on independent board chair proposals, which remained the largest subgroup of board composition proposals, fell from 51 in 2020 to 38 in 2021. Shareholder support on independent chair proposals remained relatively high (at 32% compared to 35% in 2020), although none passed (compared to two in 2020).

b. Board Diversity

This year saw proponents, companies, lawmakers and other stakeholders continue to grapple with the demographic groups that should be covered by board diversity proposals. In addition to gender diversity (which had been the focus of board diversity efforts for several years)⁴⁹ and racial diversity (which has become a focal area of board diversity efforts in 2020 and 2021)⁵⁰ proponents, companies and other stakeholders are looking at representation issues across other historically underrepresented communities.⁵¹ As in prior years, board diversity proposals rarely went to a vote (only three did in 2021), but two of the three that went to a vote received very high support. In total, shareholder support for board diversity proposals dramatically increased (from 15% in 2020 to 59% in 2021).

The low number of submissions on board diversity proposals this year may be related to the high level of attention that this topic has received from other stakeholders. U.S. legislators and regulators have

Twitter and Alphabet—reached shareholder voting, and each failed, with 4%, 14% and 10% shareholder support, respectively.

⁴⁸ These proposals requested companies to adopt (or report on the adoption of) a policy to include non-management employees as director candidates. Although seven of the eight proposals went to a vote, the only one that received more than 10% of votes cast was a proposal at Amazon, which received 17.5% of votes cast. The Amazon proposal specifically sought the inclusion of hourly employees as director candidates and was the only employee-director proposal that ISS supported. The proposal cites congressional efforts in this area from Senators Tammy Baldwin and Elizabeth Warren, as well as the recent UK adoption of a mandate on companies to enhance workers' boardroom presence, including, as an option, via the inclusion of a non-executive employee directors on their boards.

⁴⁹ The number of women directors at Fortune 500 companies has increased by 21% over the past eight years, representing about 29% of Fortune 500 directors today. See *Missing Pieces Report*, DELOITTE (June 8, 2021), available at <https://www2.deloitte.com/us/en/pages/center-for-board-effectiveness/articles/missing-pieces-board-diversity-census-fortune-500-sixth-edition.html>.

⁵⁰ As of January 2021, 83.0% of Fortune 500 directors were Caucasian/white, 8.6% were African-American/Black, 3.8% were Latinx and 3.7% were Asian or Pacific Islander. See *Corporate Board Diversity: Moving Beyond Lip Service*, SHRM.COM (Jan. 16, 2021), available at <https://www.shrm.org/hr-today/news/all-things-work/pages/boosting-corporate-board-diversity.aspx>.

⁵¹ Only three board diversity proposals went to vote in 2021. The only one that failed was a “true diversity” proposal submitted at Cigna by an undisclosed proponent, which demanded board diversity efforts to include political/policy beliefs and which received low shareholder support consistent with “true diversity” proposals in prior years. The other two board diversity proposals requested Badger Meter and First Solar to disclose board representation of historically underrepresented groups in terms of gender, sexual orientation, race and ethnicity. These proposals passed with 85% and 91% of votes cast, respectively.

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announced efforts in recent months aimed at either improving board diversity statistics or increasing the transparency of board diversity reporting. Additionally, many companies have publicly proclaimed their commitment to improving board diversity.

- ***Congressional Efforts.*** The “Improving Corporate Governance Through Diversity Act of 2021” passed out of committee by a voice vote on April 21, 2021 and is pending consideration by the full House.⁵² The bill seeks to address board diversity through disclosure, mandating that public companies annually disclose the gender, race, ethnicity and veteran status of the companies’ boards and senior officers. Also, the bill would require the SEC to establish a diversity advisory group to study strategies for increasing board diversity. A version of this bill failed to pass through the Senate during the Trump presidency.
- ***California’s 2018 Board Diversity Legislation (SC 826).*** California was the first state to enact a law that imposed minimum gender representation requirements (at least one woman director by the end of 2019) on covered companies (public companies with a principal office in California). California’s 2019 act (AB 979) expanded the 2018 legislation to require at least one director from an underrepresented community by the end of 2021 and potentially more in coming years depending on the size of the board. The legislation defined members of underrepresented communities to include individuals who self-identify as “Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian or Alaska Native” or “gay, lesbian, bisexual, or transgender.” The California laws have faced backlash, including recent litigation bringing constitutional challenges.⁵³
- ***Other State-Level Legislative Efforts.*** On June 27, 2020, New York’s disclosure-based law, The Women on Corporate Boards Study Act (Section 408 of the Business Corporation Law, S4278) became effective. Both public and private businesses in New York State will be required to disclose the number of women directors on their board, and, by comparison, the total number of directors. The New York Department of State (in collaboration with the Department of Taxation and Finance) must conduct a study on the proportion of women directors on boards of both domestic and foreign companies authorized to do business in New York State and publish its findings first on February 1, 2022, and then every four years thereafter.⁵⁴ Other states have also enacted (or have considered enacting) board diversity legislation, including Illinois, New Jersey, Pennsylvania, Michigan, Colorado, Hawaii, Massachusetts, Washington State, Ohio and Maryland. Illinois’ act, passed in 2019, requires companies to report annually on board composition data, as well as policies and procedures for promoting diversity among board members and executives.
- ***SEC.*** The SEC’s February 2019 Compliance and Disclosure Interpretations clarified that the SEC would expect any description of diversity policies followed by the company under Item 407 “to include a discussion of how the company considers the self-identified diversity attributes of nominees” as well as any other qualifications taken into account by its diversity policy.
- ***Nasdaq.*** In December 2020, Nasdaq proposed a new listing rule which would require all Nasdaq-listed companies to have, or explain why they do not have, at least one self-identified female and at least one director who self-identifies as an underrepresented minority (defined, according to EEO-1 reporting categories, as including Black or African-American, Hispanic or

⁵² H.R. 1277, 117th Congress (2021), available at <https://www.congress.gov/bills/117/congress/house-bill/1277/text>; see also <https://maloney.house.gov/media-center/press-releases/rep-maloney-emphasizes-importance-of-increasing-diversity-on-corporate>.

⁵³ See *Meland v. Weber*, 2021 U.S. App. LEXIS 18378 (9th Cir. 2021) (finding that the case challenging the constitutionality of the California law under the Fourteenth Amendment may proceed).

⁵⁴ Tracee Davis, et al. *New York’s Disclosure Law and Other Laws and Regulatory Mandates Regarding Women on Corporate Boards*, JD SUPRA (Jan. 22, 2021), available at <https://www.jdsupra.com/legalnews/new-york-s-disclosure-law-and-other-7815870/>.

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Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or two or more races or ethnicity, or as LGBTQ+) and to disclose information about the diversity of their directors on an annual basis. The proposal elicited mixed reactions and received over 200 comments in two months. In April 2021, Nasdaq submitted a response to the comments and modified the original proposal.

- Public Companies.** In January 2020, Goldman Sachs announced at the World Economic Forum in Davos that, effective July 2020, it would only underwrite IPOs in the United States and Europe of companies that have at least one diverse board member with the minimum requirement increasing to two by 2021.⁵⁵ In September 2020, 17 companies (including Zillow, RealSelf and Nextdoor, as well as companies like Lyft, SurveyMonkey, Nasdaq, NYSE, Verizon and Weight Watchers whose boards already included Black directors) signed on to the so-called “Board Challenge” (i.e., a pledge to add a Black director to their board within one year).⁵⁶ S&P 500 companies appointed between December 2020 and May 2021 65 women directors and 47 minority directors, representing a dramatic increase compared to the past.⁵⁷ A recent ISS study showed that the number of Black directors on boards nearly doubled over the past 11 months. Over 32% of new directors over the period were Black, up from 11% in the prior year.⁵⁸

F. SHAREHOLDER PROPOSALS ON ENVIRONMENTAL MATTERS

Shareholder proposals submitted on environmental matters and, in particular, climate-related proposals have increased for the second consecutive year, exceeding even the number of proposals submitted in 2018 following former President Trump’s withdrawal from the Paris Agreement in 2017 (115 in 2021 compared to 110 in 2018). The substantial majority (85) of these proposals were climate-related.

	ENVIRONMENTAL							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	2021 YTD	2020	2021 YTD	2020	2021 YTD	2020	2021 YTD	2020
Climate	85	48	28	14	41%	33%	11	3
Actions/Demands	52	16	8	3	62%	23%	6	0
Climate-Related Reporting	27	32	17	11	35%	36%	5	3
Say-On-Climate	6	0	3	0	25%	-	0	0
Sustainability (Reporting and Other Efforts)	30	41	5	12	36%	31%	1	2
Total	115	89	33	26				

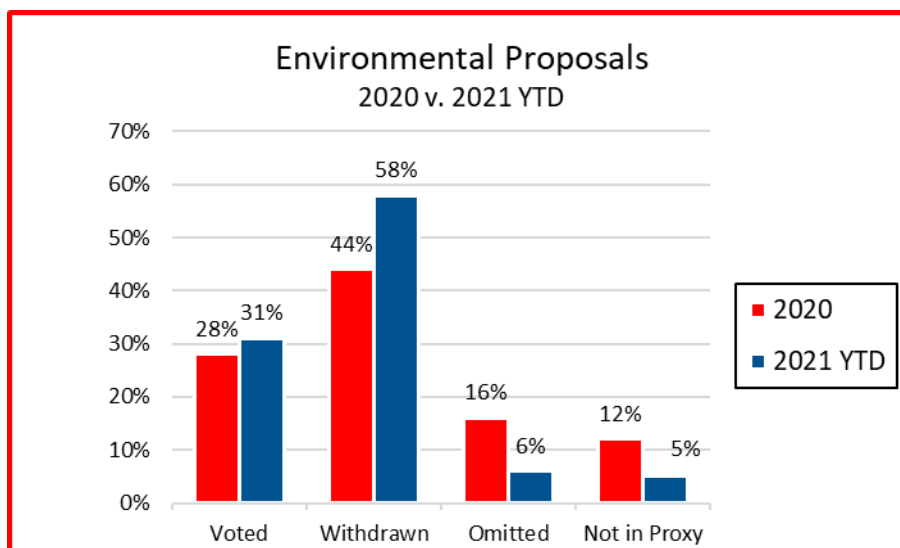
⁵⁵ Goldman Sachs’ Commitment to Board Diversity (Feb. 4, 2020), available at <https://www.goldmansachs.com/our-commitments/diversity-and-inclusion/launch-with-gs/pages/commitment-to-diversity.html>.

⁵⁶ Catherine Thorbecke, *More Than a Dozen Companies Pledge to Add a Black Director to Their Boards*, ABC NEWS (Sept. 9, 2020), available at <https://abcnews.go.com/Business/dozen-companies-pledge-add-black-director-boards/story?id=72900675>.

⁵⁷ Sheryl Estrada, *Is Nasdaq’s Board Diversity Proposal Already Working*, FORTUNE (May 25, 2021).

⁵⁸ Alisha Gupta, *Surprise: Women and Minorities Are Still Underrepresented in Corporate Boardrooms*, N.Y. TIMES (June 7, 2021), available at <https://www.nytimes.com/2021/06/07/us/women-minorities-underrepresented-corporate-boardrooms.html>.

1. Increased Withdrawal Rate



Environmental proposals were withdrawn at a meaningfully higher rate this year compared to last year. Given the increased focus of institutional investors (including [BlackRock](#), [Vanguard](#) and [State Street](#)) on climate-related issues, many companies may have preferred engaging with a proponent rather than taking the proposal to a vote. Of the 115 environmental proposals submitted, over half (70 total) were withdrawn (compared to 39 in 2020).

The major proponents rarely settled with companies unless the company committed to take actions towards the specified environmental goals or at least adopted their disclosure-based demand. For example, of the 41 environmental proposals submitted by As You Sow,⁵⁹ As You Sow reported reaching an agreement with the company and subsequently withdrawing 21 proposals,⁶⁰ including five with major financial institutions on adopting a goal of reaching net-zero financed emissions by 2050.⁶¹ Ten other proposals were either withdrawn without a reported settlement, excluded through the no-action process or did not appear in the company's proxy. The eight As You Sow proposals that went to a vote generally

⁵⁹ While the majority of these proposals were climate-related, As You Sow also submitted 10 proposals related to plastic pollution and withdrew six such proposals following negotiated agreements with Eastman Chemical, PepsiCo, McDonald's, Mondelez, Target and WalMart and one without reporting a settlement at Kraft Heinz. The three plastics-related proposals that went to a vote received 36%, 45% and 81% support at Amazon, Kroger and DuPont, respectively.

⁶⁰ *Current Resolutions*, As You Sow, available at <https://www.asyousow.org/resolutions-tracker>. Supplemented by ISS data and independent research.

⁶¹ These included Bank of America, Citigroup, Goldman Sachs, Wells Fargo and J.P. Morgan Chase. These institutions announced commitments to achieving net-zero greenhouse gas emissions from its financing activities by 2050, meeting As You Sow's proposal to issue a report "outlining if and how it intends to reduce the GHG emissions associated with its financing activities" to reach net-zero emissions. These institutions' commitments vary on measuring and disclosing the financed emissions through the Partnership for Carbon Accounting Financials (PCAF) and disclosing interim targets.

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received between 36% and 57% support,⁶² with two exceptions of high shareholder support⁶³ and one low shareholder support.⁶⁴ The New York State Comptroller also reported withdrawing proposals at five companies following their commitment to set greenhouse gas emissions (GHG) targets and, in two cases, additional green energy use or production goals.⁶⁵ The commitments were in response to the State Comptroller's proposals on these companies to report on plans to reduce their total carbon footprint. More could follow as the State Comptroller announced in December 2020 the plan for the New York State Common Retirement Fund to transition its portfolio to net-zero GHG emissions by 2040.

2. Increased Shareholder Support

The submitted environmental proposals that did go to a vote received greater shareholder support (an average of 41% of votes cast compared to 32% in 2020). Excluding the six anti-ESP environmental proposals that reached a vote, which continued to receive low votes,⁶⁶ average shareholder support for environmental proposals was even higher this year (around 53% overall and 55% for climate-related proposals compared to 32% and 36%, respectively, in 2020).

A record 12 environmental proposals passed this year (up from five in 2020). Eleven of the 12 passing proposals were climate-related,⁶⁷ and each received between 57% and 98% shareholder support. Of these, five requested transparent disclosure of climate-related lobbying efforts,⁶⁸ two requested increased reporting on contributions to or measures addressing climate change,⁶⁹ and four (three of which were oil

⁶² Including two proposals to report on impacts of plastic packaging at Amazon (36% support) and Kroger (45%), four proposals relating to the 2050 Net Zero GHG emission target and Say-on-Climate at Chevron (48% support), Exxon Mobil (49%), Booking Holdings (57%) and Caterpillar (48%), and one at Semptra Energy to report on climate-related corporate lobbying (38% support).

⁶³ These included a proposal on General Electric to disclose its plan to meet Net Zero GHG emissions by 2050, which was supported by the board and received a 98% shareholder support, and a proposal at DuPont de Nemours to report the environmental impact of its plastic released into the environment, which received 81% shareholder support despite the board's recommendation against it.

⁶⁴ A proposal on Monster Beverage Corporation to add a Say-on-Climate vote received 7% support.

⁶⁵ *DiNapoli: State Pension Fund Calls on Companies to Address Climate Risk, Transition to Cleaner Operations*, Office of the New York State Comptroller, available at <https://www.osc.state.ny.us/press/releases/2021/03/dinapoli-state-pension-fund-calls-companies-address-climate-risk-transition-cleaner-operations>.

⁶⁶ All six anti-ESP proposals were submitted by Steven Milloy, one of the leaders of Burn More Coal, who requested that Alliant Energy, CMS Energy, DTE Energy, Exxon Mobil, PNM Resources and Xcel Energy report on the costs and benefits of taking voluntary environmental actions. These proposals received between 1.6% and 5.2% of votes cast (with the greatest support at Exxon where ISS recommended not voting on the proposal).

⁶⁷ The other passing proposal was the plastic-related proposals at DuPont discussed above.

⁶⁸ These included proposals at Phillips 66 (63% support), Exxon Mobil (64% support), Norfolk Southern (76% support), Delta Air Lines (63%) and United Airlines (65% support). These proposals generally requested companies to evaluate and report how their lobbying activities affected the prospect of achieving certain climate-related or GHG emission targets.

⁶⁹ These included proposals at Bloomin' Brands (76% support) and Bookings Holdings (57% support).

and gas companies) requested adopting GHG emissions targets.⁷⁰ Ten additional environmental-related shareholder proposals received between 30% and 50% shareholder support.

3. ISS Support

Overall, ISS supported 64% of environmental proposals this year (on par with 65% support in 2020). In addition to recommending against the anti-ESP proposals discussed above, ISS recommended against six other environmental proposals this year, contributing to substantially different results: excluding the six anti-ESP proposals, proposals without ISS support received only 15% of votes cast compared with an average 55% support when ISS recommended in favor of the proposal. Compared to the 2020 proxy season, shareholder support for environmental proposals has increased both with and without ISS support, from 42% with ISS support and 12% without (again excluding anti-ESP proposals) in 2020.

4. Standardized Reporting

Standardized reporting on environmental metrics continues to be endorsed by ISS and investors such as BlackRock, Vanguard and State Street.⁷¹ Over the last year, it has also been featured on the U.S. federal and state legislative agenda:⁷²

- **President Biden.** On May 20, 2021, President Biden released an executive order requiring (i) the Secretary of the Treasury, as the Chair of the Financial Stability Oversight Council (FSOC), to issue a report that addressed the “necessity of any actions to enhance climate-

⁷⁰ These included proposals at ConocoPhillips (59% support), Phillips 66 (80% support), Chevron (61% support) and General Electric (98% support). The General Electric board supported the proposal, rather than settling with As You Sow Foundation, using the proxy statement and shareholder vote as an opportunity to highlight General Electric’s commitment to, and efforts regarding, climate.

⁷¹ *2021 Climate Proxy Voting Guidelines*, ISS, available at <https://www.issgovernance.com/file/policy/active/specialty/Climate-US-Voting-Guidelines.pdf> (recommending voting for shareholder proposals asking companies to report in accordance with the Global Reporting Initiative (GRI)); *Our 2021 Stewardship Expectations*, BlackRock, available at <https://www.blackrock.com/corporate/literature/publication/our-2021-stewardship-expectations.pdf> (asking companies to “demonstrate they were adequately managing climate and other sustainability-related risks by reporting in line with the Task Force on Climate-related Financial Disclosures (TCFD) framework and metrics provided in the Sustainability Accounting Standards Board (SASB) standards.”); *2021 Proxy Voting Summary*, Vanguard, available at <https://about.vanguard.com/investment-stewardship/portfolio-company-resources/2021-proxy-voting-summary.pdf> (likely supporting proposals that “address a shortcoming in the company’s current disclosure relative to market norms or widely accepted frameworks” like SASB and TCFD); *Asset Stewardship Report 2020*, State Street Global Advisors, available at <https://www.ssga.com/library-content/pdfs/asset-stewardship/asset-stewardship-report-2020.pdf> (evaluating companies based on ESG scores generated by leveraging the SASB transparent materiality framework.).

⁷² Despite the increased focus on legislation and regulation to implement standardized ESG disclosures, the United States is a relative laggard compared to the European ESG reporting regime. The European Union Non-Financial Reporting Directive (EU Directive 2014/95/EU) currently requires companies to report based on a so-called “double materiality” standard requiring disclosure of both how sustainability issues affect a company’s business and how the company’s business affects people and the environment (as opposed to the “single materiality” or “financial materiality” standard that is the hallmark of the principles-based U.S. ESG disclosure regime). The Corporate Sustainability Reporting Directive, a proposed amendment to the current NFRD, would expand current ESG disclosure requirements (related to environmental, social, human capital, human rights, anti-corruption and board diversity matters) to “large” companies that meet two of three metrics (over 250 employees, over €40 million revenue and over €20 million assets) and would apply to U.S. companies operating in Europe. See our memorandum of April 30, 2020, available at [Sustainable Finance Update](#). For more information regarding KPIs, see our publication, dated March 19 2021, entitled “[EU Mandatory Reporting on Sustainability KPIs under EU Taxonomy– Update.](#)”

related disclosures by regulated entities to mitigate climate-related financial risk to the financial system or assets and a recommended implementation plan for taking those actions” and (ii) the Federal Acquisition Regulatory Council, in consultation with the Chair of the Council on Environmental Quality and the heads of other agencies as appropriate to consider amending the Federal Acquisition Regulation (FAR) to “require major Federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk and to set science-based reduction targets.”⁷³

- **SEC.** On March 4, 2021, the SEC announced an enforcement task force focused on climate and ESG issues in the Division of Enforcement intended to identify gaps or misstatements in ESG disclosure of both issuers and investment advisers and funds.⁷⁴ Ten days later, then-Acting Chair Allison Herren Lee announced the opening of public comment on potential climate-related disclosure regulations.⁷⁵ While no proposed rulemakings have yet been made public, Chair Gary Gensler made clear in testimony before the House Financial Services Committee in May that addressing ESG disclosures was a “top priority” for the SEC. According to the SEC’s rulemaking agenda released on June 11, new proposed rules regarding climate-related disclosures (as well as related to human capital management and corporate board diversity) should be expected by October of this year.⁷⁶
- **Congressional Efforts.** Bills have been introduced in both houses of Congress that would require certain ESG disclosure. The Climate Risk Disclosure Act of 2021 (introduced by Senator Elizabeth Warren and Representative Sean Casten) would require (1) public companies to disclose risks based on different climate-change scenarios, explain strategies and corporate governance processes in place to manage those risks, and analyze the social cost associated with their greenhouse gas emissions and (2) SEC rulemakings to implement the climate disclosure requirements.⁷⁷ The ESG Disclosure Simplification Act of 2021 (introduced by Representatives Juan Vargas and Jesus “Chuy” Garcia) would require disclosure of a description of the company’s views on the link between ESG metrics and long-term business performance annually in their proxy statements and would establish the Sustainable Finance Advisory Committee that would recommend policies to the SEC to facilitate the flow of capital towards environmentally sustainable investments. Both bills have passed in the house, but have not yet been considered by the Senate.⁷⁸
- **State Efforts.** The Climate Corporate Accountability Act, a bill introduced in the California state senate, would require reporting by companies with annual revenues in excess of \$1

⁷³ Executive Order 14030, 86 Fed. Reg. 27,968 (May 25, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-05-25/pdf/2021-11168.pdf>.

⁷⁴ SEC Announces Enforcement Task Force Focused on Climate and ESG Issues, SEC (March 4, 2021), available at <https://www.sec.gov/news/press-release/2021-42>.

⁷⁵ Allison Herren Lee, *Public Input Welcomed on Climate Change Disclosures*, SEC (March 15, 2021), available at <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures>.

⁷⁶ Daniel F.C. Crowley & Karishma Shah Page, *SEC to Move Quickly on Proposed ESG Disclosures*, NAT. L. R. (May 13, 2021), available at <https://www.natlawreview.com/article/sec-to-move-quickly-proposed-esg-disclosures>. In April, Representative Patrick McHenry, Republican leader of the House Financial Services Committee, released a letter to then recently appointed SEC Chair Gensler cautioning against “mission creep” following former Acting Chair Lee’s climate-related initiatives and requesting (i) any ESG-related disclosure requirements be rooted in the SEC’s historical materiality-based approach and (ii) that no “rulemaking through new enforcement or examination standards” take place before new rules were established through the notice-and-comment rulemaking process. The letter to Chairman Gensler is available via https://republicans-financialservices.house.gov/uploadedfiles/2021-04-19_gensler_priorities_letter.pdf.

⁷⁷ H.R. 2570, 117th Congress (2021), available at <https://www.congress.gov/117/bills/hr2570/BILLS-117hr2570rh.pdf>.

⁷⁸ H.R. 1187, 117th Congress (2021), available at <https://www.congress.gov/117/bills/hr1187/BILLS-117hr1187rh.pdf>.

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million that do business in California of scope 1, 2 and 3 GHG emissions beginning in 2024 and require compilation of a summary report.

Perhaps related to the uncertain outcome of these legislative efforts, most environmental proposals focused more generally on companies' commitment to adopting sustainability disclosure and policies rather than demanding a specific reporting framework. Only one 2021 shareholder proposal requested standardized disclosure based on SASB framework and none requested standardized disclosure based on the TCFD framework.⁷⁹ The one SASB-linked proposal (at Pilgrim's Pride, focusing on water pollution) received only 11% shareholder support. This represents a departure from 2020, when SASB-linked proposals received between 61% and 79% shareholder support (other than a water pollution-related proposal at Sanderson Farms that received 11% of votes cast). Pilgrim's Pride has not committed to producing SASB-aligned disclosures, which Sanderson Farms did last year despite the low vote on its proposal.

Companies should continue to track developments in this space and be prepared for the possibility of disclosure regimes reflecting the rigorous regulation now being considered in the European Union. As with all disclosure, however, companies must remain cognizant of the risks presented by ESG disclosure that could give rise to a claim of material misstatement and result in liability under federal securities law. While plaintiffs were dealt a recent defeat in *Ocegueda v. Zuckerberg* (one of the several derivative suits filed last year alleging violations of federal securities laws and breaches of directors' fiduciary duties due to failure to live up to disclosed diversity and inclusion commitments), a recently filed case against Coca Cola (alleging the company's disclosures with respect to plastic pollution constitute material misstatements) confirms that ESG disclosures are not immune to scrutiny from the plaintiffs' bar.⁸⁰ The SEC is considering the extent to which forward-looking statements and commitments regarding climate change and sustainability should be, or can be, protected under the Private Securities Litigation Reform Act of 1995 (PSLRA).⁸¹

5. Say-on-Climate

This year, there were six proposals that requested companies to adopt an annual shareholder vote on climate transition plans. Three of these so-called "Say-on-Climate" proposals went to a vote at Union Pacific, Booking Holdings and Monster Beverage Corporation, where they received 32%, 37% and 7%

⁷⁹ For further discussion of certain leading standardized disclosure frameworks and related institutional investor policy, see our memorandum of June 8, 2021, available at [The Rise of Standardized ESG Disclosure Frameworks in the United States](#); see also <https://corpgov.law.harvard.edu/2021/05/17/which-corporate-esg-news-does-the-market-react-to/>.

⁸⁰ See the *Earth Island Institute v. The Coca-Cola Company*, Case No. 2021CA001846B, complaint filed with the D.C. Superior Court on June 4, 2021 available at [https://www.earthisland.org/images/uploads/suits/Earth.Island.v.Coca-Cola.Complaint.\(stamped\).pdf](https://www.earthisland.org/images/uploads/suits/Earth.Island.v.Coca-Cola.Complaint.(stamped).pdf).

⁸¹ See *Public Input Welcomed on Climate Change Discussions*, SEC (March 15, 2021), available at <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures> (and comments received).

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support, respectively.⁸² Among the companies that have already adopted the Say-on-Climate scheme, Moody's and S&P Global received overwhelming support for their climate transition plans (99% and over 99%, respectively).

Although the size of this subcategory remained low in 2021, institutional investors' attitudes on Say-on-Climate may dictate whether annual advisory shareholder votes on climate-related issues become the norm. Vanguard, for instance, currently evaluates these proposals by observing whether climate change is a material risk for the company and considers a number of factors, including (i) the reasonableness of the request, (ii) whether the proposal addresses a gap in disclosure and (iii) the proposal's alignment with industry standards.⁸³ While not in the context of a shareholder proposal, investors (including institutional investors such as California Public Employees Retirement System (CalPERS)) sent a strong signal about the relative importance of climate-related matters this year when they supported new activist Engine No. 1 in successfully unseating three Exxon directors in a short-slate proxy contest. This campaign will be addressed in greater detail in our annual review of shareholder activism.

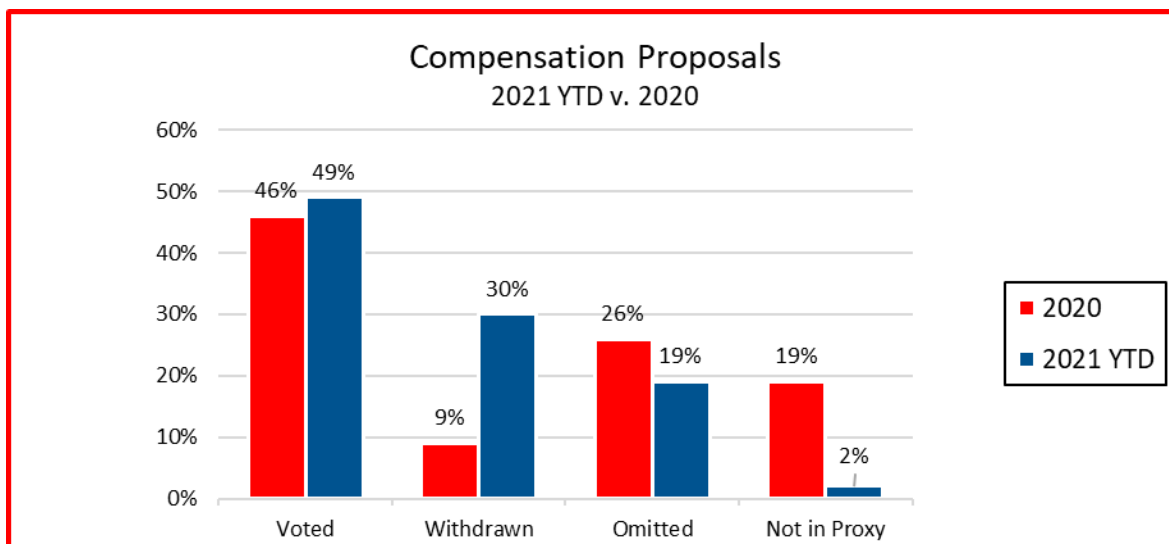
G. COMPENSATION-RELATED SHAREHOLDER PROPOSALS

	COMPENSATION							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	2021 YTD	2020	2021 YTD	2020	2021 YTD	2020	2021 YTD	2020
Compensation – Social	13	16	8	7	9%	17%	0	0
Compensation – Environmental	9	7	3	4	11%	14%	0	0
Clawbacks	3	2	3	2	34%	45%	0	1
Stock Retention	2	5	0	5	-	22%	0	0
Compensation – Other ⁸⁴	21	28	10	11	28%	26%	0	0
Total	48	58	24	29				

⁸² The two other proposals were at Moody's, which became the first S&P 500 company to adopt Say-on-Climate, and at Union Pacific, whose proposal was excluded through the SEC no-action process.

⁸³ *How We Evaluate Say on Climate Proposals*, Vanguard Investment Stewardship Insights, available at https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/INSSAYC_052021.pdf.

⁸⁴ The "Compensation-Other" proposals in 2021 related to compensation metrics such as "bonus banking" (an incentive plan where some part of the bonus is put aside or banked in a reserve fund rather than paying out the entire bonus amount to the employee), requiring executives to pay for their own tax, financial and estate planning services, and increased disclosure of compensation data or dividend policies for employees.



There was a steep decline in the number of compensation-related proposals between 2012 and 2017, in large part a result of mandatory say-on-pay votes becoming the primary mechanism by which shareholders express concerns over executive compensation. The number of compensation-related proposals leveled out between 2018 and 2020. Proposals submitted this year dropped by approximately 20% from full-year 2020 numbers (48 proposals compared to 58). Consistent with 2019 and 2020, around half of these proposals reached a vote in 2021, although more avoided a vote as a result of withdrawals and fewer through the SEC no-action process this year. Compensation-related proposals tend to receive relatively low support (averaging 20%), and none passed this year (compared to one in 2020 and two in 2019, each of which were related to clawbacks, which remains the compensation proposal topic with the highest relative shareholder support). ISS supported 50% of the proposals on executive compensation that reached a vote this year, representing a decrease from 76% in 2020 and 70% in 2019, respectively.

As was the case in both 2019 and 2020, the most common type of compensation-related proposals in 2021 were proposals to link executive compensation to ESP issues, such as diversity, social inequality, sustainability and environmental impact. Overall, there were slightly fewer ESP compensation-related proposals in 2021 than in 2020, notwithstanding the media focus on executive compensation during the height of the COVID-19 pandemic and the racial justice protests. Shareholder support for these proposals also continued to drop, falling to 9% this year, compared to 16% in 2020 and 24% in 2019.

The decreased prevalence and shareholder support for these proposals that went to a vote may be related to the proactive efforts made by companies in response to ESP issues. For example, a number of high-profile companies, including Shell, Clorox, Intel, PepsiCo, Prudential and Unilever, and, more

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recently, Chipotle⁸⁵ and Starbucks, have adopted ESP-linked executive compensation plans.⁸⁶ A November 2020 study by Willis Towers Watson found that 52% of S&P 500 companies utilized at least one ESG metric in their executive compensation plans.⁸⁷ However, 49% of the companies adopted plans linked to social metrics that broadly cover human resources, customer service and employee health and safety in addition to more recent hot topics such as workforce diversity. Only 12% of S&P 500 companies utilized at least one environmental metric, and only 3% utilized any ESG metrics in their long-term incentive compensation.

The Rule 14a-8 proposal data in 2021 is consistent with a focus on social metrics (rather than environmental metrics) in executive compensation, although the number of submissions to tie environmental metrics to compensation increased year-over-year. Compensation proposals linked to social issues were more likely to go to a vote—of the 11 ESP-linked compensation proposals, eight were related to social issues, including six⁸⁸ proposals related to pay disparity between executives and other employees.⁸⁹ One exclusively environmentally linked compensation proposal reached a vote—at Alphabet—which sought to tie executive compensation to environmental metrics like GHG and carbon output reduction and clean energy adoption.

H. NO-ACTION RELIEF

On September 6, 2019, the SEC announced that, for the 2020 proxy season, it would change its process for responding to Rule 14a-8 no-action requests and begin to provide only verbal responses unless providing a written response would “provide value, such as giving guidance on compliance with Rule 14a-8.” In the first proxy season under the new process, the staff issued 79% of its no-action responses in a verbal format. This year, verbal response rate increased, with the staff providing over 96% of its responses in that format. This increase in verbal responses has not had any impact on the overall success rate of no-action requests, however, with 71% of requests granted and 29% denied this year, on par with 2020. The average response time for the 2021 proxy season increased to 60 days from 46 days last year, likely as a result of the COVID-19 pandemic. This year, of requests that received a response, the SEC granted relief to 74% of requests related to governance proposals, 69% of requests related to ESP proposals and 61% of requests related to compensation proposals (compared to 69%, 73% and 71%, respectively, in 2020). The staff did not decline to state a view for any requests this year, and did so for only one letter last year where the proposal was the subject of pending litigation.

⁸⁵ Chipotle’s officers’ incentive bonus (10%) will be tied to ESP objectives in local sourcing, diversity and inclusion and environmental impact.

⁸⁶ Starbucks will link executive compensation to its workforce diversity target by 2025.

⁸⁷ ESG and Executive Compensation: Hearing from Board Members Globally, Willis Towers Watson, *available at* <https://www.willistowerswatson.com/-/media/WTW/Insights/2021/04/ESG-and-Executive-Compensation-Report-2021.pdf>

⁸⁸ These included proposals at Visa, Apple, Applied Materials, 3M, Mondelez and TJX Companies, which received 4%, 6%, 9%, 11% and 11% of votes cast, respectively.

⁸⁹ These included proposals at Pilgrim’s Pride and Republic Services.

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Last year, the SEC maintained a record of its responses to no-action requests in a data base on its website, giving only a very brief summary of the staff's response in instances where a verbal response was provided, and continued that approach this year.⁹⁰ This database seems to have sufficiently satisfied the initial critics of the verbal format. For example, although Glass Lewis has not rescinded its policy to recommend against a member of the governance committee if a company excluded a proposal solely based on a verbal SEC response,⁹¹ Glass Lewis does not appear to have applied its policy against any company either this year or last year.

1. Bases for Relief

From September 1, 2020 through June 30, 2021, 263 requests were submitted for no-action relief to exclude shareholder proposals from proxy circulars for annual meetings scheduled to be held in 2021, slightly up from 244 total requests for the 2020 proxy season. Of the 263 requests submitted this season, 198 received a response from the SEC, as of June 30, 2021.

Based on requests that have received responses as of June 30, 2021, the three most common bases on which the SEC granted no-action relief during the 2021 proxy season were the same as in 2020: Rule 14a-8(i)(7) (ordinary business), Rule 14a-8(i)(10) (substantial implementation) and Rule 14a-8(b) (failure to demonstrate sufficient ownership). These were also the most common bases on which issuers request relief this year.

<i>Basis for Relief</i>	<i>Requested</i>	<i>Granted</i>
Rule 14a-8(i)(7) – Ordinary Business	70	40
Rule 14a-8(i)(10) – Substantial Implementation	76	38
Rule 14a-8(b) – Failure to Demonstrate Sufficient Ownership	42	35

2. Reconsiderations

The number of reconsideration requests (i.e., requests to the staff to overturn its initial denial of no-action relief) has risen slightly to 11 this year, compared to eight and six in the 2020 and 2019 proxy seasons, respectively. Of the 11 requests, three resulted from written responses and eight resulted from verbal responses. Only two reconsideration requests were granted and in both cases the SEC agreed that upon reconsideration the proposal could be excluded.

I. EXEMPT SOLICITATIONS

Each year, some shareholders voluntarily file notices of exempt solicitation with the SEC under Rule 14a-6(g) to encourage votes on shareholder proposals and say-on-pay proposals and in “vote no”

⁹⁰ See *Shareholder Proposal No-Action Responses*, available at <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/shareholder-proposal-no-action-responses.htm>.

⁹¹ Glass Lewis 2020 Proxy Paper, Guidelines: An Overview of the Glass Lewis Approach to Proxy Advice, available at <https://www.glasslewis.com/wp-content/uploads/2020/11/US-Voting-Guidelines-GL.pdf?hsCtaTracking=7c712e31-24fb-4a3a-b396-9e8568fa0685%7C86255695-f1f4-47cb-8dc0-e919a9a5cf5b>.

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campaigns.⁹² Since 2018, shareholders have embraced this opportunity to capture the audience of the full shareholder base outside the traditional proxy proposal route. Through June 30, 2021, 220 voluntary filings were submitted to the SEC, representing around a 21% increase from the 182 filings submitted last year at this time—continuing the upward trend that started in 2018.

The majority of the voluntary filings were made by the top proponents described in Section B, including John Chevedden, the California Public Employees Retirement System (CalPERS), social investment entities (with 29 or 13% from CtW Investment Group) and religious organizations. Whereas a number of proponents continued to file “tweets” or other social media posts as they did in 2019 and 2020, voluntary submissions this year consisted primarily of press releases and email communications. For example, notices at Alphabet and Twitter this year asked shareholders to vote in favor of proposals seeking a Board candidate with “human/civil rights expertise.”⁹³ Other examples include Exxon Mobil, which has had six notices this year, ranging from support for the Engine No. 1 slate of director nominees to proposals requesting increased transparency on climate-related lobbying.⁹⁴

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⁹² Rule 14a-6(g) requires a person who conducts a solicitation of shareholders that is exempt (because the person does not seek to have proxies granted) and who owns more than \$5 million of the company’s securities to file with the SEC all written materials used in the solicitation. These notices of exempt solicitation appear on the SEC’s Edgar internet system as “PX14A6G” filings. Others can file exempt solicitations *voluntarily*. See Proxy Rules and Schedules 14A/14C, Question 126.06, available at <https://www.sec.gov/corpfin/proxy-rules-schedules-14a-14c-cdi> (stating that “the staff will not object to a *voluntary* submission of such a notice, provided that the written soliciting material is submitted under the cover of Notice of Exempt Solicitation as described in C&DI 126.07” (*emphasis added*)). C&DI 126.07 specifies how such information should be presented when making a PX14A6G filing. *Id.*, Question 126.07.

⁹³ See Arjuna Capital, Notice of Exempt Solicitation, Alphabet, available at <https://www.sec.gov/Archives/edgar/data/0001703208/000121465921004502/p426214px14a6g.htm>; see also Arjuna Capital, Notice of Exempt Solicitation, Twitter, available at <https://www.sec.gov/Archives/edgar/data/0001703208/000121465921004293/d417211px14a6g.htm>.

⁹⁴ See CalPERS, Notice of Exempt Solicitation, Exxon Mobil, available at https://www.sec.gov/Archives/edgar/data/0000919079/000114036121016599/brhc10024367_px14a6g.htm (“We believe that shareowners would benefit from improved disclosure of the company’s climate lobbying objectives.”); see also Hermes Investment Management, Notice of Exempt Solicitation, Exxon Mobil, available at <https://www.sec.gov/Archives/edgar/data/0001013143/000162363221000589/form.htm> (“EOS encourages all shareowners to vote the white card and to vote FOR the Engine No. 1 slate of director.”).

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