THE CONFERENCE BOARD

Governance Watch

Proxy Season Highlights

August 9, 2022

Hosted in Collaboration with Cleary Gottlieb

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ESG CENTER

Corporate Governance

Sustainability

Corporate Citizenship & Philanthropy

Some of the critical topics we will be addressing today

- **The trends and themes of this year's proxy season:**
  - **Shareholder proposals, director elections, and say-on-pay**
  - **November 2021 SEC staff guidance**
  - **Proposed changes to the Rule 14a-8**
- **Shareholder engagement:**
  - **Evolving discussions with shareholder proponents**
  - **Board engagement**
  - **Institutional investors, proxy advisory firms, and changes in the retail base**
- **Latest developments in regulation:**
  - **SEC disclosure**
  - **Universal proxy card**

Today’s Speakers

THE CONFERENCE BOARD

Linda Scott
Managing Director and Associate Corporate Secretary
JPMorgan Chase & Co.

Helena K. Grannis
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Cleary Gottlieb Steen & Hamilton LLP

Shuangjun Wang
Senior Associate
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Paul Washington
Executive Director, ESG Center
The Conference Board

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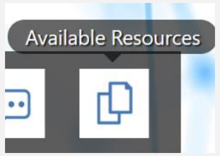

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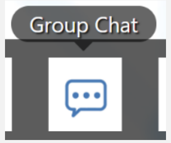

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Resources

2022 Proxy Season Preview and Shareholder Voting Trends (Publication)
This report and its six supplemental briefs highlight what to expect in the 2022 proxy season and—perhaps more importantly—suggested steps boards and CEOs can take to prepare. Briefs cover, (i) environmental & social proposals in general, (ii) human capital management proposals, (iii) environmental proposals, (iv) corporate political activity proposals, (v) corporate governance proposals, (vi), company sponsored proposals.

When Patient Capital Becomes Impatient (Publication)
Shareholder voting surprises help no one: Six steps to keep shareholder engagement on track.

Six Ways Boards Can Prepare for a Challenging Proxy Season (Publication)
Effective corporate boards, by virtue of their role and temperament, tend to view challenges as opportunities. That attitude is especially valuable today, as companies have been buffeted by the COVID-19 pandemic, social upheavals, the swing from recession to inflation, the collapse of supply chains, and now a war in Ukraine. All this is taking place against the backdrop of the shift toward multistakeholder capitalism; the growing focus on environmental, social & governance (ESG) issues; and the digital transformation of industries and the way we work. The 2022 proxy season adds one more challenge (ahem, opportunity)—to the board's list. This essay provides an overview of what to expect during this proxy season and offers six concrete suggestions for how corporate directors can prepare to make the most of it.

Shareholder Voting Benchmarking Tool (Benchmarking tool)
If you want to craft an effective strategy for responding to shareholder proposals–and prepare for ones you may receive in the future–you need to know what proposals are being submitted, who is submitting them, which companies have been able to omit them or negotiate a withdrawal, how they are likely to fare in a shareholder vote, and how all that is influenced by the specific language of the proposals and company responses. Access ESG Advantage to get timely and detailed information on shareholder proposals based on proponent, subject, industry, voting results, performance–and see all the specific details with a single click--to drive effective shareholder engagement.

Director-Shareholder Engagement (Podcast)
Traditionally, corporate board members played a limited – and only occasional – role in discussions with investors. But now investors expect to hear from independent directors on the board's oversight of ESG issues. And companies are recognizing that involving their directors in discussions with investors can have significant near-term and long-term benefits. In this podcast, Paul Washington, Executive Director of the ESG Center, speaks Bill Ultan, Managing Director at Morrow Sodali, to discuss what's happening, why, the do's and don'ts of effective engagement, and how both directors and investors can make their engagements as constructive as possible. As more companies involve their directors in shareholder engagement, they should do so with a clear purpose in mind and ample preparation beforehand.

ESG ADVANTAGE

ESG Advantage Benchmarking Platform

The ESG Center serves as a resource, partner, and platform to help our Members address their priorities in corporate governance, sustainability, and citizenship through **trusted, timely, and actionable Insights.**

We now also offer ESG Advantage – the most powerful, comprehensive, and affordable ESG benchmarking tool in the marketplace, developed with ESGAUGE Analytics.

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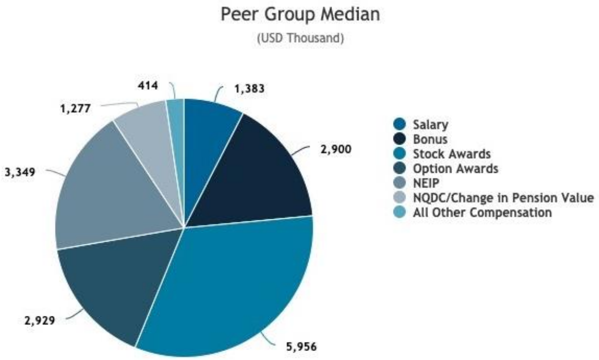

- **ESG Advantage** is the only platform that covers the **entire Russell 3000**
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2022 Post-Proxy Season Review and Governance Trends

August 2022

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I. 2022 Proxy Season Overview

Overall Shareholder Proposal Trends

KEY TAKEAWAYS

— The early prediction was that 2022 was going to be a perfect storm for ESG-oriented shareholder proposals, far outdoing the record-setting numbers from 2021

- Proponents were emboldened coming out of 2021, the SEC was less willing to grant No-Action exemptions and institutional investors were increasingly voting against management

— 2022 saw an almost two-fold increase in the number of E&S proposals that made it to a vote compared to 2021, with a particularly high increase in social proposals

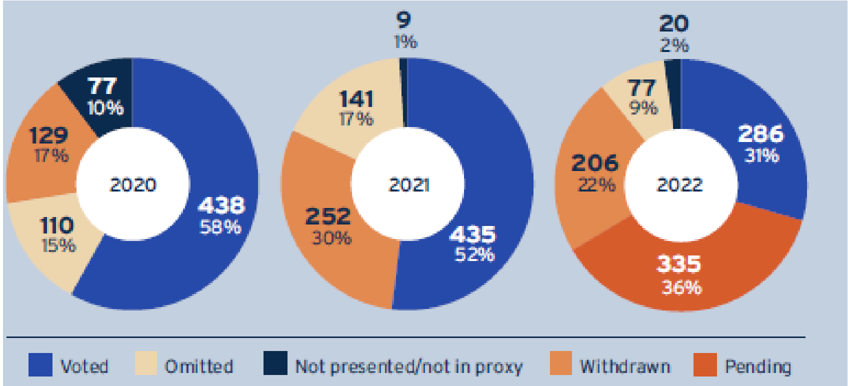
— However, many of these proposals were **deemed too prescriptive or were thematically at odds with investors' outlook**, and investors were less willing to support them

— As a result, average **support for E&S proposals was down** compared to 2021 (30.2% in 2022 vs. 39.0% in 2021), and the passage rate of E&S shareholder proposals saw an **almost 50% year-over-year decrease** (13.7% in 2022 vs. 23.6% in 2021)

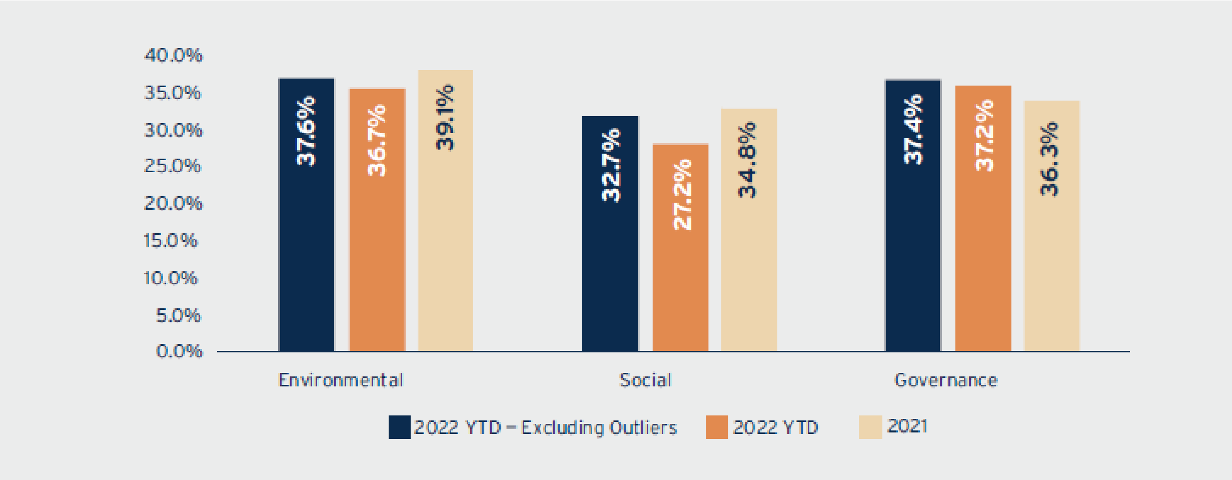
— Despite the decline in support, **2022 was still a record year** for passing shareholder proposals, with 40 E&S proposals and 41 governance proposals receiving majority support

Source: Proxy Analytics as of June 27, 2022,

Overall Shareholder Proposal Trends (cont'd)



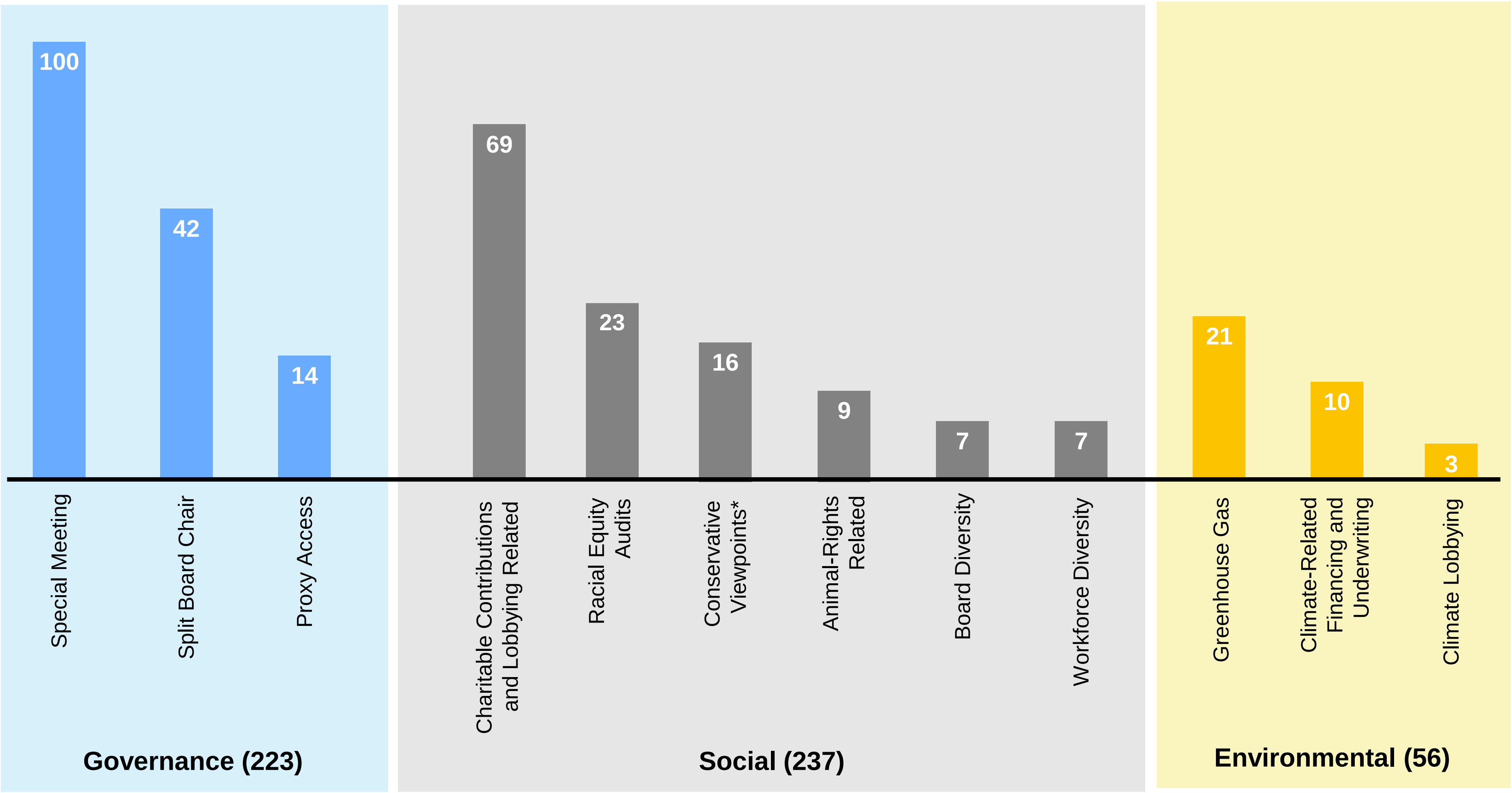
2021 – 2022 YTD AVERAGE SUPPORT BY PROPOSAL CATEGORY; AVERAGE SUPPORT EXCLUDING OUTLIER PROPONENTS[2]



Source: Georgeson as of May 16, 2022

"Outliers in Georgeson's chart refers to proposals from "conservative" proponents such as Steven Milloy and the National Center for Public Policy Research

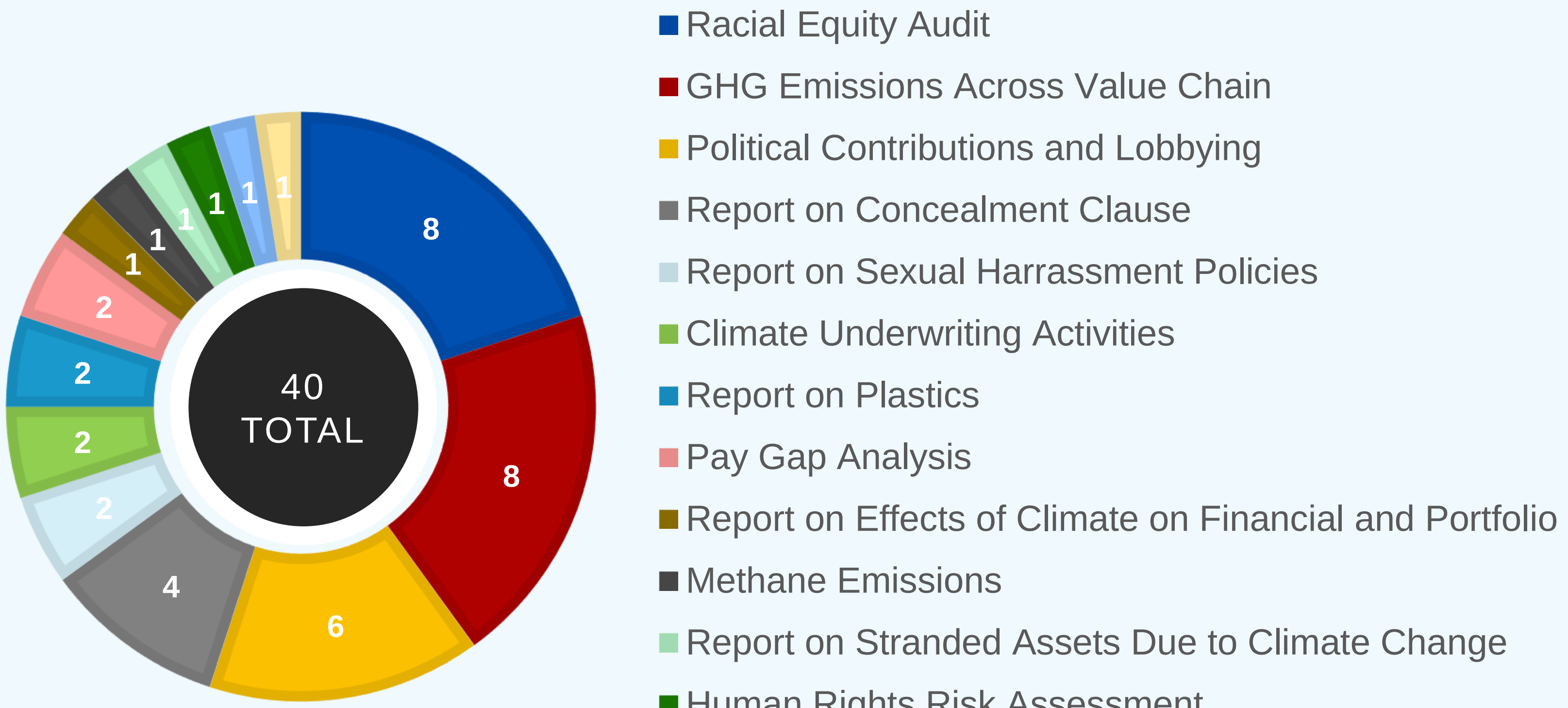
Shareholder Proposals in 2022



Number of shareholder proposals voted on by category
*This includes proposals with the National Center for Public Policy Research (NCPPR) as a proponent

E&S Proposals with Majority Support

Record-Setting, Yet Modest Increase in Passing E&S Proposals
The 2022 proxy season set yet another record for the overall number of passing E&S proposals, but the percentage of E&S proposals that passed was down from last year



2022 Proxy Season Highlights – Diversity and HCM

Proposals on diversity and human capital **averaged 35% support** out of the 72 proposals* submitted in 2022, down from 44% in 2021 (out of 37 proposals)

D&I related shareholder proposals were on a more case-by-case basis in 2022 compared to the widespread support in 2021, as investors were more likely to support proposals at companies who were in the news for human capital issues

A new proposal for the 2022 proxy season involved issuing a report on the risks associated with concealment clauses in the context of harassment and discrimination. These averaged 48% support and had a 50% passage rate, including passing at companies like Apple, Twitter and IBM

A Calvert Investment proposal asking Tesla to publish a report on the effectiveness of their D&I program (including any goals and metrics related to recruitment and retention of protected classes of employees), along with a full EEO-1 report, passed with 60% support

There were twelve proposals related to disclosures or reports on gender or racial pay gap disparities submitted in 2022. Of these proposals, seven made it to a vote, and two proposals passed at Lowe's and Disney

Two proposals relating to sexual harassment passed in 2022, including a New York State Comptroller proposal asking Activision Blizzard to issue a report describing the efforts to prevent abuse at the company, which would include the dollar amounts the company paid relating to sexual harassment disputes

Source: Proxy Analytics as of June 27, 2022

*This figure omits the 10 National Center for Public Policy proposals in opposition to racial equity audits, which averaged 2% support

2022 Proxy Season Highlights – Racial Equity Audits

WHAT ARE THEY?

— Racial Equity Audits were first introduced in the 2021 proxy season, mostly proposed by the CTW Investment Group (now SOC Investment Group) working in coordination with the Service Employees International Union (SEIU)

— The proposals urge the Board of Directors to oversee and publish a third-party audit analyzing the adverse impact of the company's policies and practices on the civil rights of company stakeholders, above and beyond legal and regulatory matters, and to provide recommendations for improving the company's civil rights impact

PROPONENTS AND PROPOSALS

— 41 racial equity audits were submitted in 2022, up from 13 in 2021

— ISS and Glass Lewis supported 82.6% and 87.0% of the 23 proposals that made it to a vote, respectively

— Average support was **46%,** with **8 proposals passing**

— SEIU is still the primary proponent, with 12 proposals submitted (including three passing proposals at Apple, Maximus and The Home Depot), and SOC Investment Group has submitted three proposals (including a passing proposal at McDonald's)

— All three No-Action requests in 2022 were denied

- In 2021, 4 out of 5 NALs were denied (Chevron was granted relief based on 14a-8(i)(7))

The National Center for Public Policy Research (NCPPR), a conservative group, has filed proposals that, while similar in wording to racial equity audits, instead asks companies to prepare an audit to include "a wide spectrum of viewpoints and perspectives" apart from those that the company may label as diverse

— In a statement concerning a proposal at AT&T, an NCPPR member stated that "AT&T's so-called 'diversity, equality, and inclusion' efforts demonstrate the opposite of antidiscrimination measures" and "AT&T should stop playing politics and instead focus on its business"

— NCPPR submitted 10 of these proposals, which averaged 2% support and were largely opposed by ISS and Glass Lewis

Source: Proxy Analytics as of June 27, 2022; National Center for Public Policy Research

2022 Proxy Season Highlights – Environmental

KEY ENVIRONMENTAL PROPOSAL TRENDS

Environmental proposals continued to be prolific in the 2022 proxy season

— There was **an 80% year-over-year increase in environmental proposals that made it to a vote in 2022**, and average support for environmental proposals stayed at approximately the same levels as 2021 (averaging approximately 40% approval in both years)

— **16 climate-related proposals passed in 2022** (up from 10 in 2021), with a passage rate of 30%

— According to Proxy Analytics, around thirteen greenhouse gas proposals mention Scope 3 or the company's full scope of operations

Proponents were willing to withdraw proposals on issues of climate disclosure

— There were 52 submitted proposals asking for companies to adopt or disclose net-zero emissions targets filed in 2022 (up from five in 2021), but only 14 made it to a vote

— As You Sow submitted 51 climate or greenhouse gas-related proposals in 2022, but only about a quarter of those made it to a vote

NOTEWORTHY ENVIRONMENTAL PROPOSALS

Jack in the box

A record-breaking **95% of Jack in the Box shareholders voted against management** to support a Green Century proposal asking them to accelerate their sustainable packaging efforts. Unlike their competitors, Jack in the Box had no goals for improving their sustainability, and they had no sustainability efforts on their website

McDonald's faced a proxy contest from Carl Icahn on their use of gestational crates. The company made a pledge 10 years ago to stop using the crates by 2022, but were still in use for 10-15% of sows in their supply chain. Icahn's director slate received around 1% of the vote

BOEING

Eight companies had Green Century / As You Sow proposals pass asking for greenhouse gas disclosures or targets, all of which reference either **Scope 3** or the company's "full scope of operational and product-related emissions"

Chevron

Chevron recommended shareholders vote FOR a Mercy Investment Services proposal asking them to disclose methane emissions, which received 98% support

2022 Proxy Season Highlights – Environmental

BLACKROCK LETTER

In May 2022, BlackRock Investment Stewardship released a letter entitled "**2022 climate-related shareholder proposals more prescriptive than 2021**"

— The letter, while not disclosing how they are voting on environmental proposals in 2022, notes that they are unlikely to support proposals that "implicitly are intended to micromanage companies"

— In particular, BlackRock mentions proposals which warrant "special attention," including proposals that:

- Request that companies issue reports on financing / underwriting energy companies
- Set absolute Scope 3 GHG emissions reduction targets (which BlackRock notes are still subject to future policy change and regional expectations)
- Require alignment of bank and energy company business models solely to a specific 1.5ºC scenario

— Even though the letter came out early in the 2022 proxy season, BlackRock linked to a Financial Times article which noted the low shareholder support for fossil fuel financing shareholder proposals at US banks

— BlackRock closes the letter by noting that they are likely to **support fewer environmental shareholder proposals in 2022** than the 47% of shareholder proposals (81 out of 172) that they supported in 2021

THE IMPACT OF BLACKROCK'S LETTER

— BlackRock's Q1 2022 Stewardship Report shows that they only supported two environmental proposals (versus five that they did not support). For example, they did not support a proposal asking Bank of Montreal to adopt a policy to ensure the bank's financing is consistent with net-zero emissions because "it is not BIS' position to tell companies what their strategies should entail, as this proposal prescribes"

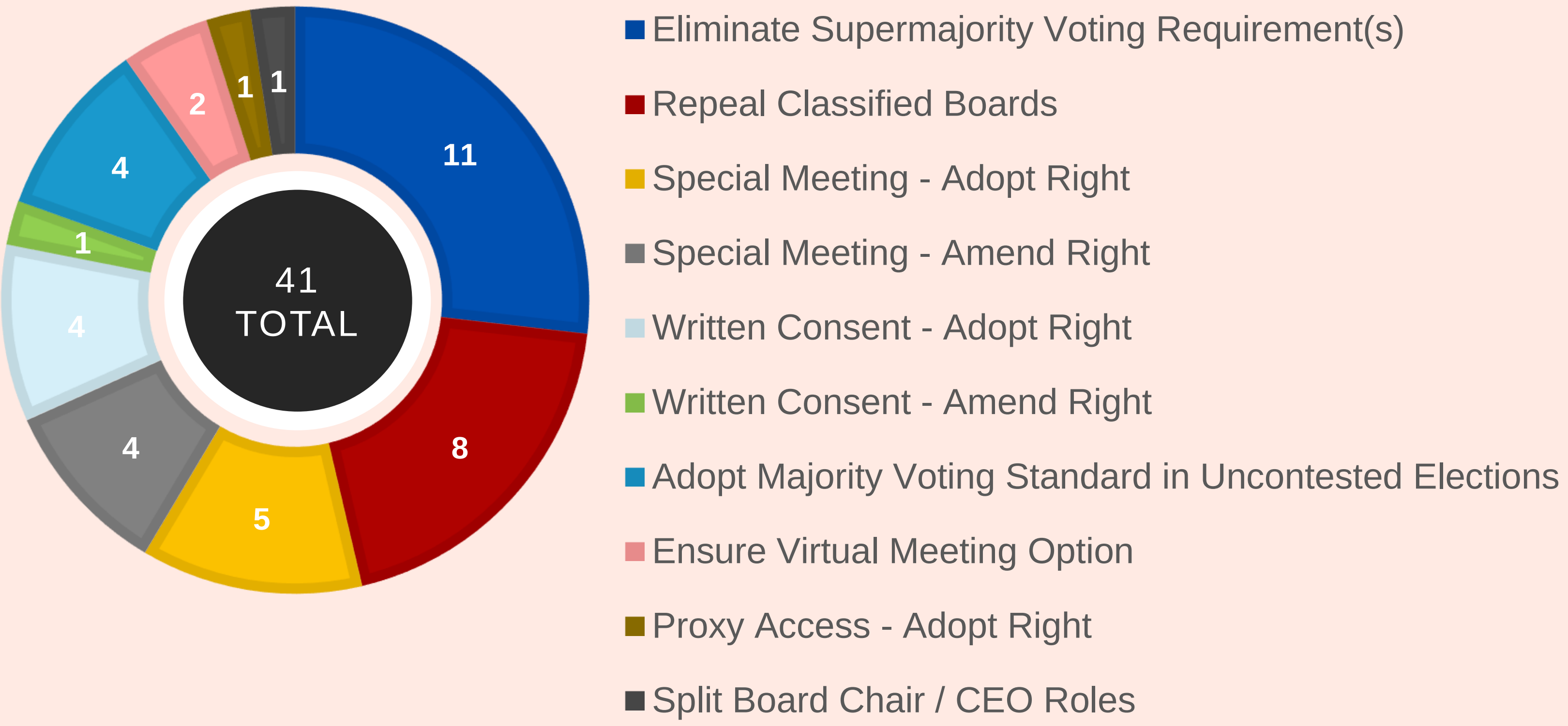
— Some of the proposals that BlackRock cites in their letter had low levels of shareholder support throughout the proxy season

- Proposals asking **companies to report on financing / underwriting energy companies averaged 21.3% support**
- A proposal asking for the integration of medium-term scope 3 targets in Dominion Energy's long-term target for net zero emissions by 2050 had 15.8% support

Sources: BlackRock; Financial Times; Proxy Analytics as of June 27, 2022

Governance Proposals with Majority Support

Governance Support Sees a Dip
The prevalence and popularity of governance proposals decreased slightly from 2021 to 2022, with a approximately a 10% decrease in both submissions and passing proposals



Source: Proxy Analytics as of June 27, 2022

2022 Proxy Season Highlights - Governance

223 governance shareholder proposals made it to a vote in 2022, with average support around 38%

Proposals asking for companies to **eliminate supermajority voting requirements** continued to be incredibly popular, with average support of 66% and a passage rate of 79%

— Average support for these proposals has never been under 50% since 2018

Special meeting proposals were submitted in record number

— 98 proposals asking for management to reduce the ownership threshold for a special meeting were put to a vote (compared to 34 in 2021), but only four passed
  - On average, support for these shareholder proposals was around 35%, consistent with previous years
  - ISS and GL recommended FOR these proposals 91% and 67% of the time, respectively

The number of **written consent** proposals fell drastically compared to last year

— A record 63 proposals to adopt a shareholder right to act by written consent made it to a vote in 2021, but just 10 proposals made it to a vote in 2022
  - ISS's support for these proposals also fell from around 90% in 2021 to 70% in 2022

Support for **CEO / chair split** proposals continues to dip compared to previous years

— Proposals to split the CEO and chairperson roles were less popular than last year, with support falling from 34% and 31% in 2020 and 2021, respectively, to 29% in 2022

John Chevedden submitted 166 proposals in 2022, roughly on par with previous years

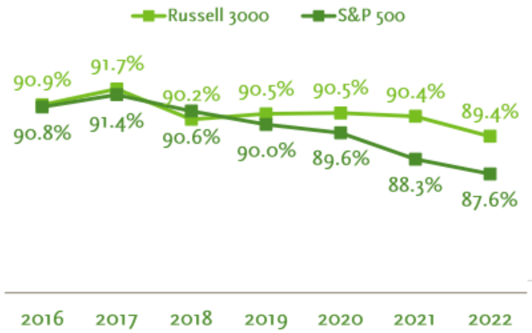
— Of these, 137 were governance-related (the most popular being special meeting-related), but he also submitted 9 E&S-related shareholder proposals and 16 compensation-related proposals

— A popular compensation-related proposal for Chevedden was votes on golden parachutes, four of which passed

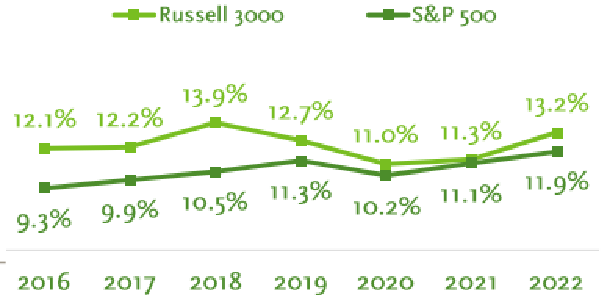
Source: Proxy Analytics as of June 27, 2022

2022 Proxy Season Highlights – Say on Pay

COMPARISON OF RUSSELL 3000 AND S&P 500



FREQUENCY OF ISS "AGAINST" RECOMMENDATIONS



Source: Semler Brossy as of July 14, 2022

- **9.7% of Russell 3000 companies had Say on Pay support below 70% in 2022** (compared to 6.8% in 2021), with 66 companies failing Say on Pay (compared to 56 in 2021)
- According to Semler Brossy, the most likely causes for failed Say on Pay votes are problematic pay practices, pay and performance disconnects and special awards
- The average Say on Pay vote results for S&P 500 companies that received ISS "Against" recommendations is 37 percentage points lower than companies receiving an ISS "For" recommendation in 2022
  - The average historical gap between ISS recommendations is 24 to 32 percentage points

NETFLIX

Netflix failed Say on Pay with only 27.0% support. BlackRock voted against Say on Pay due in part to Netflix's compensation structure, which allows executives to choose between cash and options without vesting criteria or stock ownership guidelines

BOOKING HOLDINGS

Booking Holdings went from 91% Say on Pay support in 2021 to 32% Say on Pay support in 2022. Semler Brossy cites that a mega award (the CEO had over $48 million in stock awards in 2021) and COVID-related actions as reasons for the lack of support

Sources: Proxy Analytics as of June 27, 2022, Semler Brossy as of July 14, 2022, BlackRock, CNBC

ESG and Compensation Trends

ESG AND COMPENSATION MACRO TRENDS

— The number of S&P 500 companies that link ESG to executive pay has risen steadily over the past few years

- According to data from The Conference Board, 42% of S&P 500 companies disclose some form of executive compensation being linked to ESG criteria in 2021

— This results in an increasingly high amount of money being granted based on ESG performance objectives, particularly in the form of discretionary, short-term compensation

- According to Glass Lewis, of the $6.96 billion paid to S&P 500 CEOs in 2021, at minimum nearly $600 million (8.6%) was based on E&S performance
- Of this $600 million, approximately $515 million tied to short-term incentives and approximately $83 million tied to long-term incentives

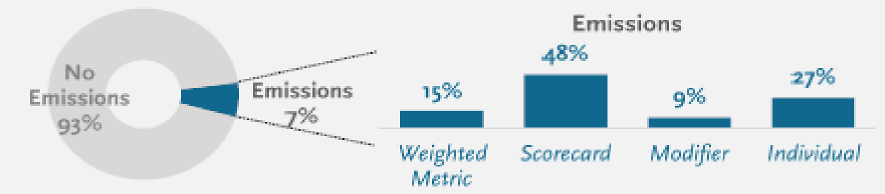
HOW COMPANIES ASSESS ESG

— In general, formulaic and specific ESG metrics are less common than discretionary evaluations

— The most common category for sustainability metrics in annual incentive plans are for carbon and climate targets (such as GHG emission, carbon footprint, renewable energy, etc.), with the second most common being holistic ESG/CSR targets

METRICS STRUCTURES FOR EMISSIONS

— According to data from Semler Brossy, sustainability metrics are most commonly incorporated in scorecards (*i.e.* strategic goals, some of which are ESG-related) and individual discretionary metrics



Sources: The Conference Board, Semler Brossy, Glass Lewis, Meridian Compensation Partners

Other 2022 Proxy Developments

VOTES AGAINST DIRECTORS

According to Proxy Analytics, combined “red zone” (less than 75% support) and failed director votes are up 3% from the already record-breaking numbers in 2021, with 911 directors receiving less than 75% support. However, failed director votes alone (less than 50% support) are down around 30% from 2021

BlackRock did not support 9% of director elections in Q1 2022, most commonly for diversity concerns in the Americas

Number of companies where BIS did not support directors for core governance concerns

	Americas	APAC	EMEA
Independence*	8	68	22
Overcommitment *	10	12	52
Diversity*	42	0	24
Compensation*	14	0	31

PROXY VOTING

During the 2022 proxy season, BlackRock provided certain institutional clients, including pension funds, insurance companies and corporations invested in many index strategies (totaling 47% of BlackRock’s $4.9 trillion index equity assets) to **vote their own preferences** through BlackRock Voting Choice

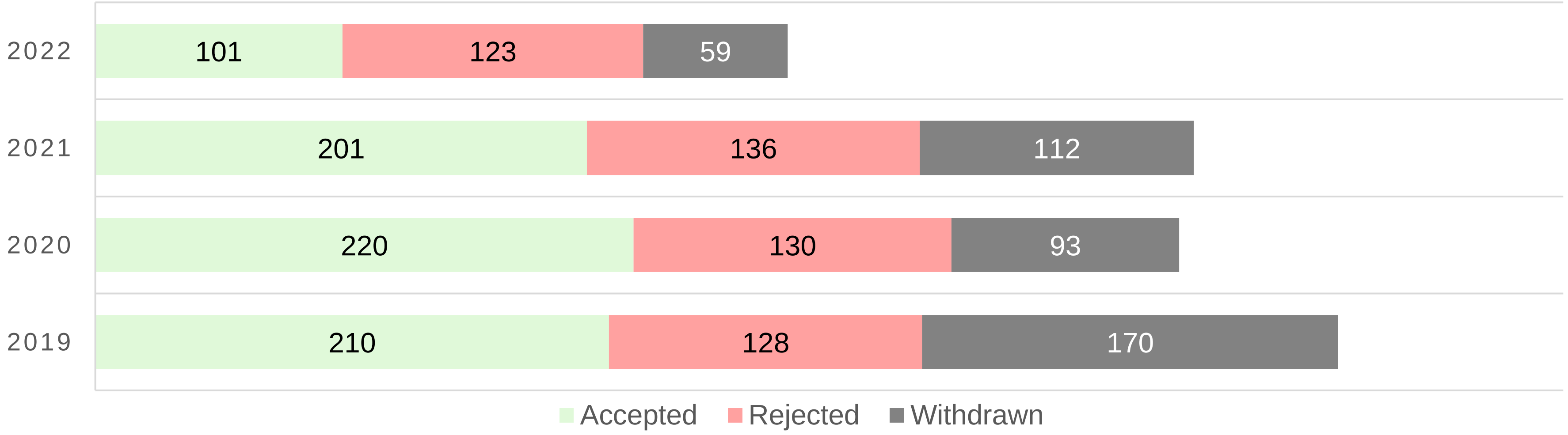
As of June 2022, BlackRock assets representing 25% ($530 billion) of eligible index equity assets have elected to participate in BlackRock Voting Choice

In June 2022, As You Sow partnered with Tulipshare, an app which allows users to add money and back proxy campaigns, with the aim of “empowering retail investors globally to use their shareholder power”

According to a Broadridge / PwC report, while retail investors own about 30% of shares (compared to 70% for institutional investors), 83% of institutional investors actually vote their shares, compared to only 30% of retail investors who vote their shares

Sources: BlackRock Investment Stewardship; Broadridge/ PwC; Proxy Analytics as of June 27, 2022

No-Action Relief Overview



KEY TAKEAWAYS

— Due in part to SLB 14L (November 2021), just 283 NAL requests were submitted in 2022, a 37% decrease from 2021

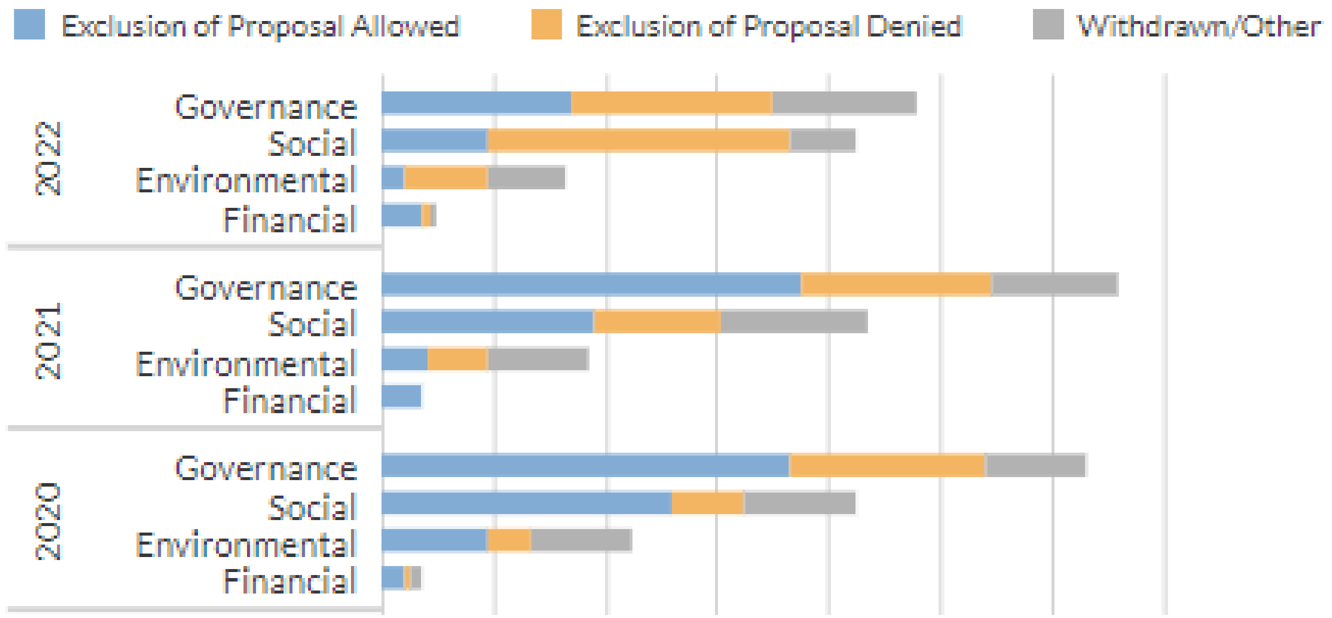
— The SEC concurred on just 36% of NAL requests in 2022, compared to 45% in 2021

— The SEC moved back to letter responses for all NALs instead of website notification

— According to Intelligize, the proposals that were most commonly submitted for no-action relief involved discrimination and diversity, followed closely by environmental proposals

Source: Intelligize

Top Topics for Requests for No-Action Relief



— Social proposals received particularly low no-action relief, with only 22% of NALs being granted exemption

- According to Proxy Analytics, only one human rights-related proposal was granted SEC exemption in 2022, with a report on forced labor in the supply chain at Apple being granted under 14a-8(i)(11)

— The SEC only granted relief for four environmental proposals in 2022, only one of which was granted under 14a-8(i)(10), with the other three being due to the eligibility of the proposal

— The exclusion of governance proposals also dipped dramatically, with the SEC only concurring on 35% of governance proposals compared to just over half in previous years

Source: Intelligize, Proxy Analytics

II. Updates to Institutional Investor and Proxy Advisory Firm Guidelines

What Stakeholders Are Looking For

Investors are increasingly looking at ESG holistically, with the expectation that companies proactively adopt, implement and incentive ESG oversight structures across all levels in the company

— A 2022 Georgeson survey of institutional investors representing over $30 trillion AUM found that 80% of investors expect companies to align with science-based climate targets, but 85% of respondents said that they will not apply a strong voting policy regarding Scope 3 emissions disclosure

— Companies are increasingly expected to incentive executives in these ESG goals, with 90% of Georgeson's respondents endorsing the concept of ESG metrics in executive compensation, and 85% of investors favoring a 10-20% weighting for ESG metrics in compensation

— A May 2021 survey of institutional investors from Morrow Sodali found that 58% of investors consider climate change to be "very important" in their investment decision-making process. 86% of investors also said companies should disclose their corporate purpose

— In a global survey of investors conducted by RBC Global, investors prefer engagement over divestment for fossil-fuel companies by a four-to-one margin

NOT JUST CLIMATE: OTHER HOT TOPICS

BlackRock

BlackRock has numerous KPIs across their five engagement priorities, all of which are mapped to align with the UN Sustainable Development Goals such as "No Poverty," "Peace, Justice and Strong Institutions" and "Clean Water and Sanitation"

CalPERS

CalPERS' Governance & Sustainability Principles states that they will hold companies accountable on interests ranging from freedom of association for employees to the development of democratic political institutions

Sources: Georgeson, Morrow Sodali Institutional Investor Survey (2021), RBC Global Asset Management

BlackRock's 2022 Letter to CEOs

BlackRock.

On December 18, 2022, Larry Fink and BlackRock released their annual Letter to CEOs. The letter was light on stewardship policies and proxy voting agenda, rather focusing on shifting the rhetoric on stakeholder capitalism (which, Fink argues, is not "woke capitalism" but effective capitalism)

LETTER TO CEOS

— **Capitalism and sustainability**
- Fink notes the explosion of sustainable investments and the shift toward decarbonization as an investment policy
- Asks companies to set **short-, medium- and long-term GHG reduction targets** along with reports aligned to TCFD standards
- BlackRock will **not be divesting from carbon-intensive sectors** and does not condone companies shifting carbon-intensive assets from public to private markets

— **Empowering clients with choice on ESG votes**
- In October 2021, BlackRock permitted around $1.5 trillion worth of pension and endowment funds (or around 40% of indexed equities managed by BlackRock) to vote their own shares
- Want a future where every investor, even individual investors, can participate in the proxy voting process

— **A new world of work**
- The letter opens by stating that no relationship has changed more from the pandemic than the employer / employee relationship
- BlackRock wants to hear how the trends in employment are impacting a CEO's company or industry

— **New sources of capital fueling market disruption**
- Fink states that CEOs need to understand the dynamic landscape and diversity of available capital if they want to state competitive

Fink closes the Letter by noting that BlackRock is launching a Center for Stakeholder Capitalism to explore the relationships between companies and stakeholders via a forum for research, dialogue and debate

BlackRock 2022 Voting and Engagement Numbers

Proposals

— BlackRock supported only 22% of E&S shareholder proposals in the 2022 proxy season compared to 47% last year, voting for 71 E&S proposals

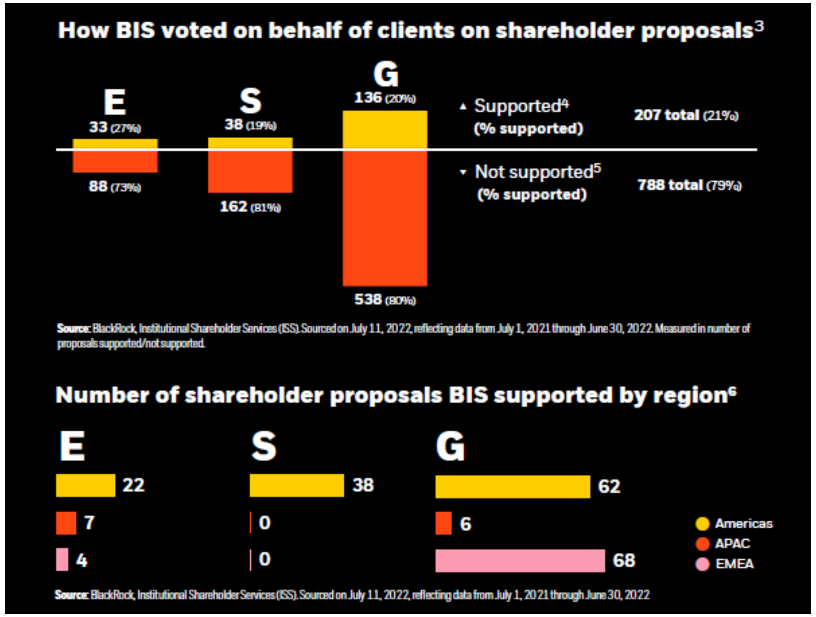
— The most common reason for voting against a proposal was because it was already implemented or the company made progress (46% of E&s votes)

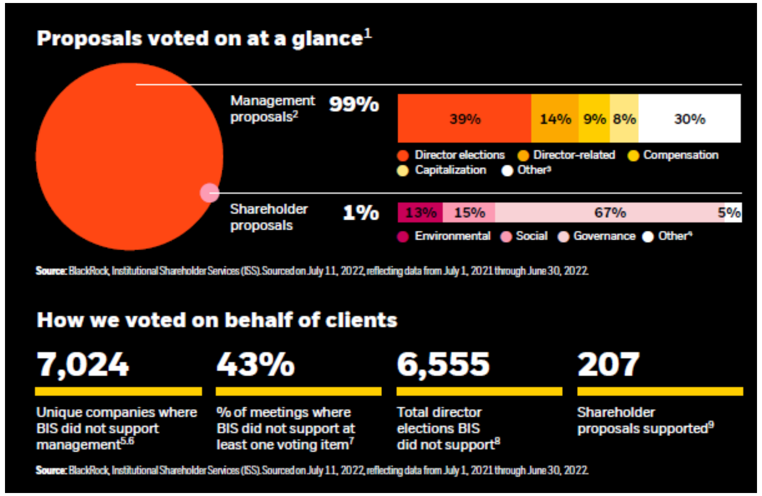
— While support for social proposals was relatively low, BlackRock supported 54% of racial equity audits

Engagement

— BlackRock held a record-level 3,690 engagement meetings (3,650 last year) with 2,460 unique investee companies (2,340 last year)

— They most commonly engaged on board quality, followed by financial resilience and incentives aligned with value creation





DIRECTOR VOTES

— BlackRock voted against 10% of directors in 2022

— BlackRock most commonly voted against director for independence concerns globally and board diversity concerns in the Americas

— They voted against 182 Americas directors for overboarding concerns

— BlackRock voted against 176 directors for climate-related concerns

SAY ON PAY

— BlackRock supported 82% of say-on-pay votes, which is on par with last year, although support was down in the Americas (91% in 2022 vs. 94% in 2021)

— The most common concern was compensation program structures, including those that tie awards to stock price hurdles which need only to be maintained for a relatively short duration.

Vanguard Updated Proxy Voting Guidelines

Vanguard's 2022 Proxy Voting Guidelines, effective March 1, 2022, mostly clarify and expand upon previous guidelines

UPDATES AND CLARIFICATIONS

- Committee Independence – Vanguard will support for independence when:
  - Only independent directors participate in the nomination process
  - A controlled company compensation and/or nominating committee is majority independent and no employees, former employees or persons affiliated with the controlled shareholder (if the CEO is a party to the controlling shareholder) serve on the committee
- Overboarding – Vanguard's update "functionally results in no change," but they clarify that they will not support any director who is an NEO and sits on more than two public boards
  - The two boards could comprise either the NEO's home board plus one outside board or two outside boards if the NEO does not serve on their home board
  - In 2022, Vanguard will also look for portfolio companies to **adopt good governance practices regarding director commitments, including the adoption of an overboarding policy** and disclosure of how the board oversees the policy
- Diversity – A board should, at minimum, represent diversity of personal characteristics, inclusive of at least diversity in gender, race and ethnicity of the board at either an aggregate or individual level
  - Boards should take action to "reflect a board that is appropriately representative, relative to their markets and the needs of long-term strategies"
- Climate Risk – Vanguard will consider an accountability vote against a director for failures of climate risk oversight, taking into account the materiality of the risk, the disclosures relating to financials and business strategies and company-specific context
- Hybrid Meetings – Vanguard funds will generally support the use of a virtual meeting so long as shareholder rights are not curtailed

SSGA 2022 Letter to CEOs

STATE STREET GLOBAL ADVISORS

On January 12, 2022, SSGA posted their CEO Letter on their 2022 proxy voting agenda, as well as guidance on climate and diversity disclosure. In the letter, SSGA's CEO Cyrus Taraporevala stated that their goal in 2022 will be to "support the acceleration of the systemic transformations underway in climate change and the diversity of boards and workforces"

EXPECTATIONS FOR THE 2022 PROXY SEASON

— Climate
  - SSGA will expect companies to align with climate-related disclosures requested by TCFD, including whether the company discloses:
    (1) board oversight of climate-related risks and opportunities;
    (2) total direct and indirect GHG emissions ("Scope 1" and "Scope 2" emissions); and
    (3) targets for reducing GHG emissions
  - In 2022, SSGA will launch a targeted engagement campaign with the most significant emitters in their portfolio to encourage disclosure aligned with our expectations for climate transition plans, which covers 10 areas including decarbonization strategy, capital allocation, climate governance, and climate policy. In 2023, they will hold companies and directors accountable for failing to meet these expectations

— Board Diversity
  - SSGA expects all holdings across the globe to have at least one woman on their boards, and in 2023 expects boards in major U.S. indices to be **30% gender diverse**
  - They encourage companies to have at least two female directors and at least one member of an underrepresented group
  - SSGA expects companies in the S&P 500 to have a person of color on their board, disclose racial and ethnic diversity of their boards (at an aggregate or individual level) and disclose their EEO-1 reports

— SSGA also published guidance on climate-related disclosures, which highlights TCFD's framework, climate transition plans that are closely aligned with the Institutional Investors Group on Climate Change Net-Zero Investment Framework and Climate Action 100+ Net-Zero Company Benchmark and guidance on diversity, including an overview on how SSGA will evaluate D&I shareholder proposals

Investor Guidelines on Climate Change

CLIMATE INSIGHTS FROM INSTITUTIONAL INVESTORS

After a prolific year for environmental proposals in 2021 and SEC action on climate expected at some point during the 2022 proxy season, institutional investors were increasingly keen on maintaining an emphasis on climate

BlackRock	BlackRock's 2022 Stewardship Principles asks that companies disclose a net-zero aligned business plan consistent with their model and sector. They also ask, beginning in 2022, that companies demonstrate that their plans are resilient under likely decarbonization pathways, and the global aspiration to limit warming to 1.5°C. They also ask that companies disclose how their capital allocation across alternatives, transition technologies, and fossil fuel production is consistent with their strategy and their emissions reduction targets
Vanguard	In 2021, Vanguard issued an Insight Report on climate risks that emphasized the long-term investment risks of climate change. According to their 2022 Key Votes Report, they supported environmental-related shareholder proposals at companies such as Berkshire Hathaway, Caterpillar, Canadian Pacific and UPS. In general, Vangaurd supported environmental proposals that addressed material risks and an oversight / disclosure gap
State Street Global Advisors	State Street's 2022 Guidelines include expectations for companies to meet disclosure and climate transition plan expectations, which are aligned with the four pillars of the TCFD framework (governance, strategy, risk management and metrics / targets). They expect companies in carbon-intensive sectors to disclose interim GHG emissions targets to accompany long-term climate ambitions and scope 1, 2 and (when material) 3 emissions
Fidelity Investments	Fidelity's 2022 Proxy Voting Guidelines states that they generally consider management's recommendation on environmental issues, but they may support shareholder proposals that request additional disclosure from companies on environmental issues, especially when the proposals could provide meaningful information without unduly burdening the company (in particular they mention reports on sustainability, renewable energy and environmental impact issues)

Investor Guidelines on DEI

BlackRock

- BlackRock's 2022 Stewardship Policies state that boards should aspire to **30% diversity** of membership and "encourage boards to have at least two directors on their board who identify as female and at least one who identifies as a member of an underrepresented group"
- BlackRock also asks that boards disclose:
  - The aspects of diversity that the company believes are relevant to its business and how the diversity characteristics of the board are aligned with a company's long term strategy
  - The process by which candidates are identified and selected, including whether other resources are used to identify candidates, and whether a diverse slate of nominees is considered for all available board nominees
  - The process by which boards evaluate themselves and any significant outcomes of the evaluation process
- In 2021, **BlackRock voted against 1,862 directors for a lack of board diversity**, their second-most common reason for voting against directors
- In 2020, BlackRock voted against management more than 1,500 times for insufficient diversity

Vanguard

- Vanguard's 2022 Guidelines note that boards should represent a diversity of personal characteristics, inclusive of at least diversity in gender, race and ethnicity at the board level. These can be in an aggregate or individual format
- Boards should take action to "reflect a board that is appropriately representative, relative to their markets and the needs of long-term strategies," and boards that are not diverse should state how they intend to make progress
- In December 2020, Vanguard stated they may vote against directors at companies "where progress on board diversity falls behind market norms and expectations"
- Vanguard states that boards should inform shareholders of their composition strategy, policies toward increasing diversity and current attributes of the board

STATE STREET GLOBAL ADVISORS

- SSGA's 2022 Letter to CEOs stated that, beginning in the 2023 proxy season, they will expect boards to be comprised of at least **30% women directors** for companies in major indices in the US
- In 2022, SSGA will vote against the Chair of the N&GC at companies in the S&P 500 that do not have at least **1 director from an underrepresented community** on their board, disclose racial and ethnic diversity of their boards and **disclose EEO-1 reports**
- In August 2020, State Street published an open letter to Board members informing them that "starting in 2021, State Street Global Advisors will ask companies in our investment portfolio to articulate their risks, goals and strategy as related to racial and ethnic diversity, and to make relevant disclosure available to shareholders"

The New York City Comptroller also recently recommended the expansion of the number of ethnic minorities at the executive and board levels

- The NYCC's Boardroom Accountability 3.0 states they: "sent a letter to 56 S&P 500 companies, regardless of the current diversity of their board or CEO, which do not currently have a Rooney Rule policy – and will file shareholder proposals at companies that lack apparent racial diversity at the highest levels"
- In March 2022, the NYCC announced that **85 S&P 100 companies will now publicly disclose Consolidated EEO-1 reports**, up from 14 in July 2020

Sources: State Street, Vanguard, BlackRock, New York City Comptroller

Director Overboarding Policies

The below is the maximum number of total public company boards before an entity will consider the director to be overboarded
*Public company directors should be **at or below** these thresholds*

Investor / Advisor	Number of Boards for Director	Number of Boards for Executive Officers*
BlackRock	4 total boards	2 total boards (1 unaffiliated board) (Executives can serve on two boards: one for their own company and one for an outside company. Executives may not serve on two outside company boards)
Vanguard	4 total boards	2 total boards (Policy covers NEOs) (The two boards could comprise either the NEO's home company board plus one outside board or two outside boards if the NEO does not serve at their home company)
State Street Global Advisors	4 total boards (3 total boards for board chairs or lead independent directors)	2 total boards (Policy covers NEOs)
Fidelity Investments	N/A	3 total boards (2 unaffiliated boards) (Policy only covers CEOs)
ISS	5 total boards	3 total boards (2 unaffiliated boards) (Policy only covers CEOs)
Glass Lewis	5 total boards	2 total boards

*Generally, if officers are considered overboarded, funds will withhold votes for the positions outside of the company where officer is an executive
Note: Policies regarding fund managers/directors vary from these

Proxy Advisory Firm Policy Updates for 2022

ISS

BOARD DIVERSITY

- Beginning in February 2023, all boards will be expected to have a woman on their board
- Beginning in 2022, ISS will start recommending against or withhold votes for chairs of N&GCs without racially or ethnically diverse members

ESG RISK

- In 2022, for "significant GHG emitters" (companies currently on the Climate Action 100+ Focus Group list), ISS will generally vote against or withhold from the incumbent chair of the responsible committee (or other directors on a case-by-case basis) in cases where ISS determines that the company is not taking the minimum steps needed to mitigate risks related to climate change to the company and the larger economy

VOTING RIGHTS

- ISS will remove the grandfathering of older companies with **unequal voting rights**
  - After a one-year grace period, starting in 2023, ISS will generally recommend against relevant directors at all companies with unequal voting rights, irrespective of when they first became public companies
  - There are exceptions for newly-public companies (including SPACs) with a sunset provision of no more than seven years from going public, REITs, de minimis voting rights or if the company provides sufficient protections for minority shareholders

GLASS LEWIS

BOARD DIVERSITY AND ESG

- Beginning in 2022, Glass Lewis will generally recommend voting against the chair of the nominating committee of a board with fewer than two gender diverse directors, or the entire nominating committee of a board with no gender diverse directors, at companies within the Russell 3000 index
- Beginning in 2023, Glass Lewis will recommend voting against the nominating committee chair of a Russell 3000 board that is not at least 30% gender diverse

ESG RISK

- Beginning in 2022, Glass Lewis will note as a concern when boards of companies in the Russell 1000 index do not provide clear disclosure concerning the board-level oversight afforded to environmental and/or social issues.
- For shareholder meetings held after January 1, 2022, Glass Lewis will generally recommend voting against the governance committee chair of a company in the S&P 500 index who fails to provide explicit disclosure concerning the board's role in overseeing these issues

ESG SCORES

- During the 2022 proxy season, Glass Lewis started issuing ESG Scores for 1,800 companies in their index
- The Scores are available in companies' Glass Lewis reports and are weighted on a 1-10 scale across four categories: board accountability, ESG transparency, ESG targets and alignment and climate risk mitigation (which is only for Climate Action 100+ companies)

Other Stakeholders – Perspectives of ESG

DODGE & COX

"Dodge & Cox may support shareholder proposals requesting information or data that enables us to better assess material financial risks to the company around social and environmental issues such as human capital and energy transition"

NORGES BANK

"Sustainability disclosures should be aligned with applicable global reporting standards and frameworks to support investors in their analysis of risks and opportunities"

WELLINGTON MANAGEMENT

Wellington expects all companies to disclose scope 1, 2 and 3 emissions

— While they acknowledge the challenges with scope 3, they want both **upstream and downstream scope 3 emissions disclosure** in order to "enhance our ability to evaluate investment risks and opportunities"

CalPERS

CalPERS states that they work with their assets to identify ways to generate positive E&S impacts with strong financial returns, which they call "Why Wouldn't You?" opportunities

In October 2019, the New York City Comptroller launched their Boardroom Accountability Project 3.0, which emphasized the expansion of the number of ethnic minorities at the executive and board levels

— In 2022, the NYC Comptroller submitted 11 proposals asking for companies to disclose EEO-1 data, all of which were withdrawn

— The NYC Comptroller also launched a "Vote No" campaign for two Amazon directors due to being "largely unresponsive to shareholder concerns about health and safety, high turnover, and labor rights violations." One of the directors received an AGAINST recommendation from Glass Lewis due to poor human capital oversight, which yielded a "red zone" level of shareholder support (78% support)

III. Board Refreshment Trends

Board Refreshment Trends

Board refreshment continues to be one of the top governance areas of investor focus. A Spencer Stuart survey of Nominating & Governance Committees found that enhancing racial and ethnic diversity was the top priority for their committee in 2021

Companies are responding by bringing on new directors

- **456** new independent directors were elected to S&P 500 companies in 2021
- 72% of the incoming directors are from historically underrepresented groups, with 43% of new directors being women and 47% of new directors being racially or ethnically diverse

88 S&P 500 companies expanded their board size to add a racially or ethnically diverse director

Companies are expanding searches for new directors

- **39%** of S&P 500 proxies include a statement considering a diverse slate of directors
- Directors 50 and younger make up 16% of new directors

35% of new directors appointed in 2021 are serving on their first public company board

Shift in director skills and experiences to align with strategic goals

- **56%** of new directors are actively employed
- Directors with experience in finance and particularly investing/investment management experience are growing, with 26% of incoming directors being financial experts
- Only 22% of new directors are active or former CEOs
- **45%** of boards include a director diversity matrix in their proxies

Source: 2021 Spencer Stuart Board Index

Director Gender Diversity

The number of women on boards is reaching record numbers, but only 9% of the Russell 3000 (265 companies) have a gender-balanced boards according to research from Equilar and 5050 Women on Boards, a public advocacy group designed to obtain gender balance in the boardroom

43%	**30%**	**42%**	**14%**
Percentage of S&P 500 board seats were filled by women in 2021, a 105% 10-year change	Percentage of S&P 500 board seats that are filled by women	Percentage of companies in the Russell 3000 with more than three women on their board	Percentage of seats gained by women directors due to a man retiring

While 44% of Russell 1000 boards were comprised of at least 30% women, **only 12% of boards have 40% or greater gender diversity**, and only 3% of boards have 50% or more women

CALIFORNIA BOARD DIVERSITY LAWS

— In May 2022, a Los Angeles court found that SB 826, which requires public companies in California to have two women directors on boards with five directors and at least three women on boards with six or more directors, was **unconstitutional**

- Similarly, AB 979, which required California boards to have a member from an "underrepresented community" was deemed unconstitutional in April 2022

— In Q1 2022 women only gained 25 seats on California-based boards, a decrease compared to the over 100 seats gained between H2 2021, when companies had a deadline to meet to comply with SB 826

- According to Equilar, 32.5% of California-based boards have over 30% women

Sources: 2021 Spencer Stuart Board Index; 5050 Women on Boards Q1 2022 Report; JUST Capital

Director Racial / Ethnic Diversity

The trend for increasing racial and ethnic diversity on boards has been slower than increases in gender diversity, but is increasingly becoming a focal point for boards

- **47%** of new independent directors are racially or ethnically diverse
- 21% of all S&P 500 directors are ethnic minorities as of 2021, 70% of whom are male

Proxy advisory firms, such as ISS and Glass Lewis, increasingly expect boards to have a representative and inclusive boardroom

- Glass Lewis will start transitioning to a percentage-based approach for evaluating board diversity in 2023, and will vote against governance committee chairs if they have poor diversity disclosure
- Beginning in 2022, ISS will start recommending against or withhold votes for chairs of N&GCs without racially or ethnically diverse members

The 30% Coalition, which has championed for female director representation, launched a campaign to address issues of female ethnic minority representation on boards

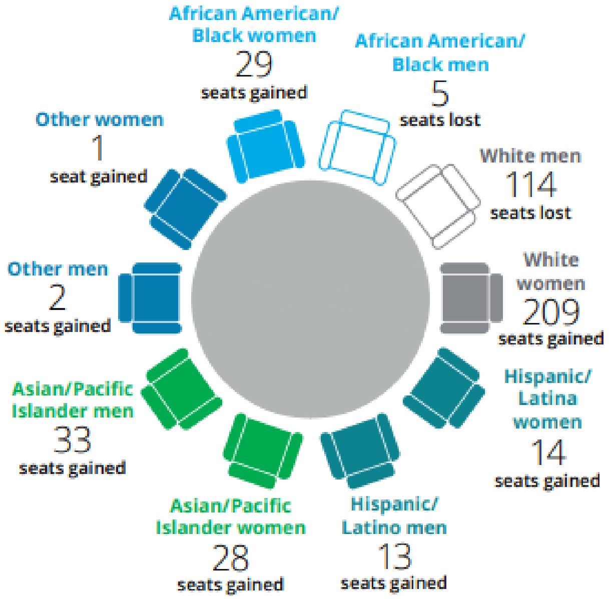
- The coalition sent letters to S&P 1500 companies outlining why representation on the board by women of color is important and offered opportunities to meet qualified candidates in targeted regional meetings this fall

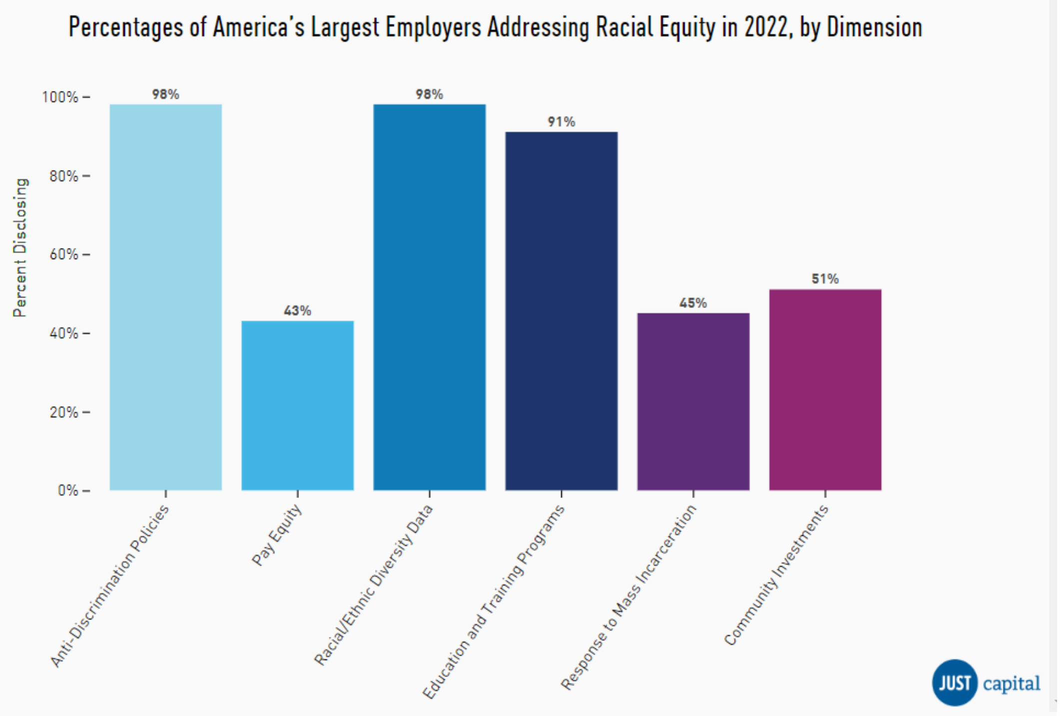
While 60% of S&P 500 board disclosed their ethnic/racial composition in 2021, only **28% disclosed individual directors' ethnicities**

Source: ISS, 2021 Spencer Stuart Board Index, Russell Reynold 2020 Report on Ethnic Diversity, Heidrick & Struggles 2020 Board Monitor, The Conference Board Corporate Board Practices 2021 Edition

Director Racial / Ethnic Diversity

Figure 11. ***Fortune*** **500 seats gained/lost from 2018 to 2020 by gender and race/ethnicity**





According to research from Deloitte, while there are 200 companies in the Fortune 500 with greater than 40% diversity, most of the gains were made by white women (21% increase year-over-year) as opposed to minority men and women, who account for only 11.8% and 5.7% of board seats, respectively

PAY GAP DISCLOSURE

While 43% of the top 100 companies in the Russell 1000 index say they perform a race and ethnicity pay gap analysis, only 24% of them disclose the results of said analysis

Board Tenure and Refreshment Policies

63.1 Years

Average S&P 500 independent director age

57.5 Years

Average new S&P 500 independent directors age

82%

Percent of S&P 500 boards where average director age is in the 60s

7.7 Years

Average S&P 500 director tenure, a year less than in 2011 (8.7 years)

Many investors continue to focus on director tenure and correlate lengthy tenures with the need to scrutinize boards for independence from management

— BlackRock's 2022 guidelines state that they may oppose boards that have an insufficient mix of short-, medium- and long-tenured directors

— CalPERS's 2022 Proxy Guidelines state that they will withhold votes from nominating committee members at companies where more than one-third of the directors have a tenure of more than 12 years and less than one-third of the directors were appointed within the past 6 years

Retirement Age Trends

— 70% of S&P 500 companies have mandatory retirement ages

— 51% of boards with age limits have a mandatory retirement age of 75 or older, compared to 20% a decade ago

— 12% of boards do not disclose mandatory retirement in their corporate governance guidelines

— 7% of the S&P 100 have retirement limits in their bylaws

Term Limit Trends

— 6% of the S&P 500 companies have term limits

— 73% of companies with term limits set the limit at 15 years or more

— 29% of companies do not mention term limits in their corporate governance guidelines

Sources: 2021 Spencer Stuart Board Index

NASDAQ Listing Rule

Nasdaq On August 6, 2021, the SEC approved Nasdaq's Board Diversity Rule. The Rule requires Nasdaq-listed companies with six or more directors to:

1. Have at least one director who self-identifies as female, **and** have at least one director who self-identifies as an ethnic minority or LGBTQ+, **or** explain why the company does not have at least two directors on its board who self-identify in the categories listed above
2. Subject to certain exceptions, provide statistical information in a proposed uniform format on the gender, race, and LGBTQ+ identification of a company's board of directors as posted on their website, proxy, 10-K or 20-F. The company may disclose on a director-by-director basis if they choose to do so

It is expected that many NYSE-listed companies will choose to provide similar disclosure due to ongoing investor focus

Alliance for Fair Board Recruitment and National Center for Public Policy filed suit on regulatory overreach and First Amendment grounds to appeal the Nasdaq rule, with amicus brief filed by 17 State AGs

TIMEFRAMES FOR COMPLIANCE

Companies are required to publicly disclose board-level diversity statistics through Nasdaq's disclosure framework by the later of August 8, 2022 and the date a company files its 2022 proxy and are required to meet the minimum board composition expectations based on the company's listing tier:

— All companies that are listed before the phase-in period will be expected to have one diverse director by August 7, 2023. Companies listed after the phase-in period will have a two-year phase-in period to meet the diversity objective

— Companies listed on the Nasdaq Global Select Market and Nasdaq Global Market will be expected to have a second diverse director by August 6, 2025

— Companies listed on the Nasdaq Capital Market will be expected to have a second diverse director by August 6, 2026

— Companies that no longer meet the diversity objective will have a one-year grace period to fill the vacancy and meet the listing requirements

IV. SEC Developments

SEC Rule Adoption – Universal Proxy and Proxy Advisory Firms

On November 17, 2021, the SEC held an open meeting to consider whether to adopt amendments to the proxy rules relating to the use of universal proxy cards and related disclosures in director elections as well as whether to propose amendments to the proxy rules governing proxy voting advice. At the meeting, the SEC Commissioners voted to approve new rules for Universal Proxy cards by a 4-1 vote and approved the proxy advisory rule proposal. On July 13, 2022, the SEC approved the proxy advisory firm proposal with a 3-2 vote

UNIVERSAL PROXY

— The Commission is requiring the use of a universal proxy card in all non-exempt solicitations involving director election contests
  - To facilitate the use of universal proxy cards, the Commission approved amending the current proxy rules so each side can list the other side's director candidates on its universal proxy card

— The rules require shareholders presenting their own director candidates in the contest to solicit holders of a minimum of 67 percent of the voting power of shares entitled to vote in the election

— In addition, the rules revised the consent required of a bona fide director nominee and eliminated the short slate rule

Chair Gensler: ***"Today's amendments will put these candidates on the same ballot. They will put investors voting in person and by proxy on equal footing"***

PROXY ADVISORY FIRMS

— The amendments aim to address concerns expressed by investors and others that the current rules may impede and impair the timeliness and independence of proxy voting advice

— The amendments rescind two rules applicable to proxy voting advice businesses that the Commission adopted in 2020, namely the requirements of:
  - Registrants that are the subject of proxy voting advice have such advice made available to them in a timely manner, and
  - Clients of proxy voting advice businesses are provided with a means of becoming aware of any written responses by registrants to proxy voting advice

SEC Proposal – Amendments to Rule 14a-8

On July 13, 2022, the SEC proposed amendments to Rule 14a-8 to address three bases for excluding shareholder proposals under Rule 14a-8(i). The proposal passed with a 3-2 vote

Comments for this proposal are due on September 12, 2022

BASES FOR EXCLUSION

— **Substantial Implementation** Rule 14a-8(i)(10)

- The proposed amendments would provide that a proposal may be excluded as substantially implemented if "the company has already implemented the essential elements of the proposal"

— **Duplication** Rule 14a-8(i)(11)

- The proposed amendments would specify that a proposal "substantially duplicates" another proposal if it "addresses the same subject matter and seeks the same objective by the same means"

— **Resubmission** Rule 14a-8(i)(12)

- The proposed amendments would: (i) provide that a proposal constitutes a resubmission if it "substantially duplicates" a prior proposal; and (ii) specify that, as with the duplication exclusion, a proposal "substantially duplicates" another proposal if it "addresses the same subject matter and seeks the same objective by the same means." These changes would align the "resubmission" standard under Rule 14a-8(i)(12) with the "duplication" standard under Rule 14a-8(i)(11), in consideration of the similar objectives of these exclusions
- Gensler stated that the resubmission proposal does not change resubmission thresholds, but harmonizes them with the "substantially duplicate" standard

"If this proposal is adopted, company proxy statements are likely to look like our rulemaking agenda—packed with items, many of which overlap with one another and rehash recently completed matters"

~ Commissioner Peirce, who did not support the proposal

SEC – Notable Proposals and Reg-Flex Agenda

2021 | 2022 | 2023

OCTOBER / NOVEMBER 2021

SEC adopts **Universal Proxy** rule

SEC reopens comment period for **clawback** rules (originally proposed in 2015)

Proxy Voting Advice rule is proposed

DECEMBER 2021

Rule 10b5-1 and Insider Trading rule is proposed

Share Repurchase Disclosure Modernization rule is proposed

JANUARY / FEBRUARY 2022

Beneficial Ownership Reporting rule is proposed

SEC reopens comment period for **Pay Versus Performance** proposal (originally proposed in 2015)

MARCH 2022

Climate-Related Risk Disclosure rules are proposed

Cybersecurity Risk rule is proposed

"[The SEC's] responsibility to help ensure accurate and complete disclosure of risks for investors and markets is long-standing and central to our mission. Climate risk is not unique in this regard"

~ Allison Herren Lee on the Climate Risk Proposal

JUNE 2022

SEC issues Reg-Flex Agenda

SEC again reopens **clawback** comment period

The comment period for the climate disclosure rules, after an extension from the SEC and over 3,400 public comments, ends

"When I think about the SEC's agenda, I'm driven by two public policy goals: continuing to drive efficiency in our capital markets and modernizing our rules for today's economy and technologies."

~ Chair Gary Gensler on the Reg Flex Agenda

OCTOBER 2022

Possible **Human Capital Management** proposal

Anticipated final rules for:
— Climate-Related Risk Disclosure
— Share Repurchase Disclosure
— Clawback Listing Standards
— Pay Versus Performance Disclosure
— Proxy Voting Advice

APRIL 2023

Anticipated Final Rules for:
— Cybersecurity Risk Governance
— Rule 10b5-1 and Insider Trading
— Modernization of Beneficial Ownership Reporting