Governance Watch

Highlights from the 2021 Proxy Season – and How to Prepare for the Challenges Ahead

July 26, 2021

Hosted in Collaboration with Cleary Gottlieb

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Corporate Governance

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Some of the critical topics we will be addressing today

- What we learned from the recent proxy season on shareholder proposals on climate change (including “say-on-climate”); diversity, equity & inclusion; and political lobbying and contributions – and what to expect in the future.
- Factors companies should consider in deciding whether, when, and how to support a shareholder proposal.
- How the “G” in ESG is evolving in areas such as written consent, proxy access, over-boarding, director independence, Chair/CEO separation, and what to expect in future director elections and say-on-pay proposals.
- Trends in this year’s shareholder engagement, and what listen for in your offseason engagement with institutional investors.
- The changing dynamics in the composition and views of companies’ retail base, and how that translates into actions companies should consider taking.
- The Board’s evolving role in ESG and the implications for board composition, structure, time allocation, decision-making.
- How to prepare for SEC action on climate change, human capital management, and ESG in general.

Today's Speakers

Gale Chang
Senior Vice President,
Associate General Counsel
and Assistant Secretary
Bank of America Corporation

Helena K. Grannis
Counsel
Cleary Gottlieb Steen & Hamilton LLP

Francesca L. Odell
Partner
Cleary Gottlieb Steen & Hamilton LLP

Paul Washington
Executive Director,
ESG Center
The Conference Board

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Related Resources

The New Era of Shareholder Activism (Webcast)

Panelists from Goldman Sachs, Cleary Gottlieb Steen & Hamilton LLP, and Innisfree M&A Inc. (the firm that represented activist hedge fund Engine No.1 in its landmark proxy fight against ExxonMobil) discussed key trends in shareholder activism today. These include the resurgence of activism to pre-pandemic levels, the proliferation of first-time activists, the lessons from the ExxonMobil fight, the growth in activism using ESG as a central focus as well as a wedge issue, and the evolving dynamics of activism outside the U.S. It's a must-watch program: companies need to be prepared for activism that can come from any, and many, directions.

Under a Microscope: A New Era of Scrutiny for Corporate Political Activity (Publication)

Companies are facing ever-greater scrutiny of their political activities, with some of the US' biggest businesses still grappling with a response to January's Capitol riot. As companies reevaluate their role in the political sphere, a new report by The Conference Board highlights considerations and best practices regarding corporate political activity.

Telling Your Sustainability Story: Overview (Publication)

Companies traditionally communicate their sustainability activities to stakeholders through large, comprehensive reports, often running more than 100 pages, that go by a number of different names: Corporate Social Responsibility (CSR), Environmental, Social & Governance (ESG), or Sustainability. Almost all S&P 500 companies issue these reports, indicating that sustainability storytelling is now mainstream and expected of large US companies. In addition, companies increasingly customize information on their sustainability initiatives for rating agencies, business partners, regulators, and others.

Choosing Wisely: How companies can make decisions and a difference on social issues (Publication)

From LGBTQ+ equality to Black Lives Matter, and from gun rights to gun control, companies have been asked to take public positions on social issues, but the process for doing so hasn't always been clear or consistent. This report discusses (1) the evolving context in which companies are operating; (2) who is involved in raising and deciding the company's stance on social issues; (3) the criteria used in deciding whether and how to respond; (4) how companies ensure that there is appropriate follow-through; and (5) lessons learned from 2020 and what companies are planning to do differently.

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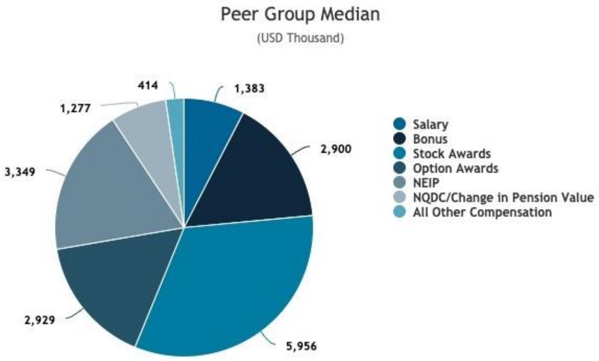

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2021 Post-Proxy Season Review and Governance Trends

July 26, 2021

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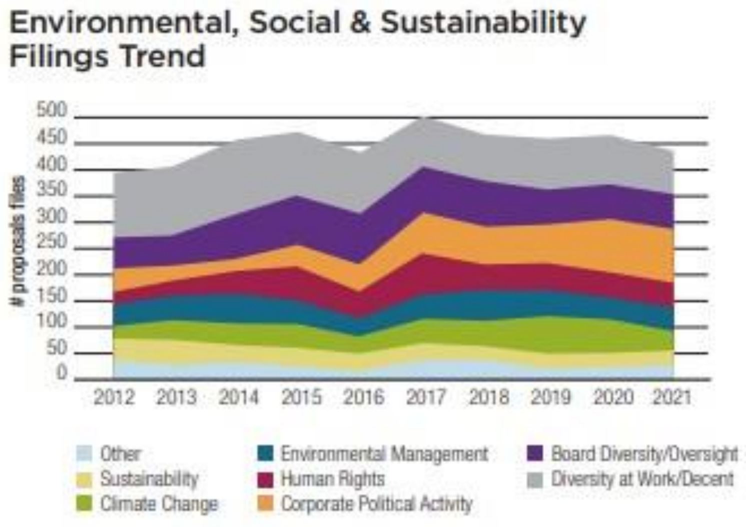
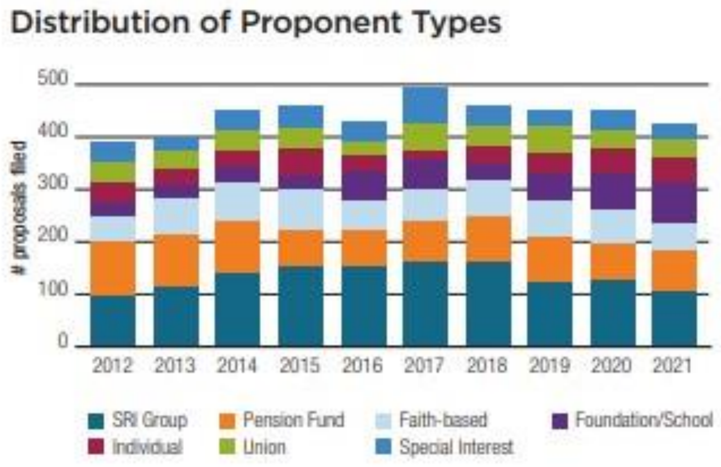
Overall Proposal Trends





Source: Proxy Preview

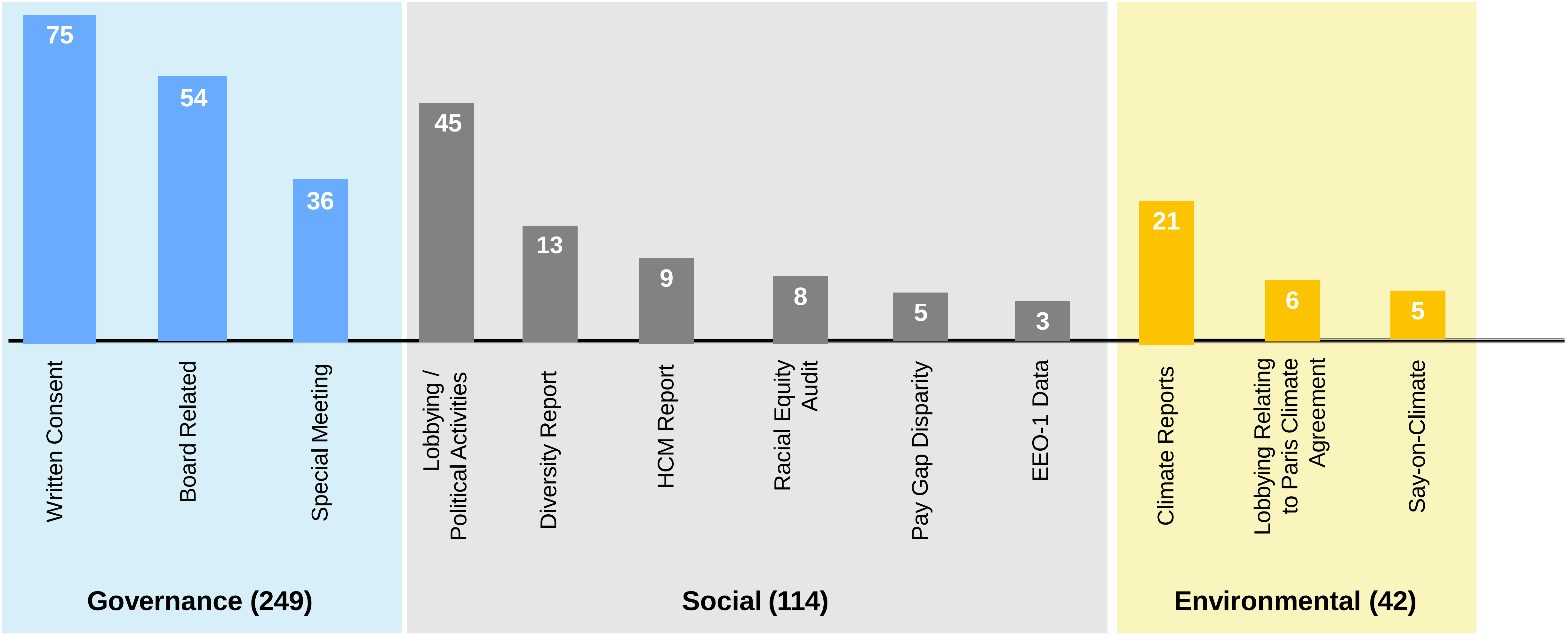
KEY TAKEAWAYS

— According to Georgeson, as of June 2021 environmental, social and governance proposals have a passage rate of 36.5%, 17.8% and 15%, respectively

— Governance proposals still make up the majority of shareholder proposals, but average support is strongest among environmental proposals at 39%

— No-action relief has been consistent year over year, with relief being granted for 16% of all proposals in 2021 (unchanged from 2020 and one percent different than 2019)

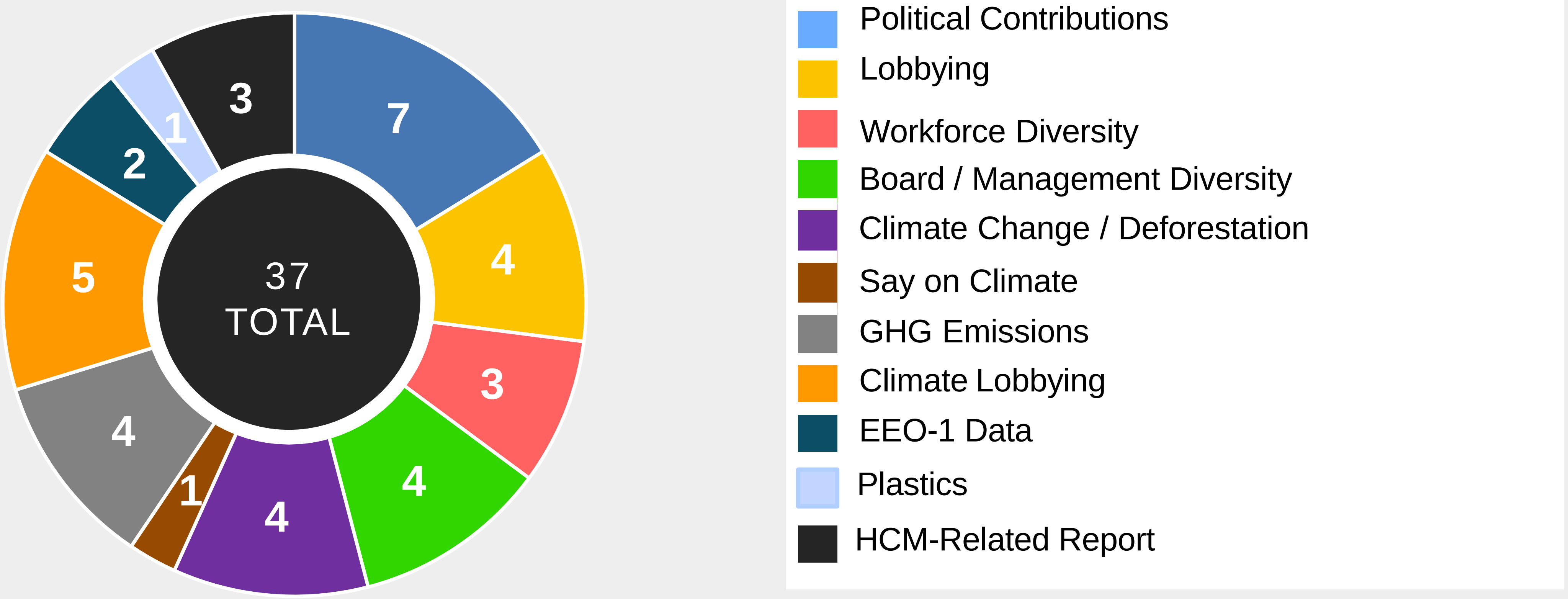
Shareholder Proposals in 2021



Source: Proxy Analytics as of June 23, 2021; Georgeson

E&S Proposals with Majority Support

E&S Proposals with Historic Support
The 2021 proxy season saw the highest number of passing E&S proposals on record, a 90% increase from 2020



2021 Proxy Season Highlights – Environmental

KEY ENVIRONMENTAL PROPOSAL TRENDS

Environmental proposals had increasing and widespread support

— Proposals asking companies to report on lobbying activities related to global warming or the Paris Climate Agreement received 61% support on average

— Proposals seeking reports on climate transition received majority support at Booking Holdings and Bloomin' Brands, with similar proposals receiving over 48% support at Chevron and 37% support at UPS

— "Say on Climate" proposals received about 40% support on average

Proponents were less likely to compromise on climate votes

— Climate change proposals are increasingly making it to a vote, with the most commonly withdrawn environmental proposals being requests for reports on climate change and GHG emissions (33 and 15 withdrawals, respectively)

NOTEWORTHY ENVIRONMENTAL PROPOSALS

Chevron

Chevron, ConocoPhillips and Phillips 66 all had proposals to reduce greenhouse gas emissions pass with 60.7%, 59.3% and 80.3% support, respectively

DUPONT

An As You Sow proposal for a report on plastic use received 81.2% support at DuPont. ISS and Glass Lewis both supported the proposal

A Greenhouse Gas Emissions Report proposal from As You Sow passed with 97.8% of the vote at General Electric. GE's Board of Directors recommended for the proposal to emphasize "that climate change is an urgent priority"

bp

BlackRock voted for a proposal at BP that called for alignment with the Paris Climate Agreement despite a goal from the company to be net zero by 2050 or sooner. ISS recommended against the proposal and it received 20.7% support

Source: Proxy Preview; Proxy Analytics; Georgeson

Climate Change – Chevron’s Scope 3 Emissions

A shareholder proposal asking Chevron “to substantially reduce the greenhouse gas (GHG) emissions of their energy products (Scope 3) in the medium- and long- term future, as defined by the Company” passed with 60.7% of the vote.

— The proposal states that “To allow maximum flexibility, nothing in this resolution shall serve to micromanage the Company by seeking to impose methods for implementing complex policies in place of the ongoing judgement of management as overseen by its board of directors”

— Management recommended against the proposal, noting that it has established Scope 1 and Scope 2 metrics for upstream oil, gas, flaring and methane, along with metrics aligned with the Paris Climate Agreement

SUPPORT FROM ISS AND BLACKROCK

ISS

— ISS recommended for the proposal, noting that Chevron publishes a Climate Resilie metrics for 2028, but has no set Scope 3 emissions targets

— ISS states, “While its Scope 1 and 2 emissions show modest declines, its Scope 3 em increasing trend… According to the Climate Action 100+ Benchmark, the company by 2050 ambition”

BlackRock

— BlackRock supported the proposal because “we believe that the companies that critically evaluate their current baseline, set rigorous GHG emissions reduction targets, and act on an accelerated timeline are those most likely to avoid operational disruption in the future”

— Chevron’s European peers, such as Equinor, BP and Shell, have already set clear and achievable Scope 3 targets

— BlackRock notes that the proposal is clear and not prescriptive, giving them confidence in Chevron’s management and board

Another proposal at Chevron regarding reports on climate change risks narrowly lost with 47.8% of the vote. BlackRock voted against the proposal because the company has already pledged to issue a similar report by January 31, 2022.

Rise in Lobbying Proposals

> Lobbying proposals were among the most successful E&S proposals in the 2021 proxy season, with current events and climate change causing increased scrutiny of lobbying and climate-lobbying practices among institutional investors.

LOBBYING PROPOSALS

- Proposals seeking greater disclosure around a company's grassroots lobbying policies and practices were the most frequently submitted E&S shareholder proposal in 2020, but only one such proposal passed
- In 2021, 27 lobbying proposals were submitted. Support for these proposals **averaged almost 40%, with four proposals passing**
- ISS and GL recommended in favor of these proposals 83.3% and 73.9% of the time, respectively

CLIMATE LOBBYING PROPOSALS

- Proposals asking for reports on lobbying efforts related to global warming and climate-change related initiatives was a new proposal category in 2020, with three proposals making it to a vote and one passing
- 2021 saw a massive increase in popularity with these proposals, with **five out of six proposals passing and average support at 61.4%**
- ISS and GL both supported these proposals at all six meetings in 2021

Source: Proxy Analytics

Diversity and Inclusion (D&I) Shareholder Proposals

2021 had high support for D&I shareholder proposals, with support averaging 61%, versus 41% in 2020.

D&I related shareholder proposals received majority support at an unprecedented rate.

An As You Sow proposal for a report on Union Pacific Corporation's D&I efforts received 81.4% support

Trillium proposed a resolution at Paycom Software calling for a report on senior management diversity. Paycom did not make a management recommendation at their meeting, and the proposal received 93.8% support

IBM recommended for a Nia Impact Capital proposal calling for IBM to publish a D&I report on recruitment and promotions. The proposal received 94.3% support

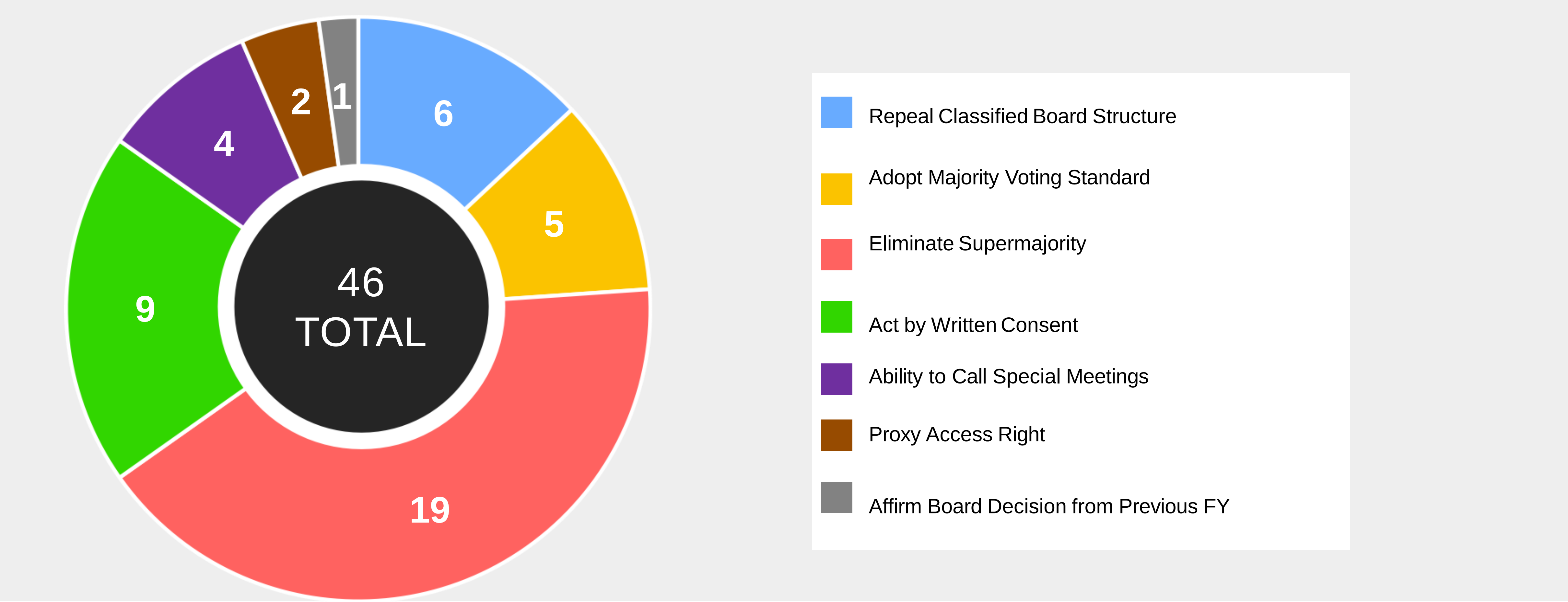
A shareholder proposal to issue a report on increasing board diversity passed with 85.4% of the vote at Badger Meter

The New York State Comptroller issued a shareholder proposal to increase commitments to board diversity and board diversity disclosure at First Community Bankshares. The proposal received 70.6% support

ISS and Glass Lewis both recommended for a report identifying whether there exists a gender/racial pay gap among Oracle's employees, and if so, asking the company to outline steps to reduce the gap. It narrowly lost, receiving 46% support

Source: Proxy Analytics

Governance Proposals with Majority Support



Source: Proxy Analytics as of June 23, 2021

2021 Proxy Season Highlights - Governance

Supermajority proposals reach record support

— Proposals to eliminate the supermajority had far-reaching support, with 19 out of the 21 proposals that made it to meeting receiving a majority vote
  - On average, support for supermajority shareholder proposals was around 80%
  - ISS and GL recommended FOR these proposals 95% and 76% of the time, respectively

Written consent proposals were on on the rise

— A record 63 proposals to adopt a shareholder right to act by written consent made it to a vote in 2021, with average support increasing from 37.6% in 2020 to 40.1% in 2021
  - ISS recommended in favor of over 90% of these written consent proposals

— 2020 saw a new type of proposal to amend existing written consent provisions in order to reduce an ownership threshold. Support for that proposal increased drastically from 16.7% in 2020 to 43.7% in 2021, including a passing proposal at BorgWarner Inc.

Support for **CEO / chair split** proposals see a dip

— Proposals to split the CEO and chairperson roles were less popular than last year, with support falling from 34% to 31% and no proposals receiving majority support

John Chevedden continued to submit governance proposals at a high rate, with 189 proposals submitted in 2021

— The majority of Chevedden proposals consisted of rights to act by written consent (49 proposals)

Source: Proxy Analytics

Say on Pay – Overall Voting Trends

- 6.9% of Russell 3000 companies had Say on Pay support below 70% in 2021, with 66 companies failing Say on Pay during the 2021 proxy season
  - In general, failed Say on Pay votes are increasingly relevant at larger cap companies, as Proxy Analytics reports that almost 70% of the companies with failed say-on-pay votes are categorized as being mid-cap or greater, compared to between 40% and 45% over the past three years.
- A Semler Brossy report states that the average Say on Pay vote results for companies that received ISS “Against” recommendations is 35 percentage points lower than companies receiving an ISS “For” recommendation in 2021
  - The average historical gap between ISS recommendations is 24 to 32 percentage points

AT&T received 48.9% Say on Pay support, with an Against recommendation from ISS and a For recommendation from Glass Lewis. BlackRock voted against Say on Pay due to a lack of transparency and misaligned equity awards

TransDigm received 42.9% of the vote for Say on Pay. BlackRock voted against Say on Pay and all members of the compensation committee due to minimal changes to compensation structures after three years of low Say on Pay support

Disney’s Say on Pay vote was in the “Red Zone” of 68.5% support. Vanguard supported the vote due to COVID-related reductions to compensation and shareholder engagement from the company

General Electric had a failing Say on Pay vote of 42.4%. BlackRock voted against the compensation structure due to a lack of disclosure of a discretionary bonus and a mid-cycle adjustment

Sources: Proxy Analytics, Semler Brossy

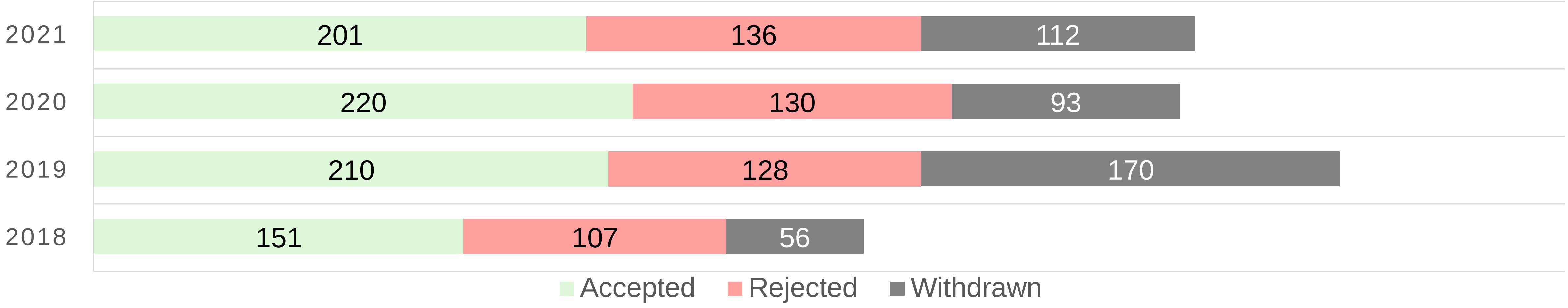
Say on Pay – COVID-19 Pay Adjustments

- Set against a backdrop of a significant, though still small, number of Say on Pay failed or "red zone" votes for various compensation program and grant concerns, a few companies, **Aramark, Becton Dickinson, Starbucks and Walgreens,** provided certain compensation adjustments, ranging from one-time grants for performance and retention during pandemic, to allowing discretion to make adjustments to existing performance criteria for COVID-19 affected periods
  - Semler Brossy attributes COVID-19 related actions to at least 18 failed Say on Pay votes
- Negative recommendations from proxy advisors and concerns from institutional investors paved the way for low or below majority Say on Pay votes

INSTITUTIONAL INVESTORS	TAKEAWAYS
— Vanguard published explanations for certain of their negative Say on Pay votes, noting that the COVID-19 related adjustments misaligned pay and performance and highlighting their view that they lead to misalignment with shareholders' experience and, in the case of Aramark, the experience of employees that had been furloughed and laid off during COVID-19 — SSGA published an insight paper in October 2020 that called for discretion in the compensation programs of their portfolio companies. They stated that they will likely vote against programs that make grants to replace options that expired out of the money, make off-cycle equity grants at the bottom of the market or take advantage of market volatility	— Companies making COVID-19 adjustments or supplemental grants should include robust and contextualized disclosure around such grants — Shareholder outreach and engagement in advance of annual meetings remains critical — Frequent/regular one-time grants may also come under additional scrutiny

Sources: Semler Brossy

No-Action Relief Overview



KEY TAKEAWAYS

— The SEC concurred on 44% of NAL requests in 2021, a slight decline from 2020

— The SEC issued fewer letters in response to NAL requests, with only ten response letters being issued as part of the no-action relief process according to the SEC website

— According to Intelligize, the proposals that saw the greatest increase in NAL frequency involved governance or internal control measures, such as implementing corporate purpose or increasing board oversight of anticompetitive practices

Source: Proxy Insight, Intelligize®

E&S NAL Trends

No-action relief for E&S proposals has steadily and drastically declined from about 50% of E&S proposals being granted exemption in 2020 to only 31% being granted exemption in 2021.

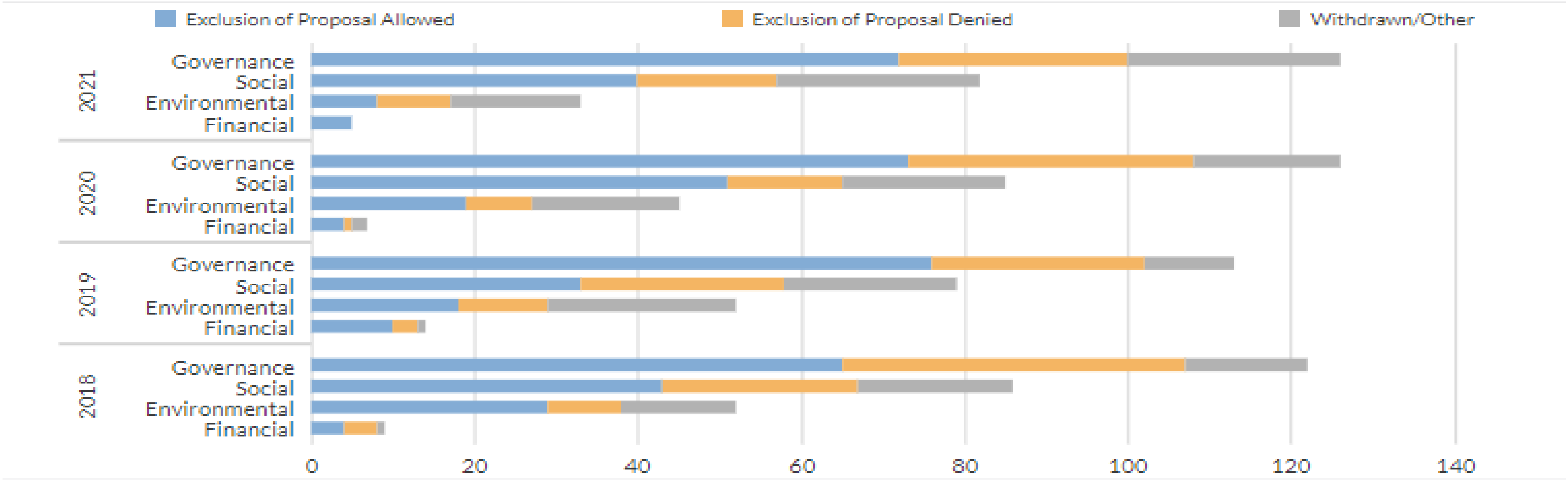
ESG no-action requests

Resolution type	2018		2019		2020		2021	
	No. filed	No. approved	No. filed	No. approved	No. filed	No. approved	No. filed	No. approved
Approve/amend diversity/EEO-1 policy	5	3	3	1	7	2	2	2
Create board diversity report	4	2	1	0	2	0	7	5
Create climate change report	10	7	9	5	22	10	13	3
Create environmental report	9	4	8	1	5	0	6	1
Create human rights report	7	5	6	2	13	6	8	0
Create industrial waste/pollution report	9	4	4	2	4	3	9	2
Create political lobbying/contributions report	11	1	14	7	8	4	9	0
Create social report	13	7	17	5	18	14	23	11

Source: Insightia | Proxy Insight Online *As of May 31, 2021*

Source: Proxy Insight

Top Topics for Requests for No-Action Relief



- Environmental proposals received particularly low no-action relief, with only 24% of NALs being granted exemption
- No-action relief for social proposals fell from 60% in 2020 to 49% in 2021
- The SEC continued to allow for the exclusion of governance proposals at a relatively high rate, with exclusion being granted 58% of the time in both 2020 and 2021
  - John Chevedden submitted 189 proposals in 2021, most of which were governance proposals
  - In particular, Chevedden proposals to eliminate or reduce a supermajority voting requirement had a high success rate at the SEC, with 13 out of 15 NALs being granted relief

Sources: Proxy Analytics, Intelligize®

II. SEC Developments

SEC – Leadership on ESG

The Biden administration has opened the way and pressed for regulatory action aligned with growing public and investor interest

ESG rulemaking and enforcement has emerged as a priority – still, expect a lengthy path through proposal, comments and likely litigation

SEC RECENT ACTION

— Satyam Khanna named as Senior Policy Advisor for Climate and ESG in February to advise on environmental, social and governance matters and advance related new initiatives across SEC

— Climate and ESG Task Force lead by Kelly Gibson in Enforcement tasked with developing initiatives to proactively identify ESG-related misconduct

- Focused on material gaps or misstatements in issuers' disclosure of climate risk under existing rules and disclosure and compliance issues for advisers' and funds' ESG strategies

— Former Acting Chair Allison Herren Lee public statements continue to push action on ESG to meet investor demand for ESG data. Looking for global action and domestic mandatory frameworks focusing on human capital, human rights, climate change and political spending

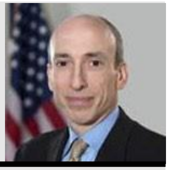
— Gary Gensler statements and testimony aligned with Former Acting Chair Lee

— Former Acting Director of Corp Fin and now SEC General Counsel John Coates recently noted that ESG is a material issue based on investor action to deploy capital and influence on voting

- SEC's role should be adaptive and innovative to lead on the creation of effective disclosure system; should not be rigid but look to seek consensus over what is useful, possible, reliable and comparable and can work over time

SEC – Key Players in ESG Disclosure

Gary Gensler



Confirmed as Chair on April 18, 2021.

— Served as Chairman of Commodity Futures Trading Commission under Obama

"Increasingly, investors really want to see… climate risk disclosure"

"It's the investor community that gets to decide what's material to them."

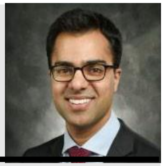
Allison Herren Lee

President Biden appointed Lee as Acting Chair of the SEC on January 21, 2021.

Has served as an SEC Commissioner since 2019

"ESG investing is no longer just a matter of personal choice…A broad swath of investors find ESG risks to be as or more important in their decision-making process than financial statements…"

Satyam Khanna



SEC named Khanna as its first ever ESG Advisor on February 1, 2021.

— Former Resident Fellow at NYU's Institute for Governance and Finance

— Member of the Biden-Harris Presidential Transition's Federal Reserve, Banking, and Securities Regulators Agency Review Team

John Coates

Named General Counsel of the SEC effective June 21, 2021 after previously serving as Acting Director of Corporate Finance.

— On leave from Harvard, where he is the John F. Coogan Professor of Law and Economics

"If I were to pick a single new thing that I'm hoping the SEC can help on, it would be this area."

Renee Jones

SEC named Jones as the Director of the Division of Corporation Finance effective June 21, 2021.

— Previously served as Professor of Law and Associate Dean for Academic Affairs at Boston College Law School

"The Division plays an essential role in ensuring investors have the information they need."

Kristina Wyatt

Wyatt is the Senior Counsel for Climate and ESG at the Division of Corporate Finance.

— Previously was Senior Counsel and Director of Sustainability at Latham & Watkins

— Worked at the SEC Division of Corporation Finance in the office of Commissioner Roel Campos

SEC – The Recent Push for Mandatory ESG Disclosure Requirements: Timeline

2020 | 2021

MAY 21, 2020

SEC's Investor Advisory Committee approves a report calling for the establishment of mandatory ESG disclosure rules.

"We recognize that any new reporting regime is difficult and comes with related litigation risk."

FEBRUARY 2, 2021

Acting Chair Lee announces that she has directed the Division of Corporation Finance to "review the extent to which companies address the topics identified in the 2010 guidance."

"It is our responsibility to ensure that [investors] have access to material information when planning for their financial future."

MARCH 3, 2021

SEC's Division of Examinations announces its 2021 examination priorities, with an increased focus on climate-related risks.

"[The SEC will examine] proxy voting policies and practices…as well as firms' business continuity plans in light of intensifying physical risks associated with climate change."

MARCH 15, 2021

Acting Chair Lee requests public input related to climate change disclosure.

"Questions arise about whether climate change disclosures adequately inform investors about known material risks, uncertainties, impacts, and opportunities, and whether greater consistency could be achieved."

JUNE 13, 2021

Comments due to the SEC. The SEC received over 360 comments by the conclusion of the comment period.

PENDING

SEC will review comments and " **evaluate our disclosure rules with an eye toward facilitating the disclosure of consistent, comparable, and reliable information on climate change**."

SEC – The Recent Push for Mandatory ESG Disclosure Requirements: Comments

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

"The TCFD… provides a disclosure framework, not a set of specific disclosures… Where necessary, these **universal disclosures could be supplemented with industry-specific requirements**. While focused on the highest emitting sectors, the Climate Action 100+ Framework serves as the best guide for TCFD-aligned disclosures across all industries. The SEC should also incorporate the ten Disclosure Indicators in the CA 100+ Net Zero Company Benchmark into its climate disclosure rules."

ISS

"While company reporting has developed and improved over the last several years, there are significant regional differences in terms of comprehensiveness. As our clients are global investors, comparability is of high importance to them (and to us). We therefore welcome regulatory initiatives that seek to improve company ESG reporting as well as any efforts on the international level to harmonize and standardize reporting."

Walmart

"As the Commission considers rules requiring disclosures, though, it should keep in mind that the materiality of this information differs from industry to industry and company to company; for that reason, we believe that **specific targets and metrics should be required in a Commission filing only where material**."

EY

"When it considers whether to require reporting under a particular framework, we believe the SEC should compare the framework's disclosure threshold to the threshold for other SEC disclosure requirements."

CalPERS

"We expect companies to provide integrated representations of operational, financial, environmental, social, and governance performance in terms of both financial statement and non-financial statement results and prospects. However, **the current disclosure regime for corporate reporting falls short of our expectations as investors**, and we believe that companies should disclose better information in regulatory reports so that shareowners can more easily identify, assess and manage climate risk and opportunity."

SOCIETY for Corporate Governance

"The Society believes that the SEC's existing principles-based disclosure scheme rooted in materiality is the best approach to provide investors with the information they need about companies and their securities offerings to make informed investment and voting decisions… **new disclosure mandates are not needed** to ensure that companies provide reliable information on climate change risks… **The Society believes there is no need to impose new disclosure rules on top of these oversight mechanisms**, which have served as an effective check on public companies and benefited the capital markets for many decades."

Momentum Builds Towards Rule 10b5-1 Reform

In February 2021, three Senate Democrats led by Elizabeth Warren asked Acting SEC Chair Lee to review and reform 10b5-1 plans in response to concerns of alleged potential abuse by senior executives, particularly in the healthcare industry.

Pfizer CEO Albert Bourla was criticized by Senator Warren and others for selling more than 60% of his Pfizer shares, valued at about $5.6 million, the same day that Pfizer announced the 90% effectiveness of their COVID vaccine.

The shares were sold pursuant to a Rule 10b5-1 plan, which Bourla amended the day before the clinical trial results were announced.

ROCK CENTER PAPER ON 10b5-1

— In January 2021, a highly publicized working paper from The Rock Center for Corporate Governance at Stanford University identified three “red flags” associated with 10b5-1 abuse:

- Short cooling-off periods
- Plans that cover a single block trade
- Plans that are adopted and commence trading immediately prior to earnings announcements

— The paper examined over 20,000 Rule 10b5-1 plans and found that a short interval between plan adoption and the first trade increased the likelihood of opportunistic trading

— The authors recommended a 4-6 month cooling-off period and eliminating single-trade Rule 10b5-1 plans

“The SEC should explore options to better align executives’ incentives with those of shareholders and the public by considering enforcing penalties when executives benefit from short-term windfalls that do not translate into long-term gains… The SEC could consider working with Congress to modify the rule to cover profits obtained through 10b5-1 sales that follow disclosure of material information that cause share prices to fall in the period immediately following the disclosure.”

Gensler Comments on Rule 10b5-1 Reforms

PREPARED REMARKS AT THE WSJ CFO SUMMIT & SEC IAC MEETING

— SEC Chair Gary Gensler recently spoke on the need to "freshen up" Rule 10b5-1 in prepared remarks at the WSJ's CFO Summit and SEC Investor Advisory Committee meeting

Gensler had four specific observations on the current Rule 10b5-1, which in his view have "led to real cracks in our insider trading regime."

1. **No mandatory cooling off period**
   - Cited Commissioner Crenshaw proposal of 4-6 month cooling off period and Rock Center working paper finding that ~14% of restricted stock sales pursuant to 10b5-1 plans initiated within 30 days of plan adoption, and ~40% of sales initiated within first 60 days
2. **No limitations on when plans can be canceled**, which can lead executives to cancel a plan when they have MNPI. This seems "upside down" to Gensler
3. **No mandatory disclosure requirements** regarding adoption, modification or terms of Rule10b5-1 plans
4. **No limits on the number of 10b5-1 plans insiders can adopt**
   - Gensler concerned executives may think they have a "free option" to pick the most favorable plan

Gensler also asked the staff to consider other reforms, such as how these plans intersect with share buybacks

III. Other Developments in Climate

Green, Social and Sustainable Bonds

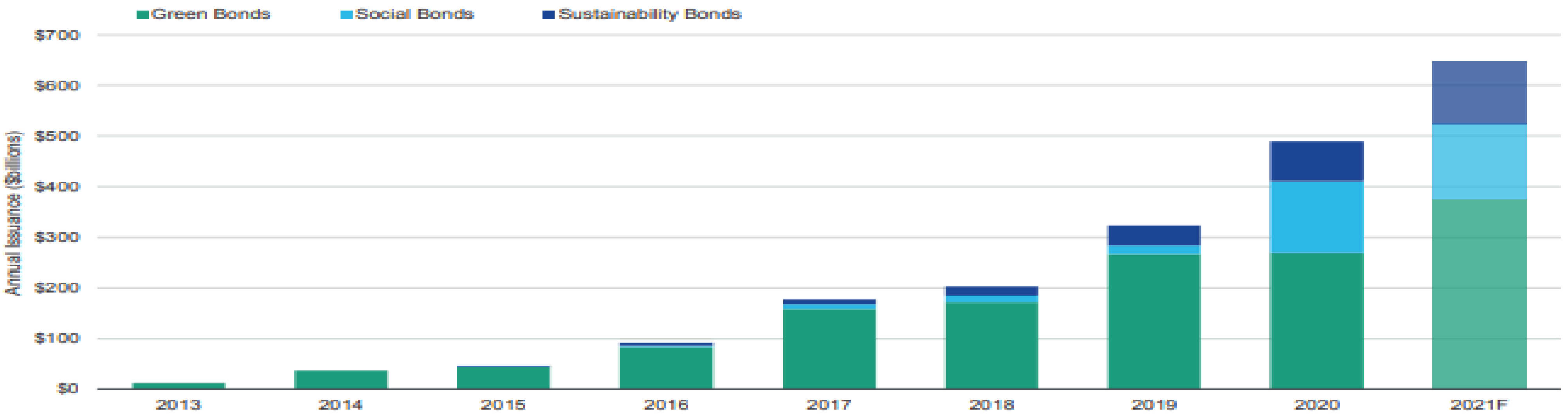


Figure 1: Sustainable bonds to hit record $650 billion in 2021

Sources: Moody's Investors Service, Climate Bonds Initiative, Dealogic

- Green, social, and sustainability bonds are "use-of-proceeds" instruments, whose proceeds are typically earmarked to finance eligible environmental and social projects
- Growth in issuance volumes and issuer diversification is continuing in the green, social and sustainability bond markets
- Moody's expects ESG bond issuance to reach a record $650 billion in 2021, a 32% increase over the $491 billion in 2020
- International Capital Market Association (ICMA): Green Bond Principles (CBP) and Social Bond Principles (SBP) lay out helpful guidelines focused on transparency, disclosure and reporting
- Alphabet, parent company of Google, issued inaugural $5.75 billion sustainability bonds in August 2020: proceeds to be used for Google's various environmental and social initiatives, including projects promoting clean energy, green buildings, affordable housing, commitment to racial equity, support for small businesses, and COVID-19 crisis response
- In September 2020, Suzano S.A. issued the first KPI-linked bonds in the Americas, which includes a target reduction of greenhouse gas emissions

Source: Moody's Investors Service

Say-on-Climate Proposals

Company	Proponent	% FOR	ISS / GL	Voting Bulletins
Aena	**TCI**	**98.15%**	FOR / FOR	**BLK**: "This is inherently consistent with our expectations that companies have a plan to transition their business models and to explain and justify progress against the plan in their annual reporting." **Vanguard**: "The shareholder proposal was addressing a material risk and involved a topic that we did not believe the company had sufficiently focused on." **SSGA**: "While we do not currently endorse an annual advisory climate vote, we would be prepared to support such a proposal at companies that have not provided investors with meaningful climate-related disclosure"
Canadian Pacific Railway Company	**TCI**	**85.36%**	FOR / FOR	**BLK**: "Notably, the company has proposed that even if the shareholder proposal does not receive at least majority support, it will continue to proactively manage the climate plan"
Moody's	Management	**98.81%**	FOR / ABSTAIN	**BLK**: "Moody's has been explicit that this vote is advisory and that oversight and management of the company's decarbonization strategy remains with the board and executive management, not shareholders"
Charter Communications	**TCI**	**38.96%**	FOR / AGAINST	**BLK**: "BIS voted for this proposal because it addresses our expectations that companies should have clear policies and action plans to manage climate risk and provide a roadmap towards stated climate ambitions and targets."
S&P Global	Management	**99.50%**	FOR / ABSTAIN	No published voting bulletins
Union Pacific Corp	**TCI**	**31.64%**	AGAINST / AGAINST	**BLK**: "We encourage the company to report in line with the recommendations of the TCFD." **Vanguard**: "We concluded that the proposal's request that the company produce its first report within 60 days of the 2021 annual meeting was an unreasonable time frame."
Booking Holdings	**As You Sow**	**37.5%**	FOR / FOR	No published voting bulletins
Monster Beverage Corporation	**As You Sow**	**7.0%**	AGAINST / AGAINST	No published voting bulletins

ISS Benchmark Reports for Say-on-Climate

ISS has not yet issued a formal policy statement on Say-on-Climate, but thus far their benchmark reports show support for Say-on-Climate proposals for all proposals except Union Pacific.

“[Moody’s] governance structure for addressing and dealing with the climate topics is transparent and appears robust. There is a commitment going forward to annually report its progress toward its goals and to seek shareholder consultation at least once more in 2022. Therefore, this item warrants support.”

“Shareholders would benefit from an annual advisory vote which would provide a means of assuring shareholders that the board and management are taking seriously the physical and transition risks associated with climate change and that the company’s business practices are in line with pathways that would enable Paris-agreement-type GHG emissions reductions goals.”

“S&P's disclosure and practices establish it as a market leader in terms of climate transition planning. The climate transition plan includes clear targets for 2025 and the governance structure for addressing and dealing with the climate topics is transparent and appears robust. There is a commitment to pursue this exercise of reporting and shareholders' consultation, at least once more in 2022. Therefore, this item warrants support.”

“Investors would benefit from more information on the company’s future GHG reduction plans… An advisory vote would also provide investors an opportunity to express their views on whether the plan is meeting expectations. However, the proponent is asking for the company to publish a GHG emissions reduction plan aligned with TCFD guidelines within 60 days of its annual meeting. The timeline within which the proponent would like such a plan to be put in place and published is unrealistic and unduly burdensome… **This proposal does not warrant support at this time.**”

Glass Lewis Will Generally Recommend Against Say-on-Climate

GLASS LEWIS

On April 27, 2021, Glass Lewis issued a blog post stating that they will evaluate say-on-climate on a case-by-case basis, but will generally recommend AGAINST say-on-climate proposals in 2021 due to a number of concerns.

— "We are concerned that it could lead to scenarios where some investors, who may not have the capacity or technical ability to analyze these plans, **provide a rubber stamp for climate strategies that are out of alignment with broader climate goals**"

— "Further, in certain markets, there could also be potential legal concerns. For example, as Michael Garland of the New York City Pension Funds noted on Glass Lewis' recent webinar, support for a corporate climate plan '**might jeopardize our right to take legal action in the future**, if those disclosures were ever revealed to be fraudulent in some way and we had somehow given them our seal of approval.'"

— "A potential unintended consequence may be that when shareholders are asked to approve a company's overall business strategy in a single vote painted with broad brush strokes**, they may unintentionally sign off on certain aspects of strategic plans without a full and reasoned analysis of the effects of those plans**. Until there is greater standardization of Say on Climate votes, whether through regulation or codified best practice guidelines, we believe shareholders should approach these proposals with caution, recognizing that their votes may be interpreted as sign off on nuanced aspects of a company's strategy."

"Given these concerns, during the 2021 proxy season, we will generally recommend **AGAINST** management and shareholder proposals requesting that companies adopt a policy that provides shareholders with an annual Say on Climate vote on a plan or strategy."

Other Perspectives on Say-on-Climate

Dodge & Cox

Dodge & Cox's Proxy Voting Policy on Climate Disclosure

— "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

Norges supported Say-on-Climate at Aena

— Their rationale was "concern regarding effective boards or shareholder protection."

CalPERS

CITY OF NEW YORK · OFFICE OF THE COMPTROLLER

CalPERS, NYCC

— A Glass Lewis webinar stated that CalPERS, NYS Common Retirement Fund and New York City Comptroller representatives had reservations with Say-on-Climate

— The pension funds at the Glass Lewis event were concerned that it **limited board accountability for companies' climate strategies**

On January 5, 2021, Harvard Business School Professor Robert Eccles posted a Forbes opinion article stating that Say-on-Climate will likely insulate director from climate accountability due to an overreliance on disclosure alone.

Eccles states that Say-on-Climate "creates an enormous burden on investors who then have yet one more issue to vote on during proxy season when in fact their most important role is to ensure Board accountability."

IV. Institutional Investor Guidelines and ESG Frameworks

What Stakeholders Are Looking For

Investors are increasingly looking for companies to be able to articulate key material ESG risks and opportunities within their industry.

— A June 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

— One of BlackRock's KPIs calls on companies to articulate how they are aligned with the Paris Climate goals. They also ask companies to provide TCFD disclosure, including scope 1 and 2 emissions (and scope 3 for carbon-intensive companies), along with GHG emission reduction targets

— State Street had over 70 diversity-related engagements in H2 2020, and will begin taking voting action against committee chairs at S&P 500 companies that do not disclose and contain a diverse board

A 2021 Nasdaq study of thirty institutional investors (combined over $35 trillion in AUM) shows that many investors favor SASB and TCFD as part of their stewardship frameworks.

The investors in the Nasdaq survey noted that SASB offers comparability across sectors and could be a useful starting point for companies new to ESG due to SASB's materiality lens.

According to a 2021 Morrow Sodali survey, three quarters of institutional investors stated that TCFD was their preferred ESG reporting framework.

Sources: Nasdaq (2021), Morrow Sodali Institutional Investor Survey (2021)

Climate Change – Investor Guidelines

CLIMATE INSIGHTS FROM INSTITUTIONAL INVESTORS

Investors warned boards that they should expect increased oversight and disclosure on transitioning to a low-carbon economy throughout the 2021 proxy season, which largely held true in their voting patterns and vote bulletins.

BlackRock's Annual Letter to CEOs continued to emphasize that climate risk is investment risk and called on companies to disclose a plan for how their business model will be compatible with a net zero economy (one where global warming is limited to well below 2ºC) and how that plan is incorporated into long-term strategy and reviewed by the board of directors. BlackRock stated its support for a single global disclosure standard, but in the meantime companies should continue to provide TCFD and SASB aligned reports

Vanguard issued an Insight Report on climate risks that emphasized the long-term investment risks of climate change. They expect companies to have a climate-competent board that can institute clear climate-related targets, with an oversight on climate progress both within the company and relative to peers. They also support TCFD disclosure as the global standard

State Street's main priorities for 2021 include the systemic risks associated with climate change and its plans to focus on specific companies that are especially vulnerable to the transition risks of climate change, while continuing ongoing engagement with companies in other sectors that, while not as carbon intensive, also face risks such as the physical impacts of climate change

Fidelity's 2021 Proxy Voting Guidelines state that they "incorporate environmental and social issues into our evaluation of a company, particularly if we believe an issue is material to that company and the investing fund's investment objective and strategies." Their separate ESG Statement of Policy states that they generally support management of companies to create long-term shareholder value, but may form their own views on strategy and governance

Climate Change – BlackRock's ESG Push in 2021

BLACKROCK'S VOTING NUMBERS

- According to Alliance Advisors, BlackRock funds have backed 91% of environmental proposals, 23% of social proposals and 26% of corporate governance related proposals out of the 170 ESG shareholder proposals from the first half of the 2021 proxy season
  - During the same period of 2020, BlackRock backed 6% of environmental proposals, 7% of social proposals and 17% of corporate governance proposals
- In Q1 2021, BlackRock voted against 53 directors and 47 companies for climate-related concerns
- BlackRock also supported 75% of environmental and social shareholder proposals in Q1 2021

BLACKROCK ENGAGEMENT

- In 2021, BlackRock expanded their Climate Focus Universe to include over 1,000 carbon-intensive companies that represent 90% of the global scope 1 and 2 GHG emissions in BlackRock's holdings
- BlackRock held nearly 1,000 engagements with over 800 companies in Q1 2021, a 24% increase year-on-year
- Climate risk concerns comprised the majority of engagements (712 engagements), a 52% increase compared to Q1 2020

> ***"Where corporate disclosures are insufficient to make a thorough assessment, or a company has not provided a credible plan to transition its business model to a low-carbon economy…we may vote against the directors we consider responsible for climate risk oversight."***

Source: Alliance Advisors

Climate Change – Other Investors Take

Vanguard

Engagement and Voting

- According to Proxy Analytics, Vanguard supported 10% of E&S shareholder proposals in 2020
- Vanguard engaged with over 250 companies in carbon-intensive industries in 2020, oftentimes on the subject of climate risk
- Despite the belief that Procter & Gamble's board was taking climate-risk and deforestation seriously, Vanguard still supported a deforestation-related shareholder proposal due to the belief that the proposal would aid in the company's goals in the area of supply chain management and palm oil production
- Vanguard supported shareholder proposals asking UPS and J.B. Hunt to issue reports describing how the companies plan to align with the Paris Agreement

TCFD

- Vanguard believes that companies should utilize TCFD framework for disclosing strategy and targets

"At companies where climate matters present material risks, the funds are likely to support shareholder proposals that seek reasonable and effective disclosure of greenhouse gas emissions or other climate-related metrics."

State Street Global Advisors

Engagement and Voting

- Since 2014, State Street Global Advisors (SSGA) has engaged with over 600 companies across multiple climate-related issues, including 148 engagements in 2020
- SSGA's 2020 Annual Report shows that they supported 50% of shareholder proposals requesting that companies issue reports on climate risks and their plans to reduce GHG emissions
- State Street also supported 66% of climate-related lobbying report proposals

The R-Factor

- In 2019, State Street launched the R-Factor as their ESG scoring system. In 2020, 698 companies requested their R-Factor from SSGA
- SSGA voted against directors at 14 companies for poor R-Factor scores in 2020

"[Climate risk management] is not happening at a pace commensurate with the challenge. We believe more fluency is needed on boards in order to adequately manage climate risks and opportunities."

Fidelity Investments

Engagement and Voting

- According to Proxy Analytics, Fidelity supported 28% of E&S shareholder proposals in 2020
- Fidelity has a team of six dedicated ESG analysts in addition to their regular analyst team
- In 2019, Fidelity's analysts held an average of 19 in-house company meetings per day

ESG Ratings

- Fidelity has developed proprietary data to assess governance, emissions and D&I as part of their ESG rating system

"We believe that the most immediate opportunity to better address climate risks is to encourage transparency through the disclosure of material and accurate information."

Board Diversity – Institutional and Activist Investors

BlackRock

— BlackRock released their approach to board diversity in a March 2021 commentary

— In evaluating diversity, BlackRock will consider various criteria such as market expectations, the addition of diverse directors in the previous year, time-bound targets for increasing diversity, board tenure and public statements on D&I

— BlackRock encourages companies to have at least two women on their boards

— In 2020, BlackRock voted against management more than 1,500 times for insufficient diversity

Vanguard

— In August 2019, Vanguard issued a statement asking for companies to disclose the ethnic composition of their boards

— In December 2020, Vanguard stated they may vote against directors at companies "where progress on board diversity falls behind market norms and expectations"

— Boards with 0% board diversity, 0% racial or ethnic diversity or a lack of board diversity disclosure policy will be at the highest risk of voting action

— Vanguard issued guidance for boards that lag in diversity, such as:

- Expand the director search beyond sitting or former CEOs to encompass alternative subject matters
- Increase the board size, even if only temporarily, to allow for additionally highly qualified diverse candidates

State Street Global Advisors

— 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"

— SSGA's 2021 guidelines state that they will vote against Nom. & Gov. Committee Chair of any S&P 500 company that does not disclose, at minimum, the gender, racial and ethnic composition of its board

— SSGA will expect Russell 3000 and TSX listed companies to have at least one female board member

— In 2022, it will vote against the Chair of the Nominating & Governance Committee at companies in the S&P 500 and FTSE 100 that do not have at least 1 director from an underrepresented community on their board

Fidelity Investments

— Fidelity will evaluate board composition and generally will oppose the election of some or all directors if there are no women on the board or if a board of ten or more members has fewer than two women directors

— Fidelity has an analytical framework focused on the pillars of leadership, commitments, culture and pipeline to evaluate diversity

— They believe oversight of D&I will be easier once companies disclose more on that front

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 September 2020, the NYCC announced that 34 S&P 100 companies will now publicly disclose Consolidated EEO-1 reports as a result of their campaigns

Sources: State Street 2021 Proxy Guidelines, Vanguard Investment Stewardship Insights: A continued call for boardroom diversity (December 2020), BlackRock: Our Approach to Engagement on Board Diversity (March 2021), Annual Report, New York City Comptroller; Fidelity 2021 Stewardship Report

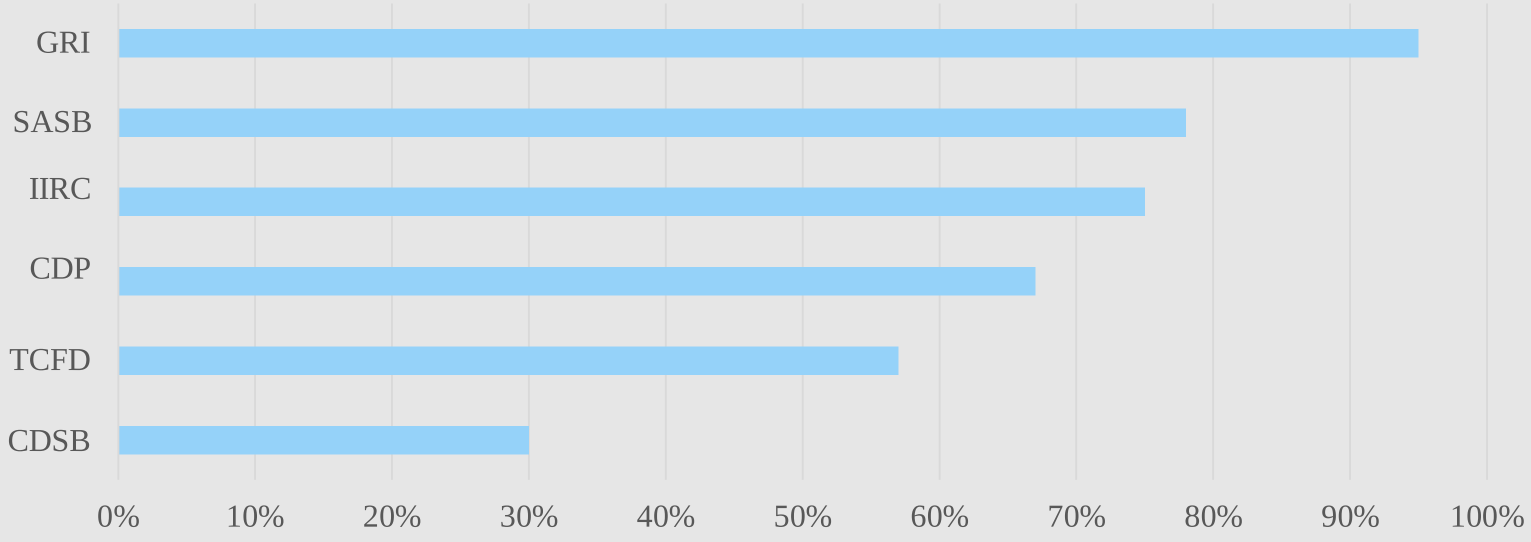
ESG Reporting Framework & Disclosure Considerations

Multiple competing frameworks: consider industry-specific framework & reporting metrics

- SASB
- ICMA
- Integrated Reporting Trends
- UN Sustainable Development Goals (SDGs)
- Task Force on Climate-related Financial Disclosures
- Global Reporting Initiative

Both NYSE and Nasdaq are part of the Sustainable Stock Exchange Initiative (SSE), a UN partner program designed to increase ESG reporting and sustainable investment at various stock exchanges. So far, 55% of the SSE exchanges have published ESG reporting guidance for their listed companies.

Reporting instruments referenced in stock exchange guidance documents



Sources: Nasdaq (2021), Sustainable Stock Initiative

Proxy Advisory Firms – ESG Ratings and Guidelines

ISS

Key Developments to ESG Policies:

— ISS will generally recommend against Nom & Gov Chairs of boards where there is no apparent racial or gender diversity effective for meetings on or after February 1, 2022

—Their 2021 policy states that they will generally vote for resolutions requesting additional climate emission disclosure

ISS has a host of ESG products and rating services, in particular their Governance and E&S QualityScores, which rank companies on a risk-based decile score.

GLASS LEWIS

Key Developments to ESG Policies:

— Glass Lewis (“GL”) will generally recommend against Nom & Gov Chairs of boards with greater than six members that contain fewer than two female directors beginning on January 1, 2022

— Beginning in 2021, GL reports will include an assessment of company proxy disclosure relating to board diversity, which may inform voting recommendations

— GL will generally recommend against Say-on-Climate advisory votes

GL uses Sustainalytics data in their ESG profiles, but reviews their voting recommendations on a case-by-case basis.

Integrated Reporting and GRI Guidelines

Integrated reporting combines the different areas of reporting (financial, management commentary, governance and compensation and sustainability reporting) into a single picture that explains the ability of a company to create and sustain value

— The International Integrated Reporting Council aims to have a single integrated report that would be a company's primary report

Often integrated reporting concerns arise in the ESG and sustainability area, where there are concerns about how to disclose material risks that do not fit squarely in the balance sheet, management commentary or current disclosure regimes

— A recent speech by Commissioner Hester Peirce rebuts the idea that ESG reporting is comparable to financial reporting, in part because it is difficult to compare factors across sectors, and often among competitors

Currently, there is little resembling a standard or framework for integrated reporting, although many feel that the GRI Sustainability Reporting Standards are the next-closest

— GRI Standards provide a holistic framework that addresses ESG reporting for companies

- GRI Standards feature a modular, interrelated structure that represents best practices for reporting on ESG issues
- Companies that participate in the GRI framework typically self-report their compliance with GRI standards

Other Stakeholders – Perspectives of ESG

“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.”

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

In December 2020, Wellington Management founded the Net Zero Asset Managers Initiative, which is committed to working with clients toward net-zero emissions by 2050. They support TCFD frameworks to mitigate climate risks, but note that disclosures so far have been incomplete and inadequate in addressing the physical risks posed by climate change.

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.

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 September 2020, the NYCC announced that 34 S&P 100 companies will now publicly disclose Consolidated EEO-1 reports as a result of their campaigns

V. 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 Nom/Gov Committees found that enhancing racial and ethnic diversity was the top priority for their committee in 2020, with 61% of respondents not being satisfied with their current board diversity.

Companies are responding by bringing on new directors

— **413** new independent directors were elected to S&P 500 companies in 2020
  - 59% of new directors are women or minority men, the same as 2019

Some are increasing their board size to accommodate new directors

— Of the 272 boards that appointed new independent directors in 2020, 28% increased the size of the board to add women

Companies are expanding searches for new directors

— **25%** of S&P 500 companies consider a commitment to diverse directors in their candidate search

— **28%** of all new directors are first-time directors
  - 59% of the first time directors are women and/or minority directors

Boards are looking at their own boards for diversity gaps

— **66%** of S&P 500 boards assess the skills, experience and expertise of existing board members

Shift in director skills and experiences to align with strategic goals

— **69%** of new directors are actively employed

— Directors with experience in finance and particularly investing/investment management experience are growing, with 27% of incoming directors being financial experts

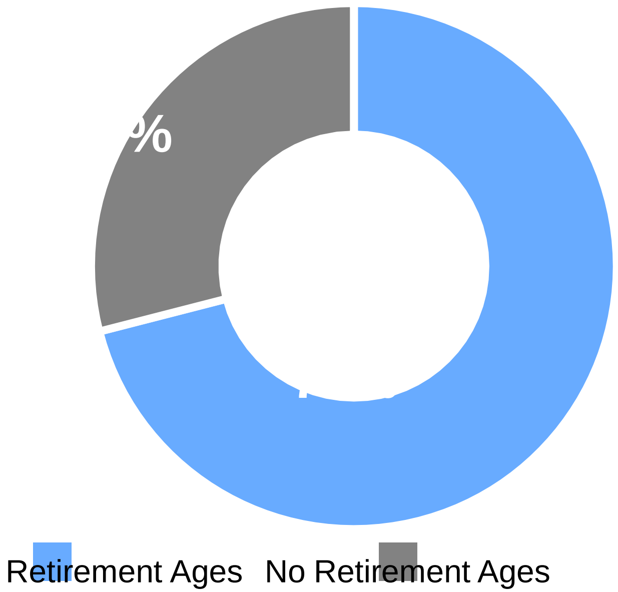
— Only 16% of new directors are former CEOs

— **38%** of boards include a director diversity matrix in their proxies

Source: 2020 Spencer Stuart Board Index

Company Refreshment Policy Frequency

Mandatory Retirement Age Policies in the S&P 500

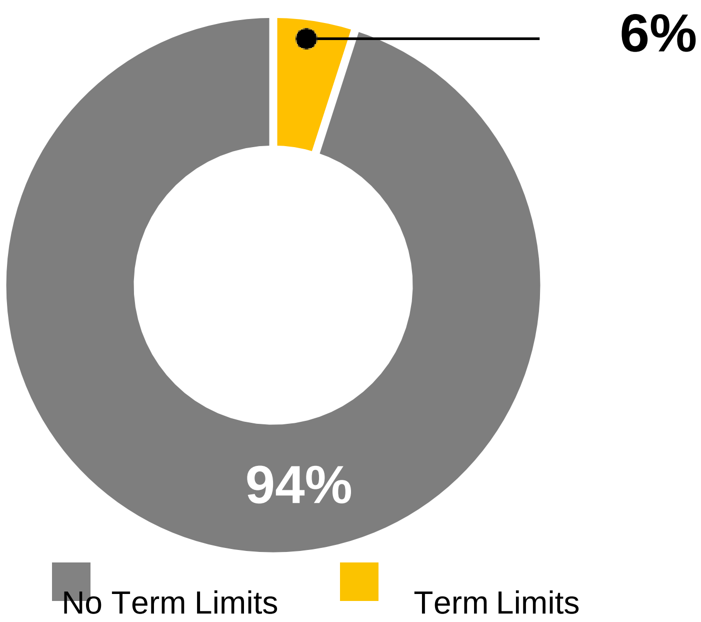


Retirement Age Trends

— 48% of boards have a mandatory retirement age of 75 or older, compared to 19% a decade ago

— 77% of the independent directors who left S&P 500 boards in the past year served on boards with mandatory retirement ages

Mandatory Term Limit Policies in the S&P 500



Term Limit Trends

— 83% of companies with term limits set the limit at 15 years or less

— 30% of companies do not mention term limits in their corporate governance guidelines

Source: 2020 Spencer Stuart Board Index

Director Overboarding Policies

Investor / Advisor	Number of Boards for Director	Number of Boards for NEOs
BlackRock	More than 4	More than 1 besides their own (includes “individuals whose full-time employment involves responsibility for the investment and oversight of fund vehicles, and those who have employment as professional investors and provide oversight for those holdings”)
Vanguard	More than 4	More than 1 besides their own
STATE STREET GLOBAL ADVISORS	More than 4 (More than 3 for board chairs or lead independent directors)	More than 2 (Service on a mutual fund board is not considered. Does not disclose if the two boards are in addition to their own)
ISS	More than 5	More than 2 besides their own (Only mentions CEOs)
GLASS LEWIS	More than 5	More than 2 besides their own

Glass Lewis, with certain exceptions, will recommend against an audit committee member who sits on more than three public company audit committees, unless they are a retired CPA, CFO or similar, in which case the limit is four committees.

VI. Other Governance Developments

ESG-Related Litigation

THE ESG LITIGATION LANDSCAPE

Board Diversity Cases

— Derivative litigation concerning board and workplace diversity

Public Disclosure Cases

— Litigation and regulatory action concerning misleading ESG-related disclosures

Human Rights Cases

— Litigation concerning human rights violations in supply chain

Climate change cases

SHELL LITIGATION IMPACT ON U.S. LAW

— Groundbreaking litigation, but is unlikely to impact U.S. ESG legal landscape in short term

- Claims brought by non-traditional claimants
- Decision based on Dutch Civil Code
- U.S. Courts likely to find climate change policy is responsibility of political branches

— It is still foreseeable that plaintiffs in the U.S. may try to bring similar suits to influence climate change policy

ESG LITIGATION RISK FOR FINANCIAL INSTITUTIONS

— Reputational as much as financial risks

— Potential risk as underwriters, lenders, or investment advisors for third-parties' ESG-related conduct

— Potential litigation risk for public ESG-related disclosures

— Potential supply chain exposure

Cybersecurity Enforcement

PROJECTIONS FOR 2021

- —In general, we expect a continuation of the shift away from viewing hacked companies as only victims ar holding them responsible for perceived deficiencies in their cybersecurity programs and other implicated
  - Recent OFAC, FinCEN, and DOJ guidance on ransomware and purchasing data on the "Dark Web" are consistent with this trend
  - The SEC will continue to consider cybersecurity as an examination priority, and has said that a data breach or other incident can potential sufficient internal controls
  - Recently, however, the SEC sent out inquiry regarding potential disclosure omissions relating to SolarWinds and other hacks
- —As agencies get more technical expertise and experience in cybersecurity issues, expect heightened scrut more detailed orders in enforcement actions
- —The OCC brought its first enforcement actions against banks in connection with data security incidents, i penalties on Capital One and Morgan Stanley
- —State Attorneys General will continue to be aggressive in connection with both data security and privacy

2020 Cybersecurity and Privacy Enforcement Actions

In August 2020, the DOJ charged Uber's former Chief Security Officer with obstruction of justice and misprision of a felony for allegedly attempting to cover up a 2016 data breach during the course of an investigation by the Federal Trade Commission.

—The prosecution represents an aggressive step by federal authorities in bringing charges under the obstruction and felony misprision statutes, the latter of which is a relatively rarely used statute in white-collar cases

In August 2020, the Office of the Comptroller of the Currency ("OCC") assessed an $80 million civil monetary penalty and entered into a cease-and-desist order with the bank subsidiaries of Capital One, following a 2019 cyber-attack.

—The OCC actions represent the first imposition of a significant penalty on a bank in connection with a data breach or an alleged failure to comply with the OCC's guidelines relating to information security

Universal Proxy

SEC REOPENS COMMENT PERIOD

On April 16, 2021, the SEC voted to reopen the comment period on the proposed Universal Proxy Rule from October 2016.

The initial proposed rules included:

— Requiring the use of universal proxy cards in all non-exempt director election contests

— Revising the consent required of a bona fide director nominee

— Eliminating the short slate rule

— Prescribing certain filing, notice, and solicitation requirements of registrants and dissidents when using universal proxy cards

— Prescribing formatting and other requirements for universal proxy cards

— The Society for Corporate Governance issued a Comment Letter on the Universal Proxy in November 2018. In their letter, they argue:

- Nominating shareholders should own a minimum amount of shares to gain access to a universal proxy card
- Universal proxy cards should be required only for election contests and should not apply to “vote no” or “withhold the vote” campaigns or other types of shareholder solicitations
- The deadline by which a nominating shareholder must provide notice to the company should be governed by the company’s bylaws (to the extent they contain advance notice requirements)

Francesca L. Odell

Partner, New York

CONTACT INFORMATION

+1 212 225 2530
flodell@cgsh.com

EDUCATION

New York University School of Law, J.D.
University of Wisconsin, B.A.

LANGUAGES

Portuguese
Spanish

Francesca Odell's practice focuses on corporate transactions, particularly capital markets, and a range of corporate governance matters.

She also has deep experience with transactions in Latin America, particularly in Brazil, including capital markets, mergers and acquisitions, restructurings, private equity transactions and project finance.

Shortlist for "Corporate Governance Lawyer of the Year"
Euromoney Women in Business Law, 2021

"Best in Corporate Governance" Finalist
Euromoney Americas Women in Business Law Awards, 2020

Leading Capital Markets Lawyer
Chambers Global, Chambers Latin America, The Legal 500 Latin America, The Legal 500 US

"She is a total professional and is completely considerate of our needs. She is very responsive and attentive."
Chambers Latin America, 2019

Leading Corporate/M&A Lawyer
Chambers Global, Chambers Latin America, The Legal 500 Latin America, Latin Lawyer 250

NOTABLE EXPERIENCE

— Regularly advises boards of directors and management on a variety of topics, including:
  - disclosure and compliance
  - stock exchange listing requirements
  - board composition and director independence
  - shareholder engagement and activism
  - shareholder proposals and proxy season trends
  - management and director succession planning
  - environmental, social and governance (ESG) issues

— Representative clients:
  - American Express
  - American Tower
  - Applied Materials
  - Bed Bath & Beyond
  - Clorox
  - ConEdison
  - Copa Airlines
  - Copel
  - EagleBank
  - Mercado Libre
  - Nexa Resources
  - Petrobras

— Petrobras on a variety of matters, including its SEC reporting, corporate governance, litigation, enforcement and financing matters in connection with "Operation Carwash"

— SEC-registered debt and equity offerings by numerous issuers, including Afya Ltd, Bancolombia, Brookfield Incorporações, Copa Holdings, Netshoes, Nexa Resources, Oi, and TAM Airlines, among others

— Abbott Laboratories on the non-U.S. aspects of its $4.3 billion sale of its ophthalmology division to Johnson & Johnson

— Acon Investments in its LBO of GBarbosa Comercial from Royal Aholdand in the subsequent sale of GBarbosa to Cencosud

— Compass Minerals in its purchase of a 35 percent interest in Produquímica Indústria e Comércio

— DIRECTV Latin America in numerous JV agreements and M&A transactions

— General Mills in its acquisition of Yoki Alimentos and the sale of its Venezuelan business

Helena K. Grannis

Counsel, New York

CONTACT INFORMATION

+1 212 225 2376
hgrannis@cgsh.com

EDUCATION

New York University School of Law, J.D.
Cornell University, B.A.

Helena K. Grannis’ practice focuses capital market transactions and corporate governance.

She regularly advises companies on corporate governance matters including disclosure matters, environmental, social and governance (ESG) issues, board composition and director independence, stock exchange listing compliance matters, shareholder proposals and proxy matters and shareholder engagement.

Her work spans numerous industries, including financial institutions; healthcare; technology; and retail.

Recognized for Corporate Governance
The Legal 500 U.S.

Leading Capital Markets Lawyer
The Legal 500 U.S. and *IFLR 1000: The Guide to the World's Leading Financial Law Firms*

NOTABLE EXPERIENCE

— Regularly advises clients on corporate governance and disclosure matters, including for Abbvie, Albany International, Bed Bath & Beyond, Clorox, Honeywell, HSBC USA, LivaNova, MDC Partners, Polaris, Post Holdings, Sixth Street Specialty Lending, and Tronox

— Astound Broadband in a $1.9 billion notes offering consisting of $900 million of senior secured notes and $1 billion of senior unsecured notes

— Honeywell in connection with the spin-off of its home automation solutions business, over $10 billion of notes offerings and a concurrent abbreviated cash tender offer, and in over €7 billion Eurobond offerings

— Cushman & Wakefield and its principal shareholders in the company’s $765 million initial public offering and multiple follow-on offerings and its inaugural secured notes offering

— TPG Specialty Lending (now Sixth Street Specialty Lending) in its $112 million initial public offering and concurrent $50 million private placement, in an approximately $74 million follow-on offering, and in over $400 million of senior and convertible notes and equity offerings

— The carve-out and sale of Surgical Care Affiliates of HealthSouth to a leading private investment firm, and in its subsequent $270 million initial public offering

— Copa Holdings, S.A. in a $350 million offering of convertible senior notes in a private offering to qualified institutional buyers

— Biomet in its propose
KKR and TPG in the
secondary sales by th

— Hellman & Friedman
Management and SEC

— HSBC in multiple SE
$8 billion

— BNP Paribas in multi

— Allergan in its $30 bil
$70.5 billion acquisiti
accelerated share repu
offering and tender of

— The Hartford on mult
Allianz and the $3.3 b
regulatory, disclosure

— The underwriters, stru
transactions by AIG t

Governance Watch

Highlights from the 2021 Proxy Season – and How to Prepare for the Challenges Ahead

July 26, 2021