Governance Watch

The New Era of Shareholder Activism

June 28, 2021

Hosted in Collaboration with Cleary Gottlieb

CLEARY GOTTLIEB

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Some of the critical topics we will be addressing today

- Main trends in shareholder activism thus far in 2021
- How the pandemic has shaped activism today
- ESG as a wedge issue in proxy fights, including the lessons to be learned from ExxonMobil, and other key trends in ESG activism
- The latest developments in deal-related activism – including the growing use of “bumpitrage” – and how companies can respond
- The changing dynamics and cast of players in shareholder activism in Europe and Asia
- How management and the board can prepare for “Big A” activism

Today’s Speakers

THE CONFERENCE BOARD




Pamela Codo-Lotti
Global Chief Operating Officer - Activism & Shareholder Advisory
Goldman Sachs

Arthur Crozier
Chairman
Innisfree M&A Incorporated

James Langston
Partner
Cleary Gottlieb Steen & Hamilton LLP

Paul Washington
Executive Director, ESG Center
The Conference Board

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Related Resources

CEO Succession Practices in the Russell 3000 and S&P 500: 2021 Edition (Report & Dashboard)

This annual report documents and analyzes succession events of CEOs of S&P 500 companies. In addition to updates on historical trends, each edition of this report features discussions of notable cases of CEO succession that took place in the calendar year prior to publication. Data is also analyzed by 11 GICS business sectors and 14 company size groups.

Director Compensation Practices in the Russell 3000 and S&P 500: 2021 Edition (Report & Dashboard)

This publication offers a comprehensive set of benchmarking data and analysis needed to inform the board pay design process. The report is complemented by an online dashboard, which enables users to delve into the most recent corporate disclosures by Russell 3000 companies and review individual elements of compensation packages, supplemental compensations for committee service and leadership roles, stock ownership and retention policies, pay limits, and deferred compensation schemes.

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.

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

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


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ESG News & Views

A podcast series brought to you by The Conference Board Environmental, Social, & Governance (ESG) Center

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Governance Watch

The New Era of Shareholder Activism

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Activism – Recent Trends

— Levels of shareholder activism declined during early days of pandemic, but have since returned to pre-pandemic levels

— The main focus of activists continue to be M&A, operational inefficiencies, capital allocation and governance considerations

— Deal activism has increased alongside the rise in M&A activity

- Sales, break-ups and bumpitrage offer activists multiple ways to win

— New and occasional activists join the fray and show they can be just as potent as name-brand activists

— E&S has opened a new front in activism battles

- In the past, E&S activism mostly took the form of shareholder proposals, behind-the-scenes engagement and wedge issues
- Today, E&S is becoming the tip of the spear as E&S figures more prominently in strategic planning and investors focus on sustainability of a business model in the transition to a low-carbon economy

First Time, Occasional Activists Loom Large

Name-brand activists remain serious threat, but shots now come from many different directions

Engine No. 1	Exxon	Bluebell Capital Partners	Danone	Arkhouse Equities / 8F / Sapir Corp Ltd	Columbia Property Trust
~$250MM AUM	**~$250 billion market cap**	**~$100MM AUM**	**~$50 billion market cap**	**$? AUM**	**~$2 billion market cap**

Campaign backed by ~$40 million investment led to election of three Engine No. 1 nominees to ExxonMobil board

Campaign backed by ~$25 million investment led to resignation of Danone CEO

Withdrew proxy contest once Columbia Property Trust announced intent to pursue strategic alternatives

TAKEAWAYS

- Multi-billion war chest and years-long track record not needed to launch activist campaign
- Occasional activists willing to pursue TSR, ESG and M&A activism
- Carefully script and do homework before in-depth engagement even if unfamiliar with stakeholder

Private Equity Hunts Large-Cap Prey

As Hostile Stigma Fades, Private Equity Becomes More Aggressive

SEPTEMBER 2020	APRIL 2021	MAY 2021
Blackstone, Global Infrastructure Partners / Kansas City Southern Lines	CVC Capital Partners / Toshiba	KKR, Stonepeak Infrastructure Partners, EQT / kpn
$21 billion	**$20 billion**	**$15 billion**
— Led to strategic bidding war — Canadian National to acquire for $34 billion	?	?

WHAT IS DRIVING LARGE, UNSOLICITED LBOS?

- Low interest rates, deep financing markets and record amount of dry powder
- Permanent capital vehicles capable of holding assets for longer, accepting of lower returns
- Companies can't assume $15-30 billion market cap puts them out of reach
- Private equity more willing to use aggressive tactics to bring targets to the table, including submission of multiple, unsolicited proposals and indiscreetly leaking

Lines Continue to Blur as Battle for Capital Intensifies

Activists want to be private equity investors, private equity investors want to be activists

Private Equity Deploys Activist Playbook	Activists and PE Partner to Put Companies in Play

Private Equity Deploys Activist Playbook

Large-cap private equity managers go constructivist

KKR / Dave & Buster's

Silver Lake / Elliott / Twitter

While some private equity managers go full activist

Sycamore Partners

Essendant Beyond Essential / Office Depot

Activists and PE Partner to Put Companies in Play

CoStar, CoreLogic / Senator, Cannae Holdings, Inc.

— Combined takeover proposal with proxy contest to replace board
— CoStar joined fray with takeover proposal
— Sold to PE consortium

NCR, Cardtronics / Hudson Executive Capital, Apollo

— Hudson Executive joined Cardtronics board in settlement
— Announced sale to Apollo-led buyout that included Hudson Executive rollover
— Topped by NCR in January 2021

Shareholders Pan Low-Premium Buyouts

Several recent LBOs have been aggressively challenged by occasional activists seeking price bump

	Vista / Pluralsight	Blackstone / Extended Stay America / Starwood Capital Group	H&F / At Home
Announcement Date	12/13/20	3/15/21	5/6/21
Deal Value	$3.3 billion	$3.3 billion	$2.8 billion
Initial Premium	22.5%	21.0%	17.0%
Initial ISS/GL Rec.:	✗	✗	?
Price Bump	11.1%	5.1%	3.0%
Final Vote	75%	85%	?

Acquirors and targets alike must be prepared and execute on strategy to sell the deal to key stakeholders

- Activists increasingly targeting low-premium, “conflicted” take privates for price bump
- Rising equity markets are not a deterrent to bumpitrage
- Go-shop also does not insulate deal from activist challenge
- Important to understand target company’s stockholder base and monitor post-announcement trading
- Acquirors should consider naked no-vote fee, voting agreements from insiders
- Selling the deal and process the target board followed is paramount

"ESG Activism" at Exxon

- On May 26, 2021 three Engine No.1-backed candidates were elected to the ExxonMobil board as part of a proxy contest that focused on ESG issues.
- Engine No.1, which owns less than 1% of Exxon's stock, nominated four candidates for election to the Exxon board in December 2020.

ENGINE NO.1

BLACKROCK VOTE

- BlackRock supported three of the four Engine No. 1 directors because "the Board would benefit from the addition of diverse energy experience to augment existing skillsets."
- BlackRock Vote Bulletin stated that they had concerns with Exxon's shareholder engagement history, energy transition strategy and a lack of specific energy industry experience on Exxon's current board.
- Exxon published a Letter to Shareholders on May 24, 2021 announcing additional commitments, but BlackRock believed more urgent action was required.

VANGUARD VOTE

- Vanguard voted in favor of two dissident director nominees from Engine No. 1.
- Vanguard and Engine No. 1 "share concerns that Exxon's risk oversight process has not led to long-term value creation."
- Additionally, they believed there was "an increasingly pressing need … for Exxon to better align its climate strategy with (1) target setting in line with global peers and (2) its public policy efforts related to climate risks."

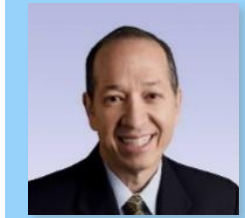
The Outcome – Three Engine No. 1 Nominees Elected

Greg Goff

— Elected with ~47% of vote
— Former Andeavor CEO
— ~40 years oil and gas experience
— Enbridge and Avient director

Kaisa Hietla

— Elected with ~50% of vote
— Geophysicist and environmental scientist
— Former executive in Nestle Renewable Products segment



Alexander Karsner

— Elected with ~40% of vote
— Executive at X (formerly Google X)
— Former US Assistant Sec. of Energy

BlackRock **6.7%**

"Exxon and its Board need to further assess the company's strategy and board expertise against the possibility that demand for fossil fuels may decline rapidly in the coming decades … The company's current reluctance to do so presents a corporate governance issue that has the potential to undermine the company's long-term financial sustainability."

Vanguard **8.2%**

"We believe that Exxon's insular culture may have contributed to areas of underperformance in the past. Over the years, we have shared with Exxon our concerns about the lack of energy sector expertise in its boardroom and questions about board independence. And for years, we did not witness sufficient progress on either front."

CALSTRS **0.02%**

"This historic vote represents a tipping point for companies unprepared for the global energy transition. While the ExxonMobil board election is the first of a large U.S. company to focus on the global energy transition, it will not be the last."

ESG Activism – Lessons Learned

ESG activism is here to stay

— ESG capital inflows and higher ESG management fees means the race to burnish ESG credentials and attract ESG capital will continue

— Stewardship efforts of key institutional investors and governance actors prioritize racial diversity, climate change and business model sustainability

— Political contribution / lobbying, de-carbonization / say on climate, and racial diversity-focused shareholder proposals have passed in record numbers as we near the end of 2021 proxy season

— SEC seems poised to adopt wide-ranging, mandatory ESG disclosures, though court challenges may well follow

But it is not just ESG for the sake of ESG – investors want both TSR and ESG outperformance

— Engine No. 1 campaign was really focused on concerns raised by Exxon's financial underperformance, sustainability of fossil fuel-oriented business model and perceived failure to adequately respond to shareholder concerns

— Danone CEO prioritized ESG, yet ousted by Bluebell Partners when ESG strategy failed to deliver superior financial returns

Activism preparedness efforts must include ESG

— Sustainability of business model should be incorporated into strategic planning

— Vulnerability assessment should examine ESG profile

— ESG disclosures should be periodically reviewed from an activism defense perspective (including relative to peers and institutional investor policies)

— Consider including ESG activist situations into broader activist tabletop exercises

— ESG investor outreach should be handled with same seriousness as other investor outreach

Will the SEC Finally Fix 13D?

THE RULE

Any person or group who beneficially owns > 5% a SEC-registered security must disclose the information required by Schedule 13D within 10 days

THE PURPOSE

"[T]o alert the marketplace to every large, rapid aggregation or accumulation of securities, regardless of technique employed, which might represent a potential shift in corporate control"

— *GAF Corp. v. Milstein*

JCPenney

10 day window

Swaps

ARCHEGOS CAPITAL MANAGEMENT

Acquired 16.5% of J.C. Penney before filing Schedule 13D

Amassed $30 billion in exposure using swaps without filing Schedule 13D

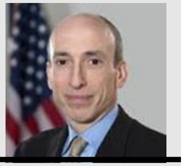
"Those rules might've been appropriate for the 1970s, but I have my doubts about whether they continue to make sense given the rapidity of current markets and technologies."

"Another area is around security-based swaps … The disclosures there aren't as robust as they are in the rest of the market."

London City Week Speech, June 23, 2021

The SEC’s Recent Push for Mandatory ESG Disclosure Requirements – Key Players

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.”

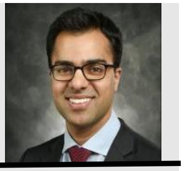
Allison Herren Lee

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.”

Climate Change – Investor Guidelines

CLIMATE INSIGHTS FROM INSTITUTIONAL INVESTORS

Investors warned boards that they would expect increased oversight and disclosure on transitioning to a low-carbon economy throughout the 2021 proxy season.

BlackRock

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 2°C) and how that plan is incorporated into long-term strategy and reviewed by the board of directors. BlackRock stated its support for a movement towards a single global disclosure standard; in the meantime companies should continue to provide TCFD and SASB aligned reports and should do so before required by regulators.

STATE STREET GLOBAL ADVISORS

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.

Vanguard

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.

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 first half 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.”***

Climate Change – Other Investors Take Action

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."

Vanguard

Engagement and Voting

- 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 Climate Agreement goals.

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."

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.

Climate Change – Shareholder Proposals

U.S. companies have seen a dramatic increase in climate change proposals. 21 shareholder proposals focused on climate change have made their way onto the meeting (up 50% from the mid-way point of 2020) and mid-way through the proxy season eight climate change shareholder proposals have been approved by shareholders (double the amount of passing proposals from the same period in 2020).

NOTEWORTHY CLIMATE 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.

Climate Change – Chevron's Scope 3 Emissions

Chevron

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 Resiliency Report with upstream emission reduction 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 emissions, which are significantly larger, show an increasing trend… According to the Climate Action 100+ Benchmark, the company doesn't meet criteria for alignment with a net-zero 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 proposals 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.

BlackRock Voting Guidelines – Responsiveness to Shareholders

BlackRock published their 2021 voting guidelines in January.

— Emphasized expectation that a board must be engaged and responsive to its shareholders, which includes acknowledging voting outcomes for shareholder proposals, director elections, compensation, and other ballot items

— May vote against the independent chair or lead independent director and/ or members of the nominating/governance committee, where a board fails to consider shareholder proposals that receive **substantial support** (as opposed to majority support in prior guidelines), and, in their view, the proposals have a material impact on the business, shareholder rights, or the potential for long-term value creation

Early meetings had strong support for certain shareholder rights related proposals – BlackRock's updated guidelines will increase pressure on companies to be responsive

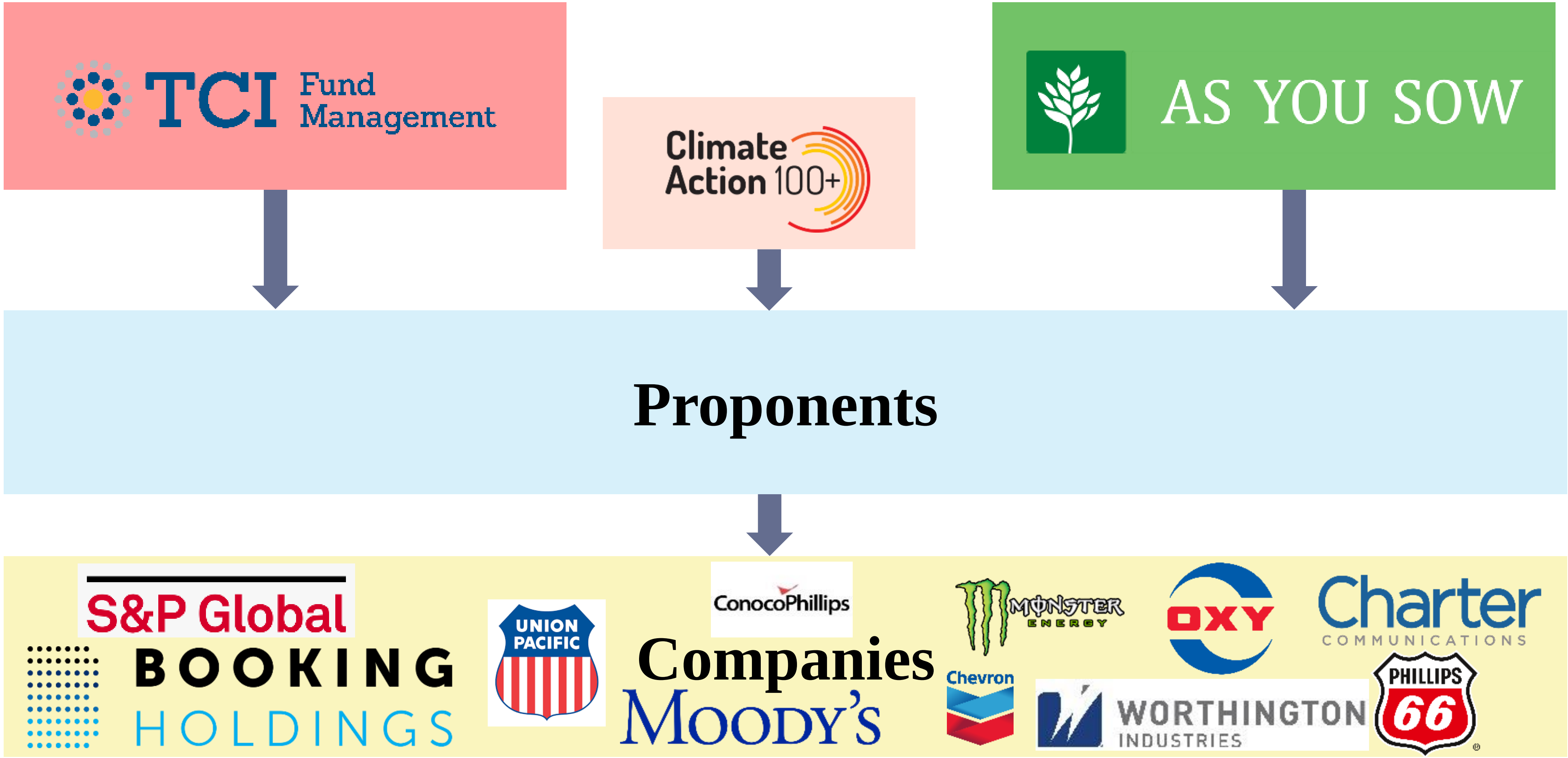
BD

Shareholder proposal by Steiner/Chevedden to lower the threshold to call a special meeting received 45.8% support. The same proposal received 40.8% support at 2020 annual meeting

VISA

Shareholder proposal by Chevedden to adopt a shareholder right to act by written consent received 40.8% support. A management proposal to approve the right for shareholders to call a special meeting received 75.4% support

Say-on-Climate Landscape



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	Pending
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	Pending
Monster Beverage Corporation	As You Sow	7.0%	AGAINST / AGAINST	Pending

ISS Benchmark Reports for Say-on-Climate

ISS

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	"[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."
Charter Communications	"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 Global	"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."
Union Pacific	"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."

Governance Watch

The New Era of Shareholder Activism

June 28, 2021