THE CONFERENCE BOARD

Governance Watch

2022 Proxy Season Preview

January 13, 2022

Hosted in Collaboration with Cleary Gottlieb

CLEARY GOTTLIEB

Cleary Gottlieb Steen & Hamilton LLP is a Member and Sponsor of The Conference Board ESG Center

THE CONFERENCE BOARD

ESG CENTER

Corporate Governance

Sustainability

Corporate Citizenship & Philanthropy

Some of the critical topics we will be addressing today

- Context
  - Recent developments at the SEC on 10b5-1 plans and share repurchases.
  - SEC guidance on shareholder proposals and new rules on universal proxy.
  - Proxy advisory firm's policies and evolving impact.
- Voting trends
  - Director elections.
  - Environmental proposals, including say-on-climate and other climate proposals.
  - Diversity proposals, with a focus on status of board diversity vs. stakeholder expectations.
  - Human capital management proposals and disclosures.
  - Say-on-pay, including ongoing impact of pandemic on compensation decisions.
- Preparing your board and senior management for a particularly challenging proxy season

Today's Speakers

THE CONFERENCE BOARD

Mary A. Francis
Corporate Secretary and
Chief Governance Officer
Chevron

Helena K. Grannis
Counsel
Cleary Gottlieb Steen & Hamilton LLP

Lillian Tsu
Partner
Cleary Gottlieb Steen & Hamilton LLP

Paul Washington
Executive Director,
ESG Center
The Conference Board

Earn Credit

NY State CLE Credits (non-transactional credit only)

- ✓ Download the CLE Verification form from the Available Resources widget
- ✓ A code will be announced during the program
- ✓ Enter the code on the form and submit via email

(To receive credit outside of NY, please list your relevant bar(s) information on the webcast verification form; your attendance will be reported upon receipt of course approval.)

Cleary Gottlieb Steen & Hamilton LLP has been certified by the New York State Continuing Legal Education Board as an accredited provider of continuing legal education in the State of New York.

CPE (NASBA)

- ✓Click the link in the CEU Request Widget to sign up for credit
- ✓Stay online for the entire webcast
- ✓Click 'ok' for 3 popups that occur during the program
- ✓Credit available for participation in live webcast only

SIGN UP FOR AVAILABLE CEU CREDITS

Related Resources

Stockholder to Stakeholder Shift Report (Publication)
The concept of stakeholder capitalism is not new. What is different today is the environment in which companies are operating, the range of issues they are addressing, the increased pressure from all stakeholders to take action, and the degree of transparency expected of companies. In a series of roundtables and interviews, we asked CEOs and C-suite executives for their perspectives and expectations for what lies ahead as the shift from stockholder to stakeholder capitalism spreads.

ESG Metrics in Executive Compensation? Time for Boards to Pause and Reflect (Publication)
Executive compensation programs have a lot in common with the Internal Revenue Code. The tax code has moved far beyond its essential purpose of raising revenue for the government, or even providing incentives to advance broad-based societal goals such as homeownership. Today it seeks to shape virtually every form of human behavior with a vastly complicated set of rules—and with questionable efficacy.

Boards and Climate Change: 5 Questions to Ask Management (Publication)
Boards can use the five questions listed in this essay to begin a dialogue on climate change—but just as importantly, they can revisit these questions with their management team over time as the company's strategy evolves.

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.

Corporate Political Activity - Many Orgs Say 2022 Will Be Harder for Political Activity (Press Release)
In 2021 corporate political action committees (PACs) suspended contributions and reassessed their policies. A survey by The Conference Board reveals the environment for corporate political activity shows no signs of calming in 2022.

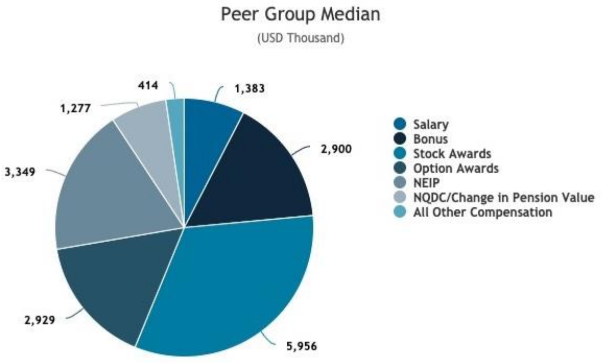
It Seemed Like a Good Idea at the Time: From Principle to Practice in Executive Compensation (Webcast)
Executive compensation programs have a lot in common with the Internal Revenue Code. The tax code has moved far beyond its essential purpose of raising revenue for the government, or even providing incentives to advance broad-based societal goals such as homeownership. Today it seeks to shape virtually every form of human behavior with a vastly complicated set of rules—and with questionable efficacy.

ESG Advantage Benchmarking Platform

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

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

- ✓ Director Compensation
- ✓ Executive Compensation
- ✓ Board Practices
- ✓ CEO Succession
- ✓ Shareholder Voting
- ✓ Environmental (New)
- ✓ HCM + Social (New)



- **ESG Advantage** is the only platform that covers the **entire Russell 3000**
- The most comprehensive and powerful data:
  - ✓ **Quantitative and qualitative** data
  - ✓ **Direct links to underlying disclosures**, eliminating the need to go through third-parties
  - ✓ **Real-time data**, added within two weeks of Proxy filings
  - ✓ **Easy and efficient to use** – confidential, customized peer groups, data trend visualizations, and flexible analyses

ESG Advantage Benchmarking Platform

SCHEDULE A DEMO

www.conference-board.org/topics/esg-benchmarking

CLEARY GOTTLIEB

THE CONFERENCE BOARD

Outlook for 2022 Proxy Season

January 2022

clearygottlieb.com

Table of Contents

I. 2021 Proxy Season Highlights and Outlook for 2022

2021 Proxy Season Lookback

Top Shareholder Proposal Topics

ENVIRONMENTAL & SOCIAL

— Political spending/lobbying
  - Political lobbying as aligned to Paris Climate Agreement

— Report on climate change / GHG
  - "Say-on-Climate" proposals

— Racial equity audits

— Reports on D&I initiatives / EEO-1 data

GOVERNANCE

— Written consent/special meeting rights and thresholds

— Independent chair

— Require majority vote for directors

COMPENSATION

— Compensation linked to environmental and sustainability targets

— Consider employee pay disparity when setting compensation targets

— Environmental proposals had increasing and widespread support, and proponents were less likely to compromise on climate votes
  - Proposals asking companies to report on lobbying activities related to global warming or the Paris Climate Agreement received 61% support on average
  - Proposals to reduce greenhouse gas emissions passed with significant support of approximately 60% or greater at oil/gas companies

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

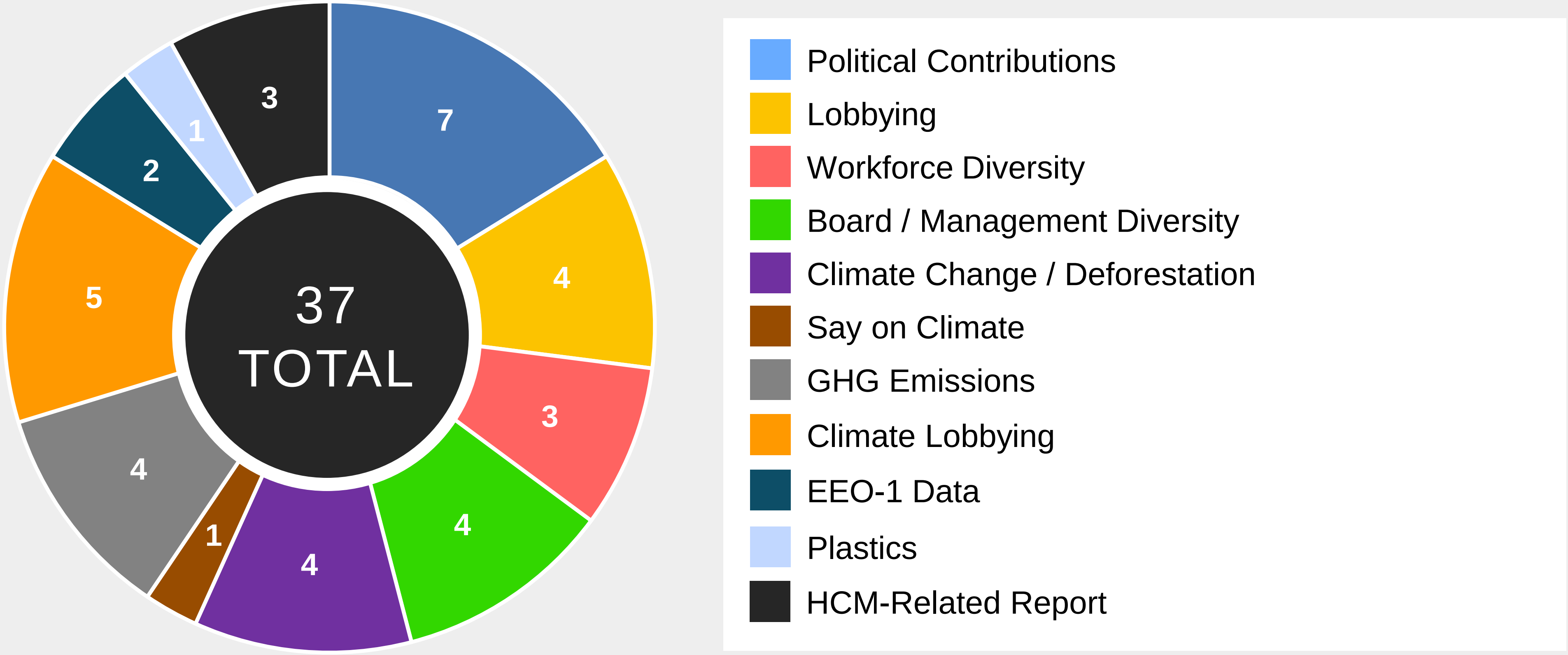
— Lobbying proposals were among the most successful E&S proposals in the 2021 proxy season, with current events and climate change causing increased scrutiny of lobbying and climate-lobbying practices among institutional investors
  - Climate lobbying was particularly popular with investors, with five out of six proposals passing and average support at 61.4%

— 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

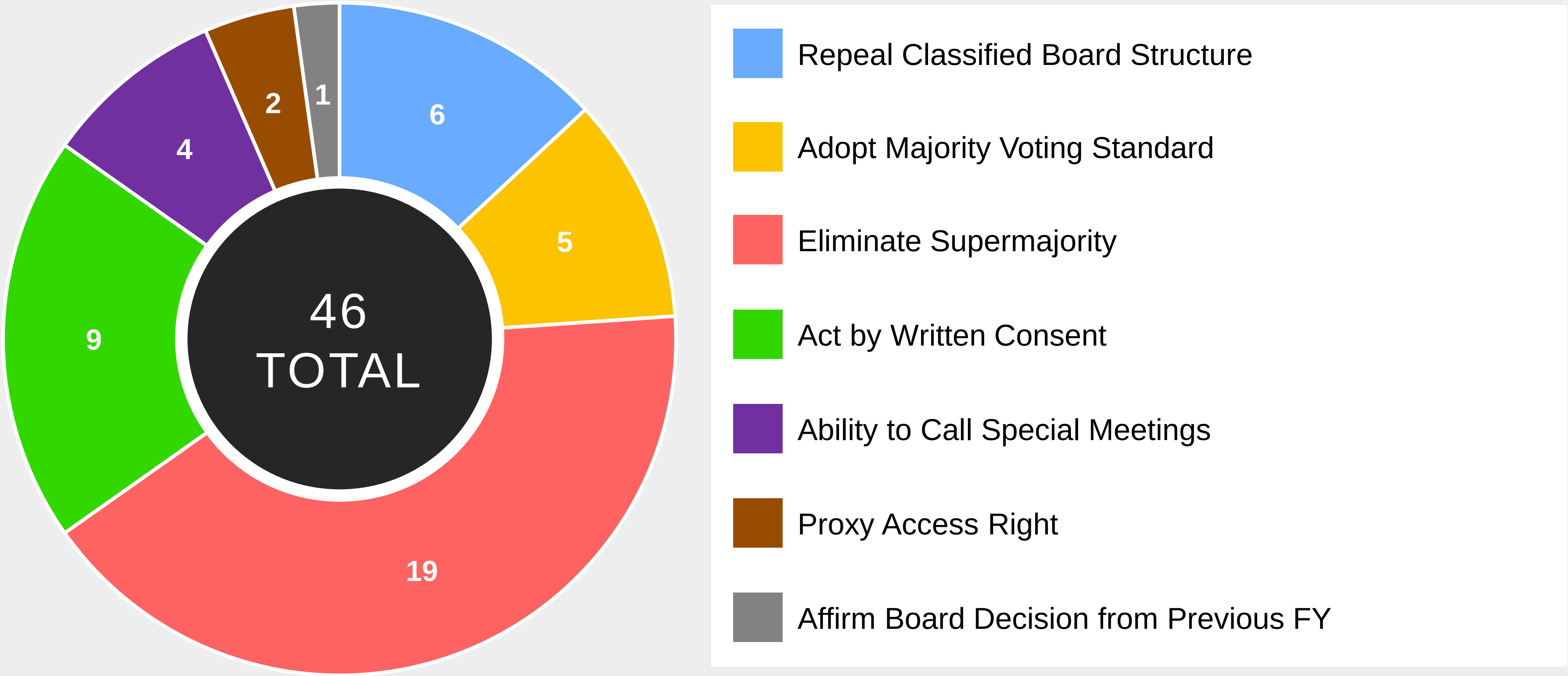
— A record 63 proposals to adopt a shareholder right to act by written consent made it to a vote in 2021, with average support increasing from 37.6% in 2020 to 40.1% in 2021

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



Governance Proposals with Majority Support



ESG Shareholder Proposals – Outlook for 2022

KEY CONSIDERATIONS

— Expect continued increase and focus on environmental and social proposals, particularly climate change and environmental sustainability, diversity and lobbying
  - Emissions, Alignment to the Paris Accords, Sustainable Supply Chain and Racial Equity Audits have early proponents
  - Insightia reported that The Children's Fund will no longer seek Say on Climate proposals in 2022

— ESG proponents and traditional governance proponents (Chevedden and McRitchie) are expected to increasingly move into environmental and social issues

— There will be a continued push on governance reforms for existing and IPO companies including elimination of supermajority voting, reduction in thresholds for shareholder action by written consent

— SEC no-action relief in 2021 was fairly consistent with previous years, but recent change in guidance will make it harder for companies to receive no action relief under "ordinary business" exemption for E&S related proposals

— On December 13, 2021, the SEC announced it would go back to written responses to NALs, no further oral/email posting only responses

Sources: Insightia, Proxy Analytics

ESG Shareholder Proposals – An Early Look at 2022

ESG PROPOSALS IN EARLY 2022

Early 2022 proxy season proposals have a focus on E&S

— According to Proxy Analytics, thus far into the 2022 proxy season E&S proposals have averaged almost 40% approval, including five passing shareholder proposals on lobbying practices, sexual harassment policies, workforce DE&I and GHG emissions

Climate proposals are both increasing in intensity and breadth

— An As You Sow proposal asking Sysco to disclose short, medium, and long term greenhouse gas targets aligned with the Paris Agreement recently received 92% support

- Sysco's board made no recommendation on the proposal, noting that "It is the Board's intention to substantially implement the stockholder proposal by disclosing, on an annual basis within the Company's Corporate Social Responsibility Reports or otherwise, Sysco's greenhouse gas emissions targets and progress made in achieving such targets"

— An As You Sow proposal at Worthington Industries to revise their policies to be responsive to Climate Action 100+'s Net Zero Company Benchmark received 41% support. Both ISS and GL supported the proposal

— Ceres has submitted proposals asking companies to "commission a third-party environmental justice audit (within reasonable time and cost) which assesses the heightened racial impacts of [the company's] operations and produces recommendations for improving them above and beyond legal and regulatory matters."

ESG Activism and Litigation Taking Shape

According to research from Diligent, the number of ESG-related activist campaigns has increased over the years, with 13% of ESG-related activist campaigns being successful in the first half of 2021 (compared to 11% during the same period in 2020)

— On October 27, 2021, the hedge fund Third Point wrote a letter to Royal Dutch Shell requesting that they spin-off the company into two groups: one for natural gas and renewables and the other for their legacy energy and chemical operations

— The activist letter came after Shell published a strategy to reach net-zero emissions by 2050, which some investors consider to be too long a timeline

In addition to activists, companies should be aware of the possibility of shareholder suits in the context of ESG disclosure and CSR reporting

— In July 2020, three separate shareholder derivative lawsuits were filed in California federal court against the directors and officers of Oracle, Facebook, and Qualcomm

— The three lawsuits contain intentionally provocative allegations that, despite public statements emphasizing the importance of diversity within their respective organizations, the boards and executive management teams of Oracle, Facebook, and Qualcomm remain largely white and male, and have failed to deliver on their commitments to diversity

— On November 15, 2021, a Delaware federal judge dismissed all the claims in Qualcomm's shareholder suit, stating that "if the board was consciously disregarding its duty of oversight, when and how did each member of the board become aware that laws governing diversity and/or discrimination were being violated?"

II. Board Diversity

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 2021

Companies are responding by bringing on new directors

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

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

Companies are expanding searches for new directors

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

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

Shift in director skills and experiences to align with strategic goals

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

Source: 2021 Spencer Stuart Board Index

Board Diversity – Institutional and Activist Investors

BlackRock

- BlackRock's 2022 Stewardship Policies state that boards should aspire to 30% diversity of membership and "encourage boards to have at least two directors on their board who identify as female and at least one who identifies as a member of an underrepresented group"
- In 2021, BlackRock voted against 1,862 directors for a lack of board diversity, their second-most common reason for voting against directors
- In 2020, BlackRock voted against management more than 1,500 times for insufficient diversity

Vanguard

- 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 2021, the NYCC announced that 67 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: 2022 Voting Guidelines (December 2021), Annual Report, New York City Comptroller; Fidelity 2021 Stewardship Report

Director Gender Diversity

Boards are increasingly placing women on boards into committee leadership roles

— 96% of S&P 500 boards include two or more women directors and 36% (up from 28% in 2020) have four or more women directors
  - 30% of audit committees are chaired by women (versus 26% in 2020)
  - 28% of compensation committee chairs are women (versus 25% in 2020)
  - 29% of nominating and governance committee chairs are women (versus 28% in 2020)

— However, women still lag behind on board chair (only 8%) and lead independent director roles (representing only 13% of all board leadership positions)

Women director backgrounds tend to differ from men

— Women less frequently have C-suite experience

— But women are more likely to be functional leaders and financial executives from the technology and telecommunications sectors

Sources: Equilar, ISS Analytics and 2021 Spencer Stuart Board Index

Director Racial/Ethnic Diversity

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

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

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

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

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

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

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

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

NASDAQ Listing Rule

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

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

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

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

TIMEFRAMES FOR COMPLIANCE

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

- All companies that are listed before the phase-in period will be expected to have one diverse director by August 7, 2023. Companies listed after the phase-in period will have a two-year phase-in period to meet the diversity objective
- Companies listed on the Nasdaq Global Select Market and Nasdaq Global Market will be expected to have a second diverse director by August 6, 2025
- Companies listed on the Nasdaq Capital Market will be expected to have a second diverse director by August 6, 2026
- Companies that no longer meet the diversity objective will have a one-year grace period to fill the vacancy and meet the listing requirements

III. Climate Proposals

2021 Environmental Proposal Highlights

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 a similar proposal receiving 37% support at UPS
- "Say on Climate" shareholder 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

A "Say-on-Climate" shareholder proposal passed at Canadian Pacific despite Glass Lewis recommending against the proposal

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"

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

Investor Guidelines on Climate Change

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	BlackRock's 2022 Stewardship Principles asks that companies disclose a net-zero aligned business plan consistent with their model and sector. They also ask, beginning in 2022, that companies demonstrate that their plans are resilient under likely decarbonization pathways, and the global aspiration to limit warming to 1.5°C. They also ask that companies disclose how their capital allocation across alternatives, transition technologies, and fossil fuel production is consistent with their strategy and their emissions reduction targets
Vanguard	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 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
Fidelity Investments	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

IV. Director Elections

Director Elections

According to ISS, the number of Russell 3000 directors who failed to receive majority vote increased in 2021, with 58 directors failing to receive majority support

6.1% of Russell 3000 directors failed to secure support from at least 80% of voted shares	— On average, directors won 95% of the vote — Directors received an average vote of 91% following a say-on-pay failure in 2020 — ISS flagged poison pill concerns and new public company governance concerns, as well as board responsiveness to failed director elections and SOP as top reasons for directors failing to receive the majority of support in 2021
Investors seem more likely to withhold support for directors	— This is likely due to the increased weight institutional investors give to ESG issues under the purview of these committees — Nominating and Governance Committee members could be held accountable for low board diversity or poor response to Say-on-Pay
Trends likely to continue in the 2022 proxy season	— Increased scrutiny for directors at companies with poor governance practices or ESG disclosure, particularly for post-IPO companies — Focus on gender and racial diversity — Tightening of overboarding policies — Average vote support for female Director nominees continues to outpace support for male nominees, but to a narrowing degree

Sources: Semler Brossy, "Say on Pay & Proxy Results" (September 30, 2021); ISS "Director Elections & Governance" (September 16, 2021)

Director Overboarding Policies

Overboarding policies continue to slowly tighten in 2021

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

V. Compensation Trends

Say on Pay

Support remains high in 2021, currently averaging approximately **91%** at Russell 3000 companies

However, the number of companies failing Say-on-Pay increased

Support rates are highest in the utilities sector

Approximate average 95%

Support rates are lowest in the communications sector, with 7% of companies failing

Approximate average 85%

2.8%

Approximate failure rates (higher than 2020)

Most common reasons for failed say on pay votes were pay for performance disconnects and special awards

ISS "Against" Recommendations

11%

Highest support level by ISS in the last decade, likely due to COVID-19's impact and ISS' changes to its pay and performance tests

Companies that receive an ISS against recommendations have a 31% lower say-on-pay support on average than companies receiving a for recommendation

Source: Semler Brossy, "Say on Pay & Proxy Results" (September 30, 2021)

Pay Ratio Trends

2021 marks the fourth year for pay ratio disclosures

— The pay ratio rule requires companies to disclose:
(i) the median of the annual total compensation of all employees except the CEO; (ii) the annual total compensation of the CEO; and
(iii) the ratio of these two amounts

TRENDS

— The average pay ratio for S&P 500 companies was 299:1, with the average CEO receiving $15.5 million in total compensation ($700,000 higher than in 2020)

— Large changes in pay ratio year-over-year are typically driven by volatility in CEO pay

- COVID saw great fluctuations in both CEO and worker pay over the past year

— However, median employee pay is the main driver of fluctuations in pay ratio across industries

— Companies with low levels of say on pay support generally tend to have higher pay ratios than companies with higher say on pay support levels, but the data is inconclusive

— ESG push continues for additional disclosure of median gender pay gap, with Starbucks and Mastercard joining Citigroup in reporting such figures

Source: American Federation of Labor (July 14, 2021)

Compensation-Related Shareholder Proposals

In 2021, shareholder proponents continued to focus on gender pay disparities and linking environmental and social factors to executive pay

GENDER PAY GAPS

— Gender pay gap proposals have slowed in 2021
  - Arjuna Capital, who submitted a proposal at 17 companies asking them to disclose wage gaps in 2020, only requested 2 such proposals in 2021
    - Mastercard and Starbucks made the requested disclosure in 2020
  - However, support for these proposals increased from 12.0% (out of 11 such proposals) in 2020 to 28.4% in 2021 (out of 5 such proposals)

LINKING ESG FACTORS WITH EXECUTIVE COMPENSATION

— BlackRock did not have a position on ESG metrics in executive compensation, but believed such metrics should be “as rigorous as other financial and operational targets” when applicable

— Shareholder pay proposals continued to focus on linking ESG factors with executive pay, including at Alphabet, FedEx, General Motors, Pilgrim’s Pride and Republic Services
  - Support for such proposals averaged 10.3% (down from 15.3% in 2019)
  - A 2020 shareholder proposal at Verizon asking them to report on linking CEO pay to enhanced data privacy and cybersecurity achieved 31% support, up from 12.4% on a similar proposal in 2019

Source: BlackRock, Proxy Analytics

VI. Proxy Advisory Firm and Institutional Investor Updates

ISS Policy Updates for 2022

BOARD DIVERSITY

- ISS will generally recommend voting against the chair of the nominating committee (or other directors, on a case-by-case basis) of a board of S&P 1500 and Russel 3000 companies if the board "has no apparent racially or ethnically diverse members"
- ISS will generally recommend voting against the nominating committee chair (or other directors, on a case-by-case basis) of a board where there are no women on the board. Policy already effective for S&P 1500 and Russel 3000 companies, beginning February 1, 2023 policy applies to all other companies
- Votes cases by case on racial equity audit proposals looking to company's processes or framework for addressing racial inequity and discrimination, public statements and track record and whether actions are aligned with market norms

CLIMATE

- ISS will vote case-by-case on both management and shareholder proposals looking at "the completeness and rigor" of management plans, including alignment with TCFD, Scope 1, 2 and 3 disclosure and net zero commitments. For shareholder proposals votes will take into account information such as the completeness and rigor of a company's existing disclosures, the company's actual GHG emissions performance, recent violations/controversy over emissions and burden
- ISS adopted a new policy for companies that are "significant GHG emitters" (currently those on the Climate Action 100+ list) and will vote against responsible committee chair where ISS determines the company is not taking minimum steps needed to understand, assess and mitigate climate change risks to the company and the larger economy

OTHER UPDATES

- Beginning in 2023 ISS will adopt a "value-adjusted burn rate" model in analyzing equity plans
- ISS also updates FAQs related to COVID-19 related pay and compensation policies and a return to pre-pandemic approach on mid-year changes to compensation metrics and on responsiveness to say-on-pay low votes

Glass Lewis Policy Updates for 2022

GLASS LEWIS

BOARD DIVERSITY AND ESG

— Glass Lewis will generally recommend voting against the chair of the nominating committee of a board with fewer than two gender diverse directors, or the entire nominating committee of a board with no gender diverse directors, dependent upon the board providing sufficient rationale for a lack of diversity in their disclosure
  - Beginning with shareholder meetings held after January 1, 2023, Glass Lewis will generally recommend voting against the nominating committee chair of a board that is not at least 30 percent gender diverse at companies within the Russell 3000 index
  - In 2023, Glass Lewis will also recommend against the chair of the governance committee at S&P 500 companies that have not provided individual or aggregate racial/ethnic demographic information for directors in their proxies

— Glass Lewis will note as a concern when boards of companies in the Russell 1000 index do not provide clear disclosure concerning the board-level oversight afforded to environmental and/or social issues
  - Glass Lewis may vote against the governance committee chair if they do not provide disclosure relating to board oversight of E&S

CLARIFYING AMENDMENTS

— Glass Lewis does not maintain a policy on the inclusion of E&S metrics in compensation plans, but they do expect robust disclosure on any compensation-related E&S metrics

— Adjustments to GAAP financials will be considered in tying executive pay to performance

— In accessing independence, Glass Lewis will apply a three-year look back for material financial transactions and a five-year look back for former employment relationships

Institutional Investors Exercising ESG Muscle

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

Proposals

- — BlackRock supported 35% of shareholder proposals (297 out of 843) in the 2021 proxy season, compared to 17% (155 out of 889) in 2020
- — 47% of E&S shareholder proposals (81 of 172) received support from BlackRock
- — BlackRock supported 93% of Say-on-Climate proposals

Engagement

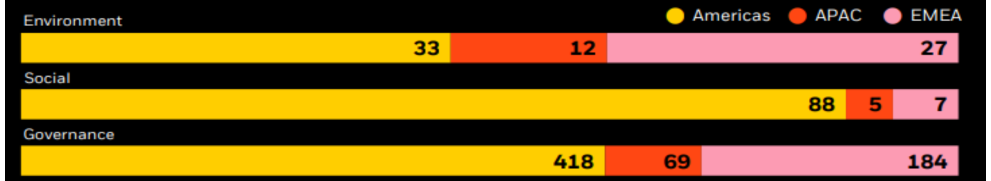
- — BlackRock mostly engaged on the topic of climate, financial resilience and board quality with 2,330, 2,200 and 2,150 engagements, respectively
- — BlackRock had 1,350 engagements on DEI

How BIS Voted on Behalf of Clients on 2020-21 Proxy Year Shareholder Proposals[1*]

	% Supported[2]	# Supported[2]	# Against[3]
Environmental	64%	46	26
Social	35%	35	65
Governance	32%	216	455

Source: BlackRock and Institutional Shareholder Services (ISS). ISS classifications used. Sourced on July 8, 2021, reflecting data July 1, 2020 through June 30, 2021

2020-21 Proxy Year Number of ESG Shareholder Proposals Voted on[1]**



Source: BlackRock and Institutional Shareholder Services (ISS). ISS classifications used. Sourced on July 8, 2021, reflecting data July 1, 2020 through June 30, 2021

1 Excludes the Japanese market, where numerous shareholder proposals are filed every year due to low filing barriers, and where shareholder proposals are often legally binding for directors in this market. 2 Includes abstentions. 3 Includes withhold votes.

* Does not include director election, director-related, or "other" proposals put forth by shareholders. Please see Appendix. ** BIS votes cast on shareholder proposals on behalf of our clients are independent of whether management recommended voting for or against the proposal.

BlackRock Policy Updates for 2022

BlackRock

BlackRock updated their Stewardship Principles in December 2021. According to BlackRock, these updates "are more incremental, seeking to reflect our latest views on certain governance issues and incorporating insights gained from company engagements, client feedback, regulatory developments, and BlackRock and third-party research"

POLICY UPDATES

— Climate Risk
- BlackRock will continue to ask that companies disclose a net zero-aligned business plan that is consistent with their business model and sector
- BlackRock will encourage companies to demonstrate that their plans are resilient under decarbonization pathways and the global goal to limit warming to 1.5°C. They also encourage companies to disclose how energy supply can affect their plans

— Board Diversity
- BlackRock wants U.S. companies to have 30% diversity of board membership
- They encourage companies to have at least two female directors and at least one member of an underrepresented group

— Sustainability Reporting
- Companies should have robust sustainability disclosures, and BlackRock will continue to ask companies to report in line with TCFD and supplement that disclosure with industry- or company-specific metrics
- BlackRock points to SASB's industry-specific guidance, but acknowledges that companies can use other standards so long as they highlight it as such

— ESG Metrics in Compensation
- BlackRock does not have a binary position on ESG criteria in compensation, but believes ESG metrics should be "as rigorous as other financial and operational targets" when applicable

— Corporate Form
- Companies proposing to change their corporate form to a public benefit corporation, or similar entity, should put it to a shareholder vote

Vanguard Updates and Voting Statistics

POLICY UPDATES

— Vanguard last updated their policies in April 2021, but have since published materials relating to climate and diversity-related proposals

— Climate
  - Vanguard expects boards to exhibit a climate-competent board that demonstrates awareness of climate risks and fosters healthy debate on climate topics, challenges management assumptions, and makes thoughtful and informed decisions regarding these risks
  - Boards should have robust risk oversight and mitigation measures, including setting targets aligned with the Paris Agreement and integrating climate risk considerations into strategic business planning and capital allocation decisions.
  - Disclosures should show progress over time, and Vanguard prefers TCFD disclosure

— Board Diversity
  - Vanguard funds may vote against directors (such as nominating and/or governance committee chairs or other relevant directors) at companies where there is a lack of sufficient progress on board diversity and board diversity disclosure
  - In the first half of 2021, Vanguard voted against 173 directors at companies where they "had concerns regarding the risks associated with the lack of progress or lack of a path forward to increase board diversity"
  - During that same period, Vanguard voted in favor of 50% of shareholder proposals (four of eight) concerning board diversity, and 37% of shareholder proposals (11 of 30) concerning oversight and disclosure of DEI-related risks within the workplace and elsewhere in the company's operations

VOTING AND ENGAGEMENT IN H1 2021

— In H1 2021, Vanguard supported 50% of workforce diversity proposals (up 17% from H1 2020)

— Vanguard supported 37% of environmental proposals and 43% of climate-related proposals (include support of 82% of Say-on-Climate proposals)

— Vanguard had 305 engagements on diversity

— 290 engagements were on board diversity in particular, over a 300% increase from the same period of 2020

Vanguard: What To Look For in 2022

In December 2021, Insightia interviewed John Galloway, the Global Head of Investment Stewardship at Vanguard, and Lisa Harlow, Head of Investment Stewardship for Europe at Vanguard

— Policy Updates
  - Harlow: “What we are looking for is for companies that are making positive developments relating to diversity, equity, and inclusion (DEI) to share their approach and process with stakeholders. Demonstrating progress against these targets is really useful for investors to see how a company is responding to evolving expectations”

— Racial Equity Audits
  - Galloway: “We do have concerns that these proposals could, in some respects, introduce more risks to an organization. We don’t think there is a one-size-fits-all solution here and so we look at racial audit proposals on a case-by-case basis. In some instances, we have not supported the proposal where we came to the view that it was either overly prescriptive, too broad, or misaligned with the company’s actual issues”
  - Galloway: “In some cases, we’ve seen racial equity audit proposals where the proponent themselves acknowledged that the company is a leader in this topic but believes they can do more – that’s not the approach Vanguard takes. We don’t tend to support those proposals in that we have no agenda other than driving shareholder value”

— What Vanguard Will Focus on in 2022
  - Galloway: “We know thematically that there is likely to continue to be a focus on climate risk, given the pervasive and complex nature of the challenge the world faces and the fact that there is not one company in our portfolio that doesn’t face some sort of risk from climate change, whether it be physical or transitional risk”
  - Galloway: “The issue of DEI, both at the board level and in the larger workforce in certain markets, will continue to be a focus… We are also interested in learning more about corporate plans for board refreshment, how the nominating committee thinks about the needs it has on its board for different skills as markets develop”

State Street Updates and Voting Statistics

STATE STREET GLOBAL ADVISORS

SSGA updated their voting guidelines in March 2021, and their stewardship priorities are climate change, D&I and the R-Factor

POLICY UPDATES AND STEWARDSHIP TRENDS

— Climate
- Since 2014, SSGA has held 787 climate-related engagements. During the first half of 2021, SSGA conducted 125 climate-related engagements, a 60% increase compared to H1 2020
- SSGA voted in favor of 46% of climate-related shareholder proposals in H1 2021 compared with 35% during the same time frame in 2020 and 14% in 2019

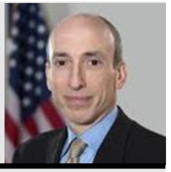
— Board Diversity
- In January 2021, SSGA asked companies to articulate the role of D&I in their company's strategy, as well as provide EEO-1 data and board diversity statistics
- As of fall 2020, 325 companies in the S&P 500 (representing 65%) did not disclose the racial and ethnic diversity of their boards. In H1 2021, SSGA identified 43 companies in the S&P 500 to take voting action against for lack of such disclosure

— R-Factor
- In H1 2021, SSGA voted against directors at 15 of the 18 companies (including 11 U.S. companies) that were identified as R-Factor laggards in 2020 and did not show satisfactory progress in their ESG disclosures
- Beginning in 2022, SSGA will expand their R-Factor screening to include companies that have been consistently underperforming their peers on their R-Factor scores for multiple years, and may take voting action unless they see meaningful change

VII. SEC Proposals and Agenda

SEC – Key Players and Comments on 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."

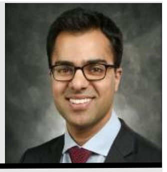
Allison Herren Lee

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

Dan Berkovitz

Replaced John Coates as General Counsel of the SEC on September 28, 2021

- Served as Commissioner of the CFTC since September 2018, where he previously served as General Counsel from 2009 to 2013
- Former partner and co-chair of the futures and derivatives practice at WilmerHale

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 Corporation 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 Climate Action – Expected Rulemaking

COMMENT LETTER ON CLIMATE DISCLOSURES

— In September 2021, the SEC published a sample letter asking select companies to disclose material information on climate change risks

— In part, the letter asked companies to provide the same type of climate-related disclosure in their SEC filings as they do in their CSR report

- The SEC's follow-up letters have focused on more in-depth materiality analysis

— Companies were also asked to disclose material litigation and financial risks associated with climate change in their risk factors

SEC CLIMATE DISCLOSURE PROPOSAL

— There is speculation that SEC will release climate disclosure proposal in January 2022

- SEC Chair Gary Gensler and others have commented that materiality should be based on investor requests for information and deployment of capital in ESG, not only viewed with financial lens
- Gensler commented that he would include climate disclosure in the 10-K
- Expect qualitative and quantitative measures including:
  - Qualitative: more detailed disclosure on management of climate related risks and strategy
  - Quantitative: disclosure on greenhouse gas emissions – Scope 1 and Scope 2, maybe Scope 3
  - Detailed disclosure on net-zero commitments/pledges and other targets

— Any new rule proposal will not be effective for 2021 Annual Reports

— Expect continued enforcement focus on greenwashing, material misstatements and gaps in risk disclosure

SEC Staff Legal Bulletin 14L

STAFF LEGAL BULLETIN ("SLB") 14L

— On November 3, 2021, the Division of Corporation Finance of the SEC SLB No. 14L, which rescinds previous SLB guidance with respect to no-action letter requests that sought relief from the Staff to exclude shareholder proposals on the basis of Rule 14a-8(i)(7) and Rule 14a-8(i)(5)

— The likely effect of SLB No. 14L will be to reduce the number of environmental and social policy proposals that the Staff will grant no action relief for exclusion from proxy statements under the ordinary business and economic relevance exceptions of Rule 14a-8

Rule 14(a)-8(i)(7) – "Ordinary Business"

— Significant Policy Issue

- The Staff will now look to whether the policy issue may have broad societal impact such that it transcends the ordinary business of the company, regardless of nexus between the issue and the company's business

— Micromanagement

- The Staff will focus on the level of detail and granularity sought in the proposal and may look to well-established frameworks or references in considering what level of detail may be too complex for shareholder input
- Proposals that request short timeframes for the production of reports or tie proposed reports to specific environmental or social targets or frameworks may now not be excludable under the ordinary business exception on the basis that they seek to micromanage the company

Rule 14a-8(i)(5) – "Economic Relevance"

— SLB No. 14L provides that companies may not exclude proposals that raise issues of broad social or ethical concern solely on the basis that the issue is not economically relevant to the company

SLB No. 14L also stated that proponents may use graphics in their proposals, proof of a proponent's continuous ownership of a company's securities does not need to be in a specified format and that e-mail senders should seek a reply email from the recipient in which the recipient acknowledges receipt of the email, and asks that parties so acknowledge

SEC 10b5-1 Proposal

STAFF LEGAL BULLETIN ("SLB") 14L

On December 15, 2021, the SEC proposed amendments regarding Rule 10b5-1 insider/issuer trading plans and related disclosures that would modify (a) the safe harbor from insider trading liability under Rule 10b5-1(c)(1), (b) Forms 4 and 5 for insider reporting under Section 16 and (c) disclosures required in 10-Q, 10-K and 20-F

Under the proposed rule:

- Overlapping trading plans would be prohibited
- Single-trade trading plans would be limited to one per twelve month period
- For officers and directors:
  - Cooling-off period of 120 days before purchases can begin
  - Written certification as to the absence of MNPI when entering into the plan
  - Forms 4 and 5 must identify transactions made under a trading plan
  - Gifts must be reported on Form 4 within two business days (not on Form 5)
- For issuers:
  - Cooling-off period of 30 days
  - Quarterly disclosure of trading arrangements entered into or terminated by issuer, officers and directors
  - Annual disclosure of insider trading policies and procedures and timing of option grants

SEC Share Repurchase Disclosure Proposal

On December 15, 2021, the SEC proposed amendments to its rules regarding disclosure about an issuer's repurchase of its equity securities

PROPOSED AMENDMENTS

Daily Reporting

— Any buyback must be reported on Edgar by the end of the next business day
— New Form SR for this purpose, using iXBRL
— Disclose reliance on 10b-18 and 10b5-1

Additional disclosures in periodic reports

— Rationale and process around issuer repurchase decisions
— Policies relating to concurrent trading by officers and directors
— Disclose whether any officer or director traded within 10 business days before and after announcement of the issuer repurchase
— Disclose reliance on 10b-18 and 10b5-1 for reported repurchases

— Application of any final rules on buyback programs like ASRs will be important to track.
— Comment period for both the Rule 10b5-1 proposal and share repurchase proposal will remain open for only 45 days, signaling potential quick SEC action

Universal Proxy and Proxy Advisory Firms

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

UNIVERSAL PROXY

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

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

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

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

PROXY ADVISORY FIRMS

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

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

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 on disclosure, corporate advisory and governance, and corporate and financial transactions, particularly capital market transactions. Her work spans numerous industries, including airlines, aviation and aerospace; automotive; consumer products and retail; banking and financial institutions; information technology; pharmaceuticals and biotechnology; and service businesses.

Helena has been recognized as a leading capital markets lawyer by *The Legal 500 U.S.* and *IFLR 1000: The Guide to the World's Leading Financial Law Firms*. She received a J.D. from New York University School of Law and a B.A. from Cornell University.

Lillian Tsu

Partner, New York

CONTACT INFORMATION

+1 212 225 2130

ltsu@cgsh.com

EDUCATION

Cornell Law School, J.D.

Cornell University, B.A.

Tsu’s practice focuses on complex securities and corporate matters, particularly advising management and boards of directors on SEC disclosure requirements, corporate governance matters, board and executive compensation, accounting restatements, shareholder activism, equity and debt offerings, public company mergers and acquisitions, spin-offs, and take-private transactions.

Lillian regularly counsels clients on capital markets transactions, including registered public offerings, private placements, and offerings under Rule 144A/Reg S, as well as tender offers, recapitalizations, debt exchange offers, consent solicitations, and private equity investments.

Lillian has been recognized as a leading capital markets and corporate governance lawyer by *The Legal 500 U.S.* and *IFLR 1000*.
She received a J.D. from New York University School of Law and a B.A. from Cornell University.