THE ADVISOR

Alliance™ ADVISORS

2022 PROXY SEASON PREVIEW
By Shirley Westcott **April 2022**

Overview

The unprecedented challenges of the 2020 global health pandemic will be one of the dominant themes shaping the narrative at 2021 annual meetings. Investors and proxy advisors will be closely monitoring proxy disclosures to ascertain how well corporate leaders navigated the crisis and protected business operations, liquidity and the health and welfare of employees. Executive compensation will be under particular scrutiny and it will be incumbent upon compensation committees to clearly explain the rationale behind any discretionary adjustments and resulting pay outcomes.

The 2022 proxy season is now underway and once again environmental and social (E&S) issues are front and center. Filings of E&S resolutions—at over 500—have already exceeded the 2021 level though the emphasis has shifted to racial justice and carbon emissions management as the two predominant themes (Table 1). Governance topics—primarily sponsored by corporate gadflies John Chevedden, Kenneth Steiner, James McRitchie and Myra Young (the "Chevedden group")—have similarly been repositioned from written consent to special meeting rights. Among the trends to watch:

- **More E&S majority votes**: If early votes are an indication, 2022 could match or break last year's record 39 majority votes on E&S resolutions (Tables 2 and 3). Expect to see more first-time majority votes on issues that have registered strong support in the past, such as racial and civil rights audits, climate risk audits, political influence congruency and sustainable packaging.

- **More withdrawals, fewer omissions:** Companies may feel more compelled to acquiesce to shareholder demands and negotiate proposal withdrawals due to changes in investor and proxy advisor policies. Higher expectations on issues such as board diversity—particularly race and ethnicity—and disclosure of climate change strategies could put more directors at risk of opposition votes. Revised SEC guidance issued last fall (Staff Legal Bulletin (SLB) 14L) is also making ordinary business and economic relevance exclusions less likely if a proposal raises a significant social policy issue. As of early March, the number of no-action requests received by the Division of Corporation Finance (Corp Fin) had declined by 9% over the same time last year. Approximately 20% of the requests were withdrawn, which Corp Fin largely attributes to constructive engagements between proponents and issuers.[1]

- **Influx of new topics:** A surge in new shareholder proposal topics has emerged this season—particularly in the E&S space—though not all will come to fruition at the ballot box. Worker rights and employee welfare will be prominent themes due to labor shortages from the "Great Resignation" and employee demands for unions and better working conditions. Other new entries pertain to concealment clauses in employment contracts, COVID-19 vaccine distribution, global political influence, electronic waste, and retirement plan alignment with climate policy. On the governance front, the United Brotherhood of Carpenters Pension Plan proposed—but ultimately pulled—some novel mechanisms for dealing with "holdover" directors within the context of majority voting, proxy access and classified boards.

- **Heightened scrutiny of executive compensation**: Investors and proxy advisors will be carefully examining executive compensation plans, particularly at companies that struggled with their say-on-pay (SOP) votes in 2021. In addition to

[1] See comments by Corp Fin Director Renee Jones at https://www.sec.gov/news/speech/jones-cii-2022-03-08?utm_medium=email&utm_source=govdelivery.

pay-for-performance (PFP) disconnects, last year's failed SOP votes were largely attributable to special grants and the exercise of upward discretion that boosted incentive payouts, in some cases due to the impact of the COVID-19 pandemic. Expect shareholders to take a hard line on companies that simply defend their pay decisions rather than fully address investor concerns.

These and other key proxy season issues are discussed in more detail below.

Board Diversity

Investors and proxy advisory firms are raising their expectations around board diversity in 2022 through their voting policies on director elections (Table 4). Some, including Glass Lewis, want a minimum of two women on the board and in 2023 are transitioning to a 30% threshold for gender representation. A number of investors, as well as Institutional Shareholder Services (ISS), will apply voting sanctions at companies that do not have at least one director from an underrepresented racial/ethnic group.[2]

Nasdaq's new board diversity rule also takes effect this year. Beginning in August, listed companies must disclose board-level diversity statistics in a standardized template. In subsequent years, those with five or more board members must have at least two self-identified "diverse" members—generally one female and one from an underrepresented minority or LGBTQ—or explain their lack of compliance.[3]

States are similarly developing legislation around board diversity, either as composition or disclosure-only mandates. Furthest along is California which requires public companies headquartered in the state to have, depending on board size, one to three female directors by the end of 2021 and one to three directors from an underrepresented community by the end of 2022.[4]

These myriad requirements are likely to accelerate the gender and racial/ethnic diversity of boards from current levels. As of Q3 2021, 32% of Russell 3000 boards had two female directors and 37% had three or more female directors, according to 50/50 Women on Boards.[5] ISS also reported that as of January 2022, 97% of S&P 500 firms and nearly 80% of Russell 3000 firms (less the S&P 500) had at least one racially/ethnically diverse director.

Consistent with 2021, filings of board diversity proposals have greatly diminished with only about a dozen submitted to date. This year's crop has shifted towards improving boardroom racial diversity or to align the board's gender and racial composition with the demographics of the company's customers and/or regions in which it operates (Arjuna Capital at Alphabet and Wells Fargo). James McRitchie has also filed several proposals seeking disclosure of each director's self-identified gender and race/ethnicity.

Overboarded Directors

One potential side effect of the push for board diversity is that the high demand for female and minority candidates may result in some becoming overboarded. According to Insightia, 23 of the 68 directors who failed to receive majority support in 2021 held an excessive number of board seats, including seven who were public company board chairs and/or CEOs.[6]

[2] KPMG reported that as of September 2021, 73% of S&P 500 firms and 36% of Russell 3000 firms disclosed their board's overall racial and ethnic diversity. See https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/board-disclosure-of-race-and-ethnicity-gains-traction-1.pdf.

[3] See Nasdaq's board diversity rule at https://listingcenter.nasdaq.com/assets/Board%20Diversity%20Disclosure%20Five%20Things.pdf and its board diversity matrix disclosure requirement at https://listingcenter.nasdaq.com/assets/Board%20Matrix%20Examples_Website.pdf.

[4] The California Secretary of State's annual compliance reports for the Women on Boards (SB 826) and Underrepresented Communities on Boards (AB 979) statutory requirements can be found at https://www.sos.ca.gov/business-programs/women-boards and https://www.sos.ca.gov/business-programs/underrepresented-communities-boards.

[5] See the 50/50 Women on Boards report at https://5050wob.com/wp-content/uploads/2021/12/5050WOB-Q3_Infographic_Website.pdf.

[6] See Insightia's "The Activst Investing Annual Review" at https://www.srz.com/images/content/1/8/v2/182237/The-Activist-Investing-Annual-Review-2022.pdf.

This year, State Street Global Advisors (SSGA) and Vanguard are relaxing their bright-line board capacity limits.[7] Other than for public company named executive officers (NEOs), SSGA will waive its withhold policy and support an over-extended director if the company adopts and discloses a director commitment policy, which must include:

- A numerical limit on public company boards, which cannot exceed SSGA's policy by more than one board seat,
- Consideration of public company board leadership positions,
- Affirmation that all directors are compliant with the policy, and
- An annual policy review process by the nominating committee to evaluate outside director time commitments.[8]

Similarly, Vanguard will look for portfolio companies to adopt good governance practices regarding director commitments. This should include an overboarding policy and disclosure of how the board oversees implementation of the policy.

Workplace Diversity

After a surge of filings in 2021, only a handful of resolutions calling for the disclosure of EEO-1 reports have appeared this year due to the high degree of adoptions.[9] Following a campaign launched in mid-2020 by the New York City Retirement Systems (NYCRS), 84% of S&P 100 companies now disclose or have committed to disclose their EEO-1 reports. [10] The figure for the Russell 1000 is 11%, as last reported by JUST Capital.[11] As an added impetus, both SSGA and the New York State Common Retirement Fund (NYSCRF) announced that in 2022 they will begin voting against compensation committee chairs and full compensation committees, respectively, at S&P 500 firms that do not disclose their EEO-1 survey responses.[12]

Calls for diversity, equity and inclusion (DEI) reports have similarly receded with two dozen filed compared to 30 last year. The intent is to assess the effectiveness of a company's DEI programs, including quantitative data on workforce composition, recruitment, retention and promotion rates by gender, race and ethnicity. So far, over half of the targeted companies have acquiesced, exceeding the withdrawal rate in 2021 when four proposals received majority support.

As with board diversity, investor interest in the disclosure of employee demographics is a precursor to establishing goals. SSGA, for example, has indicated that it will support DEI reporting proposals unless the company meets its disclosure expectations, including timebound and specific diversity goals. Trillium Asset Management withdrew a workplace diversity resolution

[7] See SSGA's 2022 position on director time commitments at https://www.ssga.com/library-content/pdfs/insights/the-boards-oversight-of-director-time-commitments.pdf and Vanguard's 2022 U.S. voting policy at https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/policies-and-reports/US_Proxy_Voting.pdf. SSGA's and Vanguard's board seat limits are a total of two for NEOs and four for non-executive directors. SSGA also limits independent chairs and lead directors to three total boards.

[8] According to the 2021 U.S. Spencer Stuart Board Index, 67% of S&P 500 boards impose numerical limits on all directors' outside board service (typically three or four additional boards). One-quarter report a specific limit on their CEO's outside board service (typically one or two additional boards). See https://www.spencerstuart.com/-/media/2021/october/ssbi2021/us-spencer-stuart-board-index-2021.pdf.

[9] In 2021, 38 EEO-1 reporting proposals were filed but most were withdrawn. The three voted averaged 70.3% support, including two majority votes.

[10] See NYCRS' 2021 post-season report at https://comptroller.nyc.gov/newsroom/comptroller-stringer-nyc-funds-release-2021-shareowner-initiatives-postseason-report/.

[11] See JUST Capital's statistics at https://justcapital.com/reports/share-of-largest-us-companies-disclosing-race-and-ethnicity-data-rises/.

[12] The targeting of compensation committees is due to their predominance in overseeing human capital matters. According to EY, 53% of Fortune 100 company boards assign human capital management oversight to their compensation committees. See https://www.ey.com/en_us/board-matters/esg-developments-in-the-2021-proxy-season.

at Intercontinental Exchange after the company agreed to set gender and racial diversity targets, with linear increases year-over-year, and to interview a minimum of two diverse candidates for open senior-level positions.

Racial and Civil Rights Audits

2022 is seeing an avalanche of proposals seeking third-party racial equity and civil rights audits or reports on companies' plans to promote racial justice in the workplace and their operations. The purpose of the audits is to provide an independent, objective analysis of the racial impacts of a company's policies, practices, products and services along with recommendations for improvement. The sponsors suggest that the assessment include input from employees, customers, civil rights organizations and other stakeholders.

Following the 2020 Black Lives Matter protests, the Service Employees International Union (SEIU) and SOC Investment Group became the prime movers of this initiative, which initially targeted major financial institutions that made public pledges to combat racism and discrimination. Since then, Amgen, BlackRock, Citigroup, CoreCivic, JPMorgan Chase, Morgan Stanley, State Street and Tyson Foods have agreed to commission third-party racial audits, joining Airbnb, Meta Platforms and Starbucks, which conducted their initial audits several years ago.[13]

Investors and proxy advisors have been divided on the merits of racial impact audits, giving the 2021 proposals an average of 33% support but no majority votes. Those who frequently opposed the resolutions—including ISS, Vanguard and SSGA—felt that many of the targeted companies had already taken meaningful steps to address racial inequality.[14] However, the tide may be shifting this year with initial proposals receiving 53.5% at Apple and 64.2% at Maximus.

Conservative think-tank the National Center for Public Policy Research (NCPPR) is also moving into this space, sponsoring nine proposals calling for racial equity or non-discrimination audits. NCPPR's thrust is that anti-racism programs may in themselves be discriminatory against non-diverse employees and any audit should include input from stakeholders across the ideological spectrum. An initial proposal at Walt Disney mustered only 2.7% support, though other votes could get more interesting, such as Johnson & Johnson which is facing competing proposals from NCPPR and Mercy Investment Services.

Worker Rights

Spurred by tight labor markets and unionization efforts at Apple, Amazon.com, Starbucks and the New York Times, shareholder activists have filed over three dozen proposals on worker rights. Although prior resolutions have generated limited interest, polling data shows that the treatment of workers is a top priority for investors—and the public at large—ranking higher than climate change and social causes.[15]

Most of the resolutions ask retailers, restaurant chains and gig economy businesses to address workplace health and safety concerns and improve workers' pay and benefits. Eight proposals were directed at Amazon.com including requests for independent audits of working conditions at company warehouses and reports on workforce turnover and risks related to worker shortages. A new initiative by the Teamsters and SOC Investment Group takes issue with retailers' use of self-employed "independent contractors" in their supply chains and distribution networks which results in lower wages and fewer benefits for workers.

---

[13] Results of the civil rights audits of Airbnb, Meta Platforms and Starbucks can be found at https://blog.atairbnb.com/wp-content/uploads/2016/09/REPORT_Airbnbs-Work-to-Fight-Discrimination-and-Build-Inclusion.pdf, https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf and https://stories.starbucks.com/stories/civil-rights-assessments/, respectively.

[14] Vanguard and SSGA have provided additional guidance at https://global.vanguard.com/documents/insights-diversity-equality-inclusion.pdf and https://www.ssga.com/library-content/pdfs/asset-stewardship/guidance-on-diversity-disclosures-practices.pdf, respectively. ISS's 2022 policy on racial equity audits can be found at https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf.

[15] See JUST Capital's survey research at https://justcapital.com/reports/in-2021-americans-told-us-they-expect-companies-to-lead-on-these-7-imperatives-2022-is-the-time-to-act/ and PwC's 2021 U.S. investor survey at https://viewpoint.pwc.com/dt/us/en/pwc/in_the_loop/in_the_loop_US/theeconomicrealitiesofESG.html.

Sexual Misconduct and Concealment Clauses

Proposal submissions dealing with sexual harassment policies have doubled in number this year after three of the five voted in 2021 garnered majority support. Most ask boards to review the risks associated with the use of concealment clauses, including arbitration, non-disclosure and non-disparagement agreements. Such provisions can restrict employees from publicly disclosing harassment, discrimination or other unlawful acts in the workplace. The resolution recently won a slim majority vote (50.04%) at Apple while a proposal at Starbucks to report on the effectiveness of its sexual harassment and racial discrimination policies received 32.1% support.

Going forward, newly enacted state and federal laws could diminish investor interest in private ordering efforts. California recently broadened its laws to prohibit concealment clauses in employment agreements involving recognized forms of discrimination and unlawful activity. The Biden administration additionally signed new federal legislation which bans forced arbitration in sexual misconduct cases.

Gender/Racial Pay Equity

Arjuna Capital and Proxy Impact are pressing ahead with their longstanding campaign to compel companies to report median and adjusted pay gap data across gender and race. Three of this year's nearly dozen targets— Chipotle Mexican Grill, Home Depot and Target—have agreed to the disclosures, joining a small group of companies that are releasing unadjusted figures which purportedly show how jobs are distributed by gender and race.[16] Of the proposals voted to date, support levels are exceeding last year's average of 25.6%., including 33.6% at Apple and 59.6% at Walt Disney—marking the second time since 2016 that a pay gap resolution has received a majority vote.

[16] Companies reporting median pay gap statistics include Adobe, Bank of New York Mellon, Citigroup, Mastercard, Microsoft, Pfizer and Starbucks.

Climate Change

After last year's say-on-climate resolutions received a mixed response from shareholders, proponents have shifted their attention to requesting more ambitious targets for reducing greenhouse gas (GHG) emissions—including Scope 3 value chain emissions—to align with the Paris Agreement goal of achieving net-zero emissions by 2050.[17]

Over four dozen GHG proposals have been filed and the first out of the gate—at Costco Wholesale—won 69.9% support.[18] Notably, Costco withdrew its request for no-action relief after the SEC issued SLB 14L last fall which signaled that proposals to adopt targets or timelines to address climate change would not be excludable as micromanagement if they did not mandate specific methods for achieving such goals.[19] As a result, relatively few companies are challenging the 2022 proposals and half have reached negotiated withdrawals.

Proposals dealing with climate change financing have similarly escalated in volume, tripling last year's filings. Most encourage banks and insurers to ensure that their financing, lending and underwriting activities do not contribute to new fossil fuel supplies that are inconsistent with the International Energy Agency's (IEA) Net Zero Emissions by 2050 Scenario. Many of the banks are repeat targets, but this is the first time that the insurance industry is being pressured to drop fossil fuel clients. Another group of proposals asks banks, utilities and oil companies to account for climate risk in their audited financial statements. In 2021, the

[17] The Conference Board reported that 43% of S&P 500 companies disclosed Scope 3 emissions in 2021, compared to 13% of the S&P MidCap 400 and 11% of the Russell 3000. Nearly 70% of the S&P 500, about one quarter of the S&P MidCap 400 and 20% of the Russell 3000 disclosed Scope 1 and 2 emissions. See https://www.conference-board.org/topics/sustainability-practices/is-your-company-ready-for-scope-3.

[18] Vanguard supported the GHG proposal at Costco due to gaps in its disclosure of Scope 3 emissions, which are likely its largest source of emissions. See https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/perspectives-and-commentary/Costco_2033822_022022.pdf.

[19] See SLB 14L at https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals.

proposals received 47.8% at Chevron and 48.9% at Exxon Mobil.

Aside from shareholder proposals, investors and proxy advisors are increasingly holding boards accountable for climate risk. 2021 was the first year that Glass Lewis recommended against directors of U.S. companies due to poor disclosure and oversight of climate-related risks. BlackRock also expanded its climate-focus universe last year to over 1,000 carbon-intensive companies globally. In the 2020-2021 proxy year, it voted against 255 directors based on climate-related concerns.[20] It is BlackRock's policy to vote against the directors tasked with climate risk oversight if corporate disclosures do not align with the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD) or do not include Scope 1 and 2 emissions and meaningful short-, medium-, and long-term targets.[21]

For 2022, ISS has adopted a new climate change policy that applies to the 167 companies in the Climate Action 100+ focus group. ISS will recommend against the responsible directors if the company is not taking "minimum steps" to understand, assess and mitigate climate risks. SSGA is launching an engagement campaign this year on climate transition plan disclosure targeting significant emitters in carbon-intensive sectors. In 2023, SSGA will hold directors accountable if these companies fail to show adequate progress on meeting its disclosure expectations.[22] For 2022, SSGA has adopted a TCFD-aligned disclosure policy—similar to BlackRock's—which will pertain to the entire S&P 500 index and hold board leaders accountable for non-compliance.

Environmental Pollution

Apart from climate change, plastic pollution of the oceans is another top environmental priority for shareholders, spurred by a whopping 81.2% vote at DuPont de Nemours last year. As You Sow is now targeting three other petrochemical companies—Dow, Exxon Mobil and Phillips 66—to address the risks of reduced demand for single-use plastics and consider shifting their business models from virgin to recycled polymers. In 2019, Exxon Mobil and Chevron Phillips Chemical—a joint venture of Chevron and Phillips 66—reached agreements with the proponent to report on spills of pre-production plastic pellets, which can also contaminate waterways.

In addition to producers, As You Sow and the Green Century Funds are continuing to press the consumer goods sector to reduce its use of non-recycled plastics. A sustainable packaging proposal recently received a staggering 95.4% vote at Jack in the Box which, according to Green Century, lags its competitors in reporting and mitigating packaging-related risks. Several other companies settled with the proponents, including Kraft Heinz which plans to set a virgin plastic reduction goal by early 2023. Last year, six companies agreed to cut the virgin plastic in their brand packaging by 2025 or 2030, while votes on the topic reached 45.6% at Kroger and 35.5% at Amazon.com.

The remaining recycling proposals for 2022 deal with electronic waste arising from consumers' limited ability to perform common repairs to their products. As You Sow won a first-of-its kind victory last fall at Microsoft, which agreed to study the benefits of increasing consumer access to parts and repair documentation, as well as impacts on carbon emissions and waste. Apple and Deere followed suit while the proposal remains pending at Alphabet.

[20] See BlackRock's 2020-2021 Investment Stewardship report at https://www.blackrock.com/corporate/literature/publication/2021-voting-spotlight-full-report.pdf.
[21] See BlackRock's "Climate Risk and the Global Energy Transition" at https://www.blackrock.com/corporate/literature/publication/blk-commentary-climate-risk-and-energy-transition.pdf.
[22] See SSGA's "Guidance on Climate-Related Disclosures" at https://www.ssga.com/library-content/pdfs/asset-stewardship/guidance-on-climate-related-disclosures.pdf.

Political Activities

With more issuers disclosing details of their lobbying and campaign spending, political activity proposals are becoming focused on driving alignment between companies' expenditures and their stated core values and public commitments on key issues.[23] Congruency resolutions have more than doubled in volume this season after receiving a record 38.5% in average support in 2021 and the backing of ISS.

As in 2021, the underlying issues raised by the proponents include funding members of Congress who contested the 2020 election results and donating to candidates and political committees who endorse stricter abortion and voter ID laws and a rollback of climate regulations. A new variation asks four pharmaceutical companies to specifically address how their lobbying activities align with their public positions and statements on access to affordable medicines.

Paris-aligned climate lobbying proposals have returned for a third year after majority votes escalated from one in 2020 to five in 2021. The resolutions ask for a report describing if and how the company's lobbying activities (direct and indirect) align with the Paris Climate Agreement's aspirational goal of limiting average global warming to 1.5º Celsius. This year the proponents have broadened their targets from the energy and transportation sectors to high tech firms, financial institutions, and healthcare and pharmaceutical companies. So far, over half of the proposals have been withdrawn due to company commitments.

Meanwhile, standard disclosure proposals on lobbying and election spending could register higher support this year due to shifts in investor positions. During the 2021 proxy season, BlackRock and Vanguard backed the Center for Political Accountability's (CPA) model resolutions for the first time—with 50% endorsed by BlackRock and 25% by Vanguard—while SSGA increased the frequency of its support to 75%, up from 45.5% in 2020.[24] This year, Harrington Investments is expanding the reach of disclosures by urging Coca-Cola, McDonald's and PepsiCo to report their expenditures on public policy activities *outside* of the U.S.

Drug Pricing and Access

Pharmaceutical companies are facing a dozen healthcare resolutions which largely center on equitable access to COVID-19 products. A repeat theme asks manufacturers to explain whether and how their receipt of public financial assistance to develop and produce COVID-19 vaccines and therapeutics is factored into access and pricing decisions. Last year, the proposals averaged 31.2% support at Pfizer, Merck and Johnson & Johnson and received the backing of ISS.

New proposal variations deal with COVID-19 vaccine technology transfer. Pfizer, Moderna and Johnson & Johnson are being asked to study the feasibility of sharing intellectual property and technical know-how with manufacturers in low- and middle-income countries to increase vaccine supply or to report on the public health costs of vaccine protectionism. In a January letter, a group of 65 institutional investors additionally urged the drugmakers to tie executive pay to making COVID-19 vaccines available around the world.

Apart from COVID products, shareholders affiliated with the Investors for Opioid and Pharmaceutical Accountability (IOPA) are revisiting the issue of rising prescription drug costs. This year's resolutions single out AbbVie, Eli Lilly, Gilead Sciences and Pfizer for patent protections and anti-competitive practices which shut out generic medications. Unlike prior drug pricing proposals, the targeted firms have been unable to block the resolutions on ordinary business or substantial implementation grounds.

[23] The Center for Political Accountability (CPA) reported in November 2021 that over 75% of S&P 500 firms fully or partially disclose their political contributions or prohibit at least one type of spending. See https://www.politicalaccountability.net/wp-content/uploads/2021/11/2021-CPA-Zicklin-Index.pdf.

[24] See the CPA's 2021 proxy season analysis at https://www.politicalaccountability.net/wp-content/uploads/2021/12/2021-CPA-Proxy-Report.pdf.

Corporate Gadfly Initiatives

Members of the Chevedden group have scuttled their broadscale campaign on written consent—the most prevalent proposal in 2021—in favor of other governance measures, including upping their submissions on special meeting rights and reviving severance pay and clawback resolutions.

This year, Chevedden and Steiner have added some nuances to their independent chair resolutions by according boards the discretion to appoint a temporary, non-independent chair. However, in a few cases the proposed policy explicitly restricts the appointment to a three- to six-month period (International Business Machines) or requires that it be ratified by shareholders at the next annual meeting (Dow).

In another twist, after calling out companies for switching to virtual-only meetings during the pandemic, Chevedden is now admonishing at least one company—Dover—for holding an in-person-only meeting this year. In his view, this discriminates against shareholders over a certain age or those with a disability due to a compromised immune system.[25] The Humane Society has similarly been advocating that shareholder meetings be held in whole or part by virtual means, winning 69% approval this year at Jack in the Box and 58% last year at Cracker Barrel Old Country Store.

For their part, McRitchie and Young have already made inroads at nine companies that adopted proxy access in response to their proposals. These include two whose bylaws are lenient on group aggregations, a longstanding advocacy of the proponents: Celldex Therapeutics (no limit) and Yelp (50-person limit). They additionally reached agreements with six companies to destagger their boards.

As a new focus, McRitchie wants to foster an ownership culture among employees as a way of empowering workers and reducing wealth inequality. Five proposals request disclosure of share incentives and associated voting power awarded to employees at all levels, sorted by EEO-1 employee classifications. Ten others ask boards to consider the pay and stock ownership incentives across all levels of U.S. employees when setting target amounts of CEO compensation.

For a second year, McRitchie and Young are working with The Shareholder Commons (TSC), a non-profit that focuses on systemic investment risk—namely, how individual company practices, while increasing returns, impose external costs on the broader economy which impact the portfolios of diversified shareholders. After a poor showing last year, TSC has abandoned its initial solution—conversion to a public benefit company—in favor of requesting studies on specific societal costs borne by investors, such as declining public health, misinformation, climate change and wealth inequality.[26]

Executive Compensation

Shareholders and proxy advisors will be closely eyeing executive pay plans after last year's failure rate reached 2.8% of the Russell 3000 and 3.9% of the S&P 500.[27] In their respective 2021 post-season reports, the proxy advisors indicated that the primary drivers of their negative SOP recommendations were PFP misalignment (ISS) and excessive granting practices, particularly mega-grants (Glass Lewis). Both observed that one-time awards and adjustments to in-flight long-term incentives were prevalent among S&P 500 failures. Compensation concerns were also the most common reason for majority opposition to Russell 3000 directors, according to Glass Lewis.

So far this year, investors have voted down SOP at only three Russell 3000 firms, compared to seven during the first quarter of 2021. Just one—Arrowhead Pharmaceuticals—was a second-year failure, which ISS attributed to inadequate disclosure of shareholder outreach efforts and the company's responses to feedback. For the most part, companies that were penalized last year are providing more details in their

[25] See Chevedden's comments at https://www.corpgov.net/2022/03/in-person-only-agm-reckless-disregard/.

[26] TSC has coordinated 19 proposals for 2022, which can be found at https://theshareholdercommons.com/system-stewardship-shareholder-proposals/.

[27] See Semler Brossy's "2021 Say on Pay & Proxy Results" at https://semlerbrossy.com/wp-content/uploads/2022/01/SBCG-2021-SOP-Report-2022-01-31.pdf.

proxy statements on how they have addressed the factors behind the low support. Most have made meaningful changes to their executive compensation programs and related disclosures, including adjusting peer groups, enhancing the rigor of performance metrics and refraining from making special awards to NEOs.

Coming Up

Aside from annual meetings, the SEC is moving through an ambitious rulemaking agenda, some of which has already materialized in proposed or final form.[28] These include universal proxy ballots and climate change disclosure, which are discussed in more detail below, and reporting around beneficial ownership, cybersecurity risk management and SPAC transactions, which are out for public comment until April 11, May 9 and May 31, respectively.[29]

Additional ESG disclosure requirements could be announced this year, including board diversity and human capital metrics. The SEC also plans to complete rulemaking mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, including pay-versus-performance and clawback rules which were originally proposed in 2015.

Universal proxies: On Aug. 31, the SEC's universal proxy rule will take effect which will allow shareholders to split their votes between board nominees and dissident candidates in a contested election on one proxy card. This will put shareholders who vote by proxy or in person on equal footing.

The second half of 2022 will be the first indicator as to whether the use of universal proxies leads to increased proxy fight activity or more dissidents being elected to boards—concerns that have been expressed by the corporate community. Some activists are getting out ahead and pressing target firms to utilize universal ballots at spring annual meetings. So far, companies have shown no inclination to consent, including Huntsman, which prevailed in its recent fight with Starboard Value, and Kohl's, which is facing off with Macellum Advisors in May.

Climate change disclosure: Toward the end of the year, the SEC plans to finalize its proposed climate change disclosure rule, which it unveiled on March 21. The long-anticipated proposal will require U.S. issuers to report in their SEC filings GHG emissions data and climate-related risks in a framework modeled after the TCFD and Greenhouse Gas Protocol.[30] The proposed rule is open to public comment until the later of 30 days after publication in the Federal Register or May 20, 2022.

The release spans a profusion of disclosures, which will be phased in over the next several years based on company size and filing status.[31] Among them are climate risk impacts on a company's strategy, business model and outlook; physical and transition risks; and board and management oversight of climate risks, including their climate-related expertise. Companies must also provide details on any climate transition plan, scenario analysis and GHG reduction goals they have in place and progress made on them.

Emissions reporting covers those arising from company operations (Scope 1), purchased energy (Scope 2) and, in the case of larger filers, the entire value chain (Scope 3) if material or if targets have been publicly announced. The rule includes a safe harbor for Scope 3 disclosures and a third-party attestation requirement for large reporting companies' Scope 1 and 2 disclosures.

Based on the volume of comment letters submitted during the SEC's 2021 consultation on climate disclosures, the proposed rule could face a tough road to finalization. While some shareholders have long advocated for a rule to enhance and standardize disclosures, mandatory climate reporting has sparked

[28] See the SEC's Fall 2021 Regulatory Flexibility Agenda at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=7CE97CC2D49C9B6B70868F7B2752E582C86F1945A4A46F34426C18AF1ABE101E611318F64B67159C3A36E7556BD0FB872C8.

[29] See the SEC's related fact sheets at https://www.sec.gov/files/33-11030-fact-sheet.pdf, https://www.sec.gov/files/33-11038-fact-sheet.pdf and https://www.sec.gov/files/33-11048-fact-sheet.pdf.

[30] See more on the Greenhouse Gas Protocol at https://ghgprotocol.org/about-us.

[31] See the SEC's proposed climate disclosure rule and fact sheet at https://www.sec.gov/rules/proposed/2022/33-11042.pdf and https://www.sec.gov/files/33-11042-fact-sheet.pdf.

considerable controversy, especially from business groups. One flashpoint is the requirement for Scope 3 emissions, which may constitute a significant part of a firm's carbon footprint but are difficult and costly to estimate since companies cannot directly control them.[32] Even investors are divided on this issue with some, such as BlackRock, regarding Scope 3 reporting as premature.

In the near term, the rule is unlikely to lessen shareholder proposals on climate change in view of the multi-year transition period and the certainty of legal challenges. Moreover, many resolutions go beyond disclosure and call for the establishment of Paris-aligned GHG reduction goals—including for Scope 3 output—which companies may be reluctant to do if it would trigger additional disclosure burdens.

Alliance Advisors will continue to monitor the status of new regulations, as well as vote outcomes from the 2022 proxy season. We will keep issuers informed of significant developments that will aid in their planning for upcoming annual meetings.

[32] A September 2021 survey by Deloitte of 353 audit committee members found that only 26% of respondents in the Americas and 36% globally said their organizations were reporting or planning to report Scope 3 emissions as part of their TCFD disclosures. The two biggest reporting challenges cited were the ambiguity of measurement standards and the lack of robust information from the value chain. See https://www2.deloitte.com/global/en/pages/risk/articles/frontier-topics-audit-committees-climate-audit-committee.html?nc=1.

Table 1: Top 10 Shareholder Proposal Filings: 2021-2022

Proposal	2022 (as of April 1)	Proposal	2020 (full year)
Special meetings	78	Written consent	84
Racial justice/civil rights audit/report	55	Independent chairman	47
GHG emissions reduction	54	Supermajority voting	40
Grassroots lobbying	44	Special meetings	39
Independent chairman	37	Proxy access	38
Finance and climate change	27	Workplace diversity (EEO-1 report)	38
Proxy access	25	Grassroots lobbying	37
Workplace diversity (DEI report)	24	Carbon transition planning	32
Political spending	23	Political spending	31
Lobbying alignment on climate change	20	Workplace diversity (DEI report)	30

Source: SEC filings, proponent websites and media reports.

Table 2: Shareholder Proposal Majority Votes: 2022 (as of April 1)

Proposal	Company	Vote*
Special meetings	Agilent Technologies	81.7%
Special meetings	Becton, Dickinson	55.1%
Hold virtual meetings	Jack in the Box*	69.0%
Gender/racial pay equity	Walt Disney	59.6%
GHG emissions reduction	Costco Wholesale	69.9%
Sustainable packaging	Jack in the Box	95.4%
Racial equity/civil rights audit	Apple	53.5%
Racial equity/civil rights audit	Maximus	64.2%
Sexual harassment policies	Apple	50.04%

Note: Vote results are calculated as “for” votes as a percentage of “for” and “against” votes.
*The board made no recommendation on the proposal.
Source: SEC filings

Table 3: E&S Majority Votes: 2021

Proposal	Company	Vote*
Board diversity - liberal version	Badger Meter	85.4%
Board diversity - liberal version	First Community Bankshares*	70.6%
Board diversity - liberal version	First Solar	91.2%
Executive diversity	PayCom Software*	93.8%
Workplace diversity - EEO-1 report	DuPont de Nemours	83.8%
Workplace diversity - EEO-1 report	Union Pacific	86.4%
Workplace diversity - DEI report	American Express	59.7%
Workplace diversity - DEI report	International Business Machines**	94.3%
Workplace diversity - DEI report	Tesla	56.9%
Workplace diversity - DEI report	Union Pacific	81.4%
Mandatory arbitration of employment-related claims	Goldman Sachs Group	53.2%
Mandatory arbitration of employment-related claims	Sunrun	59.4%
Sexual harassment policies	Microsoft	78.0%
Worker safety	Wendy's**	95.3%
Climate change transition planning	Booking Holdings	56.5%
Climate change transition planning	General Electric**	98.0%
GHG emissions reduction	AutoZone	70.4%
GHG emissions reduction	Chevron	60.7%
GHG emissions reduction	ConocoPhillips	59.3%
GHG emissions reduction	Phillips 66	80.3%
GHG emissions reduction	Sysco*	92.1%
Plastic pollution	DuPont de Nemours	81.2%
Deforestation	Bloomin' Brands	76.2%
Deforestation	Bunge**	98.9%
Lobbying disclosure	AECOM	54.6%
Lobbying disclosure	Exxon Mobil	55.6%
Lobbying disclosure	FedEx	62.4%
Lobbying disclosure	GEO Group	66.3%
Lobbying alignment on climate change	Delta Air Lines	63.0%
Lobbying alignment on climate change	Exxon Mobil	63.8%
Lobbying alignment on climate change	Norfolk Southern	76.4%
Lobbying alignment on climate change	Phillips 66	62.5%
Lobbying alignment on climate change	United Airlines Holdings	65.4%
Political spending disclosure	Chemed	80.2%
Political spending disclosure	Duke Energy	51.9%
Political spending disclosure	Netflix	80.7%
Political spending disclosure	Omnicom Group	51.0%

Proposal	Company	Vote*
Political spending disclosure	Royal Caribbean Cruises	52.9%
Political spending disclosure	United Airlines Holdings	67.9%

Note: Vote results are calculated as "for" votes as a percentage of "for" and "against" votes.
*The board made no recommendation on the proposal.
**The board supported the proposal.
Source: SEC filings

Gender Diversity				
Organization	Date Effective	Applicable U.S. Index	Threshold	Directors Opposed
ISS	2023	All	1 female director	Nominating committee chair
Glass Lewis	2022	Russell 3000 or 7+ directors	2 gender diverse directors	Nominating committee chair. All nominating committee members if no gender diverse directors.
Glass Lewis	2022	Non-Russell 3000 or 6 or fewer directors	1 gender diverse director	Nominating committee chair
Glass Lewis	2023	Russell 3000	30% gender diverse board	Nominating committee chair
BlackRock	2022	All but with a focus on S&P 500	30% diverse membership, including at least 2 women and 1 director from an underrepresented group	All nominating committee members if inadequate progress made
State Street	2022	All	1 female director	Nominating committee chair or board leader. All nominating committee members if threshold not met for three consecutive years.
State Street	2023	Russell 3000	30% female directors	Nominating committee chair or board leader. All nominating committee members if threshold not met for three consecutive years.
Goldman Sachs Asset Management	2022	All	2 female directors if more than 10 board members	All nominating committee members
Wellington Management	2022	All	1 gender diverse director	Nominating committee chair
Wellington Management	2022	Major indices	20% gender diverse	Nominating committee chair
Legal & General Investment Management	2023	S&P 500	30% female directors and women in senior management	Nominating committee chair or board chair

Racial/Ethnic Diversity				
Organization	**Date Effective**	**Applicable U.S. Index**	**Threshold**	**Directors Opposed**
ISS	2022	S&P 1500, Russell 3000	1 racially/ethnically diverse director	Nominating committee chair
State Street	2022	S&P 500	1 director from an underrepresented minority	Nominating committee chair
	2022	S&P 500	Disclosure of board racial/ethnic diversity	Nominating committee chair
State Street	2022	S&P 500	Disclosure of EEO-1 report	Compensation committee chair
AllianceBernstein	2022	All	1 racially/ethnically diverse director	Nominating committee chair
Goldman Sachs Asset Management	2022	S&P 500	1 director from an underrepresented minority	All nominating committee members
Wellington Management	2022	Large caps	1 director from a minority ethnic group	Nominating committee chair
Legal & General Investment Management	2022	S&P 500	1 ethnically diverse director	Nominating committee chair or board chair
New York State Common Retirement Fund	2022	Russell 1000	1 director from an underrepresented minority	Full board
	2022	Russell 1000	2 directors from an underrepresented minority	All nominating committee members
	2022	Russell 1000	Disclosure of board racial/ethnic diversity	All nominating committee members
	2022	S&P 500	Disclosure of EEO-1 report	All compensation committee members