

## 2015 PROXY SEASON PREVIEW

By Shirley Westcott

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### Overview

This year's annual meeting season presents a variety of challenges for issuers. Foremost is a sweeping campaign spearheaded by New York City Comptroller Scott Stringer advocating proxy access rights, which would allow eligible shareholders to include their own board nominees in company proxy statements. While this will be the pivotal issue of 2015, the proponents expect proxy access to be a multi-year campaign with an expanding focus list of corporate targets.<sup>1</sup> As an added impetus, SEC Chair Mary Jo White recently announced that the Commission will not resurrect a universal proxy access rule after its rulemaking effort five years ago was voided by a U.S. appeals court.

Unforeseen this year was the SEC's decision in mid-January to stop issuing no-action letters for conflicting management proposals while it reviews Rule 14a-8(i)(9). This has left issuers scrambling on how best to respond to shareholder calls for proxy access as well as other matters, such as requests for special meeting rights. While a number of prominent firms, including Bank of America, Citigroup, and General Electric, have been agreeable to adopting access rights, a majority of the targeted companies have opted to oppose the shareholder resolutions—already reaching over 100 submissions—rather than implement any form of proxy access at this time.

Although proxy access will overshadow other voting issues this proxy season, shareholder activists, particularly in the environmental and social (E&S) community, have still found the bandwidth to devise new types of resolutions alongside a deluge of filings on climate change and campaign finance. Meanwhile, gadfly investors John Chevedden, James McRitchie, Myra Young, and William and Kenneth Steiner have taken up the slack from pension funds on advancing

<sup>1</sup> One advocate, TIAA-CREF, hopes to fast-track corporate adoptions of proxy access over the next six to eight months through letters to its top 100 portfolio companies.

governance measures such as board declassification, the adoption of majority voting in director elections, and the appointment of independent chairmen.<sup>2</sup> Even so, popular governance proposals are down in count this year, reflecting the increasing shift towards direct engagement to promote corporate reforms (see Table 1).

Hedge funds and other insurgents are similarly not shirking from pressing for strategic and operational changes—and often board seats—at multi-billion dollar corporations. While a number of high-profile campaigns, including General Motors, PepsiCo, and Gannett, were settled early in the year, proxy fight volume is expected to equal or exceed 2014 levels. This year, corporate split-ups, coupled with governance enhancements, are increasingly featuring in dissident demands. Proxy advisors Institutional Shareholder Services (ISS) and Glass Lewis are also surveilling the governance of newly public companies and promise to come down hard on any boards that unilaterally adopt charter or bylaw provisions that detract from shareholder rights.

In all, this proxy season will bear close monitoring on a number of fronts. Some of the key issues being raised this year are discussed in more detail below.

<sup>2</sup>For example, the Harvard Law School Shareholder Rights Project (SRP) completed its work in the summer of 2014. Through company dialogues and proposal submissions, the SRP's investor partners moved nearly 100 S&P 500 and Fortune 500 companies to declassify their boards between 2012 and 2014. Other investors, such as Vanguard, the California State Teachers' Retirement System (CalSTRS), the California Public Employees' Retirement System (CalPERS), and the United Brotherhood of Carpenters Pension Plan, have largely engaged in behind-the-scenes negotiations to encourage governance reforms.

## Proxy Access

Proxy access will take center stage this proxy season with over 100 shareholder proposals in the pipeline seeking access rights. Most are in conjunction with the NYC Comptroller's Boardroom Accountability Project, which targeted 75 companies on the basis of high opposition to say-on-pay (SOP) votes in 2014 (25 firms), inadequate board diversity (24 firms), or operations in carbon-intensive industries (33 firms).<sup>3</sup> To date, virtually all of this year's shareholder access resolutions, including those sponsored by individual investors, follow the 3%/3-year eligibility provisions established in SEC Rule 14a-11, which was vacated in 2011.<sup>4</sup>

This ambitious push came about following two years of proponents testing various proxy access formulations. Shareholder access proposals reached a tipping point last year when six out of ten "three-and-three" proposals received majority support (excluding abstentions)—including four that were sponsored by the NYC Pension Funds—and nine issuers adopted or committed to adopt access rights.<sup>5</sup> Noteworthy, however, is that five of the six winning proposals occurred at companies with a history of failed SOP votes. The NYC Comptroller's social screening criteria—board diversity and climate change—will be far less persuasive arguments for mainstream investors to support proxy access. Business advocates also caution that the campaign isn't motivated by

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<sup>3</sup> See <http://comptroller.nyc.gov/boardroom-accountability/bap-companies/>. The targets include 55 S&P 500 companies and 20 Russell 3000 companies. Other selection criteria included companies targeted in 2014 with proxy access or independent chair resolutions. The NYC Comptroller passed on firms with high insider ownership, dual-class stock structures, or early filing deadlines.

<sup>4</sup> A proposal at CSP, sponsored by McRitchie and Young, called for access rights for 3% shareholders but with a two-year, rather than three-year, holding period.

<sup>5</sup> In 2014, shareholder access proposals received majority support (excluding abstentions) at Abercrombie & Fitch, Big Lots, Boston Properties, International Game Technology, Nabors Industries, and SLM. Companies that adopted or committed to adopting proxy access rights last year included CenturyLink, Chesapeake Energy, Darden Restaurants, Enterprise Financial Services, Kilroy Realty, McKesson, Nabors Industries, SLM, and Verizon Communications.

shareholder returns—the proponents didn't target underperforming companies—but as a mechanism for special interest groups to nominate directors who would promote their agendas internally.<sup>6</sup>

Two developments have shaped issuers' responses to the campaign. In mid-January, the SEC's Division of Corporation Finance suspended issuing guidance on same subject matter counter-proposals while it reviews the scope and applicability of Rule 14a-8(i)(9). This followed outcry from proponents and other investor groups after CorpFin granted Whole Foods Market no-action relief for offering a conflicting management resolution—but with an onerous 9%/5-year/single holder eligibility requirement—which unleashed a flurry of similar actions by two dozen other companies.

The second development is the prospect of backlash against boards that obstruct votes on shareholder access proposals. The proxy advisors, along with various institutional investors such as BlackRock, TIAA-CREF, CalSTRS, and CalPERS, threatened to oppose the election of directors who omit the shareholder resolution without obtaining regulatory or judicial relief.<sup>7</sup> ISS went one step further when it declared in a Feb. 19 policy update that it would generally reject any

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<sup>6</sup> One example reported in As You Sow's 2015 Proxy Preview is the 50/50 Climate Project which aims to improve the "climate competency" of boards. The project's initial activities include supporting proxy access proposals at energy companies and building a bench of climate competent director candidates to be put forward to nominating committees or, in select cases, to run on dissident slates. Other project activities include identifying corporate funding of the climate change denial movement and promoting executive incentive structures that reward less carbon intensive and more sustainable energy sources. See <http://www.proxypreview.org/>.

<sup>7</sup> ISS's "withhold" policy applies to a company's exclusion of any shareholder proposal—whether or not there is a conflicting management proposal on the ballot—without obtaining a voluntary withdrawal from the proponent, a no-action letter from the SEC, or a declaratory judgment from a U.S. District Court that the proposal may be omitted. Where a company has taken unilateral action to implement the shareholder proposal, ISS will take into account the extent it has been implemented and any material restrictions added to it. See <http://www.issgovernance.com/file/policy/2015faquspoliciesonselecttopics.pdf>.

proxy access proposal—either from management or a shareholder—that has more restrictive parameters than a three-and-three group structure. Glass Lewis, for its part, is maintaining its case-by-case approach to access resolutions, and will evaluate whether the terms of an alternate management proposal are overly burdensome or vary materially from the shareholder resolution. The divergent approaches of these two advisory firms were manifested early on when ISS supported a 3%/3-year proposal at Apple, while Glass Lewis rejected it as unnecessary in view of the company’s strong financial performance and its responsiveness to shareholders by adopting majority voting and increasing its share repurchases.<sup>8</sup> The resolution failed with only 39.2% support.<sup>9</sup>

As a result, a majority of the targeted companies that have filed proxies to date have opted to fight the shareholder proposal rather than support it, adopt it, or offer a board-sponsored alternative (see Table 2). One additional firm—governance front-runner Prudential Financial—proactively implemented a proxy access bylaw in the absence of any shareholder proposal. No company has been reported to be seeking exclusion of the shareholder resolution through a federal court order.

Only a handful of issuers have reached negotiated settlements with the proponents. However, the points of compromise have been on “below the line” features, not on the 3%/3-year eligibility requirements: capping shareholder nominations at 20% rather than 25% of the board, limiting group aggregations to 20-25 shareholders, allowing shares on loan to count towards the ownership threshold, and restricting resubmissions of shareholder-nominated candidates. The NYC pension funds reported five withdrawals, though some were easy wins: Abercrombie & Fitch and Big Lots, where access resolutions received majority support last year, and McKesson, which reached an accord with the proponent prior to its 2014 annual meeting.

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<sup>8</sup> Despite being a strong advocate for proxy access, CalPERS came to the same conclusion as Glass Lewis and opposed the resolution at Apple.

<sup>9</sup> In addition to Apple, proxy access resolutions have been voted on this year at CSP (49% support) and Monsanto (53.5% support).

Other corporate adopters have gravitated towards a 5%/3-year formulation, clearly influenced by the views of their major shareholders, particularly Vanguard which prefers access thresholds of 5%/3 years. Five companies—AES, Chipotle Mexican Grill, Cloud Peak Energy, Exelon, and SBA Communications—are offering investors a choice between the three-and-three shareholder proposal and a five-and-three management proposal. At AES, Exelon, and SBA Communications, the management proposals are only advisory, but they are taking different approaches to reconciling the voting outcomes. If approved, AES will adopt management’s measure, irrespective of the vote on the shareholder resolution, while Exelon will put forward a binding management proposal in 2016 if *either* the management or the shareholder resolution is approved by a majority of shares. SBA Communications will implement the management proposal if it passes and the shareholder proposal fails, but if both are approved, the company will seek additional input from investors.

However the votes shake out this proxy season, it is evident that investor views on proxy access are still evolving. Far from a one-size-fits-all consensus, issuers have encountered a range of opinions from their shareholders, from those who support some level of access rights, but differ on the specific formulation, to those who oppose proxy access entirely. For this reason, many companies prefer to continue engaging their shareholders on the matter and develop approaches that are best suited to their specific circumstances.

### *SEC Reversals*

Beyond proxy access, the SEC retreat on Rule 14a-8(i)(9) is impacting other types of shareholder resolutions that issuers have historically omitted due to conflicting proposals, such as those calling for special meeting rights, removal of supermajority provisions, stronger clawback policies, or the pro rata vesting of equity awards.<sup>10</sup> In particular, over a dozen companies

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<sup>10</sup> In the past, the SEC has permitted exclusion of shareholder proposals advocating certain compensation measures when there is a management resolution on the ballot to adopt or amend an equity

facing special meeting resolutions have had to resort to alternative courses of action, including two—BorgWarner and Illinois Tool Works—where proponents Chevedden and Steiner persuaded the SEC to withdraw previously issued no-action letters. In most cases, issuers are presenting dueling proposals rather than adopting the eligibility thresholds promulgated by the proponents (10% or 20% of the shares) (see Table 3).<sup>11</sup> However, votes on these will be more unpredictable than those on competing proxy access resolutions where ISS and various institutional investors have been unequivocal about their preferred structure.<sup>12</sup>

Aside from the conflicting proposal exemption, business groups have raised concerns with the SEC over other inconsistencies in staff decisions at the onset of proxy season.<sup>13</sup> Some 15 companies were denied no-action relief on gadfly-sponsored independent chair resolutions, despite earlier pronouncements by the SEC—as late as December 2014—that they were excludable as vague and indefinite. The issuers had

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incentive plan. Companies targeted with supermajority voting proposals have been able to omit them as substantially implemented when presenting a comparable management proposal, though Goodyear Tire & Rubber is including both resolutions on its ballot.

<sup>11</sup> At least one company (AGL Resources) filed a second no-action petition to exclude the shareholder resolution as substantially implemented. Another company—Illinois Tool Works—is endorsing the shareholder proposal after switching its stance between its preliminary and definitive proxy filings. The company’s preliminary proxy had excluded the shareholder proposal in favor of a management resolution with the same eligibility requirements (20% of the shares).

<sup>12</sup> Although ISS supports management proposals that enhance shareholders’ ability to call special meetings, it has also endorsed shareholder resolutions that seek to reduce the eligibility threshold to as low as 10% of the shares. In recent years, these shareholder proposals have won majority support primarily at companies that had no special meeting rights or where the eligibility threshold was a majority of shares or higher.

<sup>13</sup> See letters to the SEC from the Business Roundtable and the Society of Corporate Secretaries and Governance Professionals at <http://businessroundtable.org/sites/default/files/letters/Business%20Roundtable%20Letter%20to%20Chair%20White.pdf> and [http://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/26582a95-d501-4284-afd8-8e18fa9426a2/UploadedImages/Comment%20Letters/SEC%20Rule%2014a-8\(i\)\(9\)%20-%20Comment%20LetterFinal.pdf](http://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/26582a95-d501-4284-afd8-8e18fa9426a2/UploadedImages/Comment%20Letters/SEC%20Rule%2014a-8(i)(9)%20-%20Comment%20LetterFinal.pdf).

argued that it was unclear under the proponents’ definition of independence whether director pay or stock ownership constituted a nontrivial financial connection to the company. The SEC staff concluded that “upon further reflection” the proposal was not materially misleading.

Other SEC flip-flops signal a more permissive approach in general towards shareholder campaigns. In another first, Bank of America shareholders will be allowed to vote on a proposal from Bart Naylor of Public Citizen to appoint a board committee to develop a plan to divest all non-core banking assets. Similar proposals calling for bank breakups in 2013 and 2014 were blocked by the SEC as vague and indefinite. Observers, such as Columbia Law Professor Robert Jackson, attribute this shift at the Commission to the appointment of SEC Chair Mary Jo White and the recent *Trinity Wall Street v. Wal-Mart Stores* decision where a U.S. District Court overrode an SEC determination that Wal-Mart could exclude a shareholder proposal on firearms sales as ordinary business.

### *Board Refreshment*

Activists are raising the bar this year on board refreshment with campaigns extending beyond gender diversity proposals to proxy access. The Thirty Percent Coalition’s institutional investor partners have continued their “Adopt a Company” initiative, including a third series of letters last fall to 160 S&P 500 and Russell 3000 companies with no women on their boards. They received responses from 21 companies and ultimately filed 25 board diversity resolutions for 2015. In several cases—Alliance Data Systems, eBay, Monster Beverage, SBA Communications, and Urban Outfitters—their focus list overlaps that of the NYC Pension Funds’ proxy access targets, which includes 24 companies that have no female directors or that have only one female director and no additional racial or ethnic diversity on the board.

Proponents are also looking beyond corporate commitments to gender diversity and requesting progress reports on how board composition has



changed as a result of revisions to governance guidelines. According to a 2014 census by Catalyst, women still constitute less than one-fifth (19.2%) of S&P 500 company boards and 18 have no female directors. Nevertheless, this is a marked improvement over the prior two years when women held only 17% of board seats at Fortune 500 companies and one-tenth had no female directors.

Lack of board turnover and lengthy director tenures are often cited by activists as barriers to progress on diversity.<sup>14</sup> In mid-February, California State Treasurer John Chiang called on state pension funds CalPERS and CalSTRS to redouble their efforts on board diversity by specifying an “appropriate” length of director tenure in their voting policies and by continuing to advocate for proxy access as a means for shareholders to shape board composition.<sup>15</sup>

Nevertheless, most institutional investors, as well as the proxy advisors, dislike arbitrary term limits and are more likely to address board refreshment through engagement rather than proxy voting. BlackRock, for example, may start withholding votes from long-tenured directors if there is evidence of board entrenchment, insufficient attention to diversity, inadequate board succession planning, or lack of responsiveness to shareholder concerns over board composition. But it also affirmed in its 2015 policies that it does not oppose long-tenured directors in principle, nor does it consider lengthy board service to necessarily be an impediment to director independence. Even SSgA Funds Management, Inc. (SSgA), which adopted guidelines on director tenure last year,

reportedly voted against few directors under the policy due to productive dialogues with issuers.<sup>16</sup>

So far this year, few activist campaigns related to director tenure have materialized. James McRitchie’s proposal at Costco Wholesale to limit the terms of two-thirds of the board to 15 years received only 7.1% support. CtW Investment Group is also calling for a board overhaul at McDonald’s where average director tenure is 13 years. Notwithstanding the recent announcement that CEO Don Thompson will be stepping down, CtW insists that the company’s turnaround is still hindered by a “stale, insular board” with numerous interlocks and ties to the local Chicago business community.

### *Compensation Proposals*

Delays in SEC rulemaking on compensation disclosures mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act have resulted in an uptick in shareholder resolutions this year on recoupment policies and pay disparity. In February, the SEC made headway in issuing draft rules on the disclosure of employee and director hedging policies, which are open to public comment until April 20, 2015.<sup>17</sup> However, implementation of the remaining rules, which include incentive compensation clawbacks, internal pay ratios and executive pay-for-performance, are slated for October 2015.

### *Pay Disparity*

The public debate over income inequality is reaching into corporate proxies, with a focus on raising the pay of low wage earners and closing gender-based pay gaps. Although pay disparity proposals have historically drawn only single-digit support—and many of this year’s submissions are getting withdrawn or omitted—the proponents hope to keep the issue in the spotlight.

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<sup>14</sup> According to executive search firm Spencer Stuart, S&P 500 companies elected 371 new independent directors in 2014, down from 443 a decade ago. Although a majority of these firms have mandatory retirement ages for directors, many boards have raised their age limits past 75. Among Russell 3000 firms, 31% of directors have served a decade or longer, compared to 29% in 2009, according to an analysis by MSCI for the *Wall Street Journal*.

<sup>15</sup> See Chiang’s letter at [http://www.treasurer.ca.gov/news/releases/2015/20150219\\_letter.pdf](http://www.treasurer.ca.gov/news/releases/2015/20150219_letter.pdf).

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<sup>16</sup> See SSgA’s director tenure policy at <http://blogs.law.harvard.edu/corpgov/2014/05/25/board-refreshment-and-director-succession-in-investee-companies/>.

<sup>17</sup> See the SEC’s proposed rules on hedging disclosure at <http://www.sec.gov/rules/proposed/2015/33-9723.pdf>.

A coalition of religious orders led by Capuchin friar Michael Crosby has filed 20 proposals at retailers and other firms with low wage employees to disclose a comparison of their top executives' pay with the median wages of store employees in the U.S. as of July 2005, 2010 and 2015. In addition, the proposal requests that the firms provide an analysis and rationale for the changes in the size of the gap. The proponents not only view sizable pay disparities as a moral issue, but are trying to make an economic case that retail companies' sales are being undermined by stagnant wages.<sup>18</sup> Three of the targeted firms—McDonald's, Wal-Mart Stores, and TJX Companies—recently announced hikes of their base wages, which the proponents hope marks a shift toward fair wages in the retail sector.

Wal-Mart and Kohl's were additionally targeted with proposals to use at least one metric for executive incentive compensation that is tied to the company's employee engagement—i.e., the extent that hourly, non-exempt workers are motivated to contribute to organizational success. The sponsors—the Connecticut Retirement Plans and Trust Funds, the United Auto Workers (UAW) Retiree Medical Benefits Trust, and Calvert Investment Management—argue that standard financial performance metrics reward senior executives for cutting employee-related expenses.

Separately, Wal-Mart, eBay, and Exxon Mobil have been singled out over gender-based pay discrepancies—the first time the issue has ever been raised in shareholder proposals. Wal-Mart employee Cynthia Murray is pressing the retailer—which is facing various gender discrimination lawsuits—to disclose the proportion of men and women in each pay grade and salary range, the average hours worked and the average hourly wage rates. At eBay, which has a better diversity profile than many other Silicon Valley firms, Arjuna Capital has asked for a report on the company's goals to reduce gender pay differentials. An individual investor is similarly petitioning Exxon Mobil

to annually report on the percentage of women employees at varying percentiles of compensation.

### *Clawbacks*

Although many companies have modified their clawback policies in anticipation of new SEC rules, most still only provide for recovery of compensation if the employee caused or contributed to false or incorrect financial reporting.<sup>19</sup> This year gadfly investors and union and public pension funds are asking a dozen firms to strengthen their recoupment policies, as well as disclose the circumstances and amounts of any incentive pay that has been forfeited. The proponents want clawbacks to extend beyond financial restatements and apply to misconduct—either committed by a senior executive or resulting from his failure to oversee other employees—that results in a violation of law or company policy that causes significant financial or reputational harm to the company. Past votes on this topic averaged 28.7% support in 2014 and 33.9% support in 2013.

### *Revolving Door Payments*

In a new campaign, the AFL-CIO is asking four Wall Street Banks to explain their practice of granting sizable exit payments, such as accelerated or continued vesting of equity awards, to executives who leave the company for government service. The labor coalition views such payouts, which are untied to performance, as a backdoor way to pay off newly minted government officials to act in Wall Street's private interests rather than in the public interest.

The issue recently drew media attention when Senator Elizabeth Warren and other Senate Democrats lambasted Antonio Weiss' candidacy as Treasury undersecretary for domestic finance as emblematic of the “revolving door” between federal regulators and Wall Street. The former Lazard investment banker,

<sup>18</sup> See related research by the Center for American Progress at [http://cdn.americanprogress.org/wp-content/uploads/2014/10/CorporateMiddleOut\\_report3.pdf](http://cdn.americanprogress.org/wp-content/uploads/2014/10/CorporateMiddleOut_report3.pdf).

<sup>19</sup> See PwC's study of clawback policies at Fortune 100 companies at [http://www.pwc.com/en\\_US/us/hr-management/publications/assets/pwc-executive-compensation-clawbacks-2014.pdf](http://www.pwc.com/en_US/us/hr-management/publications/assets/pwc-executive-compensation-clawbacks-2014.pdf).

who withdrew from consideration, stood to receive \$21 million in unvested equity and deferred compensation upon departing the company for a government post. According to a 2013 report by the Project on Government Oversight (POGO), these types of compensation arrangements are common at major banks to encourage highly talented and experienced financial executives to enter public service.<sup>20</sup>

### *Proxy Fights*

Hedge fund activism and campaigns for board seats reached a five-year high in 2014 and are showing no signs of abating in 2015. Activist demands, however, are shifting. With more companies boosting their dividends and buying back shares, balance sheet activism is increasingly being supplanted by calls for breakups and value-creating spin-offs.<sup>21</sup>

In conjunction with this, dissidents are taking companies to task over the governance of their spun-off units, which are often replete with anti-takeover defenses.<sup>22</sup> In one of the most-watched proxy fights this season, Nelson Peltz's Trian Fund has criticized E.I. du Pont de Nemours for the "circa 1970's-style board governance" of its performance chemicals business, Chemours, which is to be spun off later this year. In an effort to appease shareholders, some of whom are pressing the parties to resolve their proxy battle, DuPont agreed to revise Chemours' governance by lowering the threshold for calling special meetings

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<sup>20</sup> See POGO's report at <http://www.pogo.org/our-work/reports/2013/big-businesses-offer-revolving-door-rewards.html>.

<sup>21</sup> According to Activist Insight, activists ran 203 public campaigns in 2014 seeking board representation or forcing strategic changes, and 74% of their demands were at least partially successful. As a result of a stronger M&A climate, campaigns advocating a sale or acquisition doubled between 2013 and 2014, while balance sheet activism declined 28% during that period. During 2014, there were a record 64 corporate spin-offs, according to BDO USA.

<sup>22</sup> FactSet reports that 55% of spin-offs that began trading in 2014 had staggered boards, two-thirds had no special meeting rights, and 72% set a high bar for dismantling defenses. About half of the spin-offs that have gone public since 2012 have an activist among their 10 largest shareholders.

to 25% and holding a vote on the classified board structure at Chemours' first annual meeting.

Like Peltz, Carl Icahn has taken a keener interest in the governance of companies he is trying to break up. His recent settlements with eBay, Gannett, and Manitowoc include shareholder-friendly features at the spun-off units, such as annually elected boards, special meeting rights, no supermajority voting provisions, and no low-trigger or long-term poison pills.

Although primarily motivated by ongoing labor disputes, UNITE HERE is continuing to press for governance improvements at lodging and gaming REITs to preserve future strategic opportunities. After failing to block Ashford Hospitality Trust's spin-off of its asset management business last fall, the hotel union is conducting a counter-solicitation to lock in or restore shareholder rights relating to bylaw changes, calling special meetings, and obtaining shareholder approval of any poison pill. In an unusual move, Ashford Trust and its two spun-off firms, Ashford and Ashford Hospitality Prime, are each proposing a bylaw amendment that would only permit holders of at least 1% of the shares for one year to submit shareholder proposals or nominate director candidates at annual or special meetings. The companies defend the measure as way of ensuring that only investors with a meaningful ownership stake could propose shareholder business, rather than misuse the corporate governance process to gain leverage in hotel labor conflicts.<sup>23</sup>

In related activity, the union is taking a second swipe at Chesapeake Lodging to further minimize anti-takeover barriers beyond last year's accord to opt out of various statutory provisions. It is also circling back to Hospitality Properties Trust, which agreed not to be subject to Maryland's Unsolicited Takeover Act, but is retaining the flexibility to unilaterally opt in for limited (18-month) duration. Finally, in a preemptive move, UNITE HERE has launched a counter-solicitation at

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<sup>23</sup> Some companies have minimum ownership requirements for shareholders to recommend board candidates to the nominating and governance committee. For example, Starbucks' requirement is 5% for one year, and Twitter's requirement is 1% for one year.

Pinnacle Entertainment, in an effort to get the company to commit to certain shareholder rights prior to separating its operating assets and real estate into two publicly traded companies. The campaign, however, may be usurped by a recent unsolicited offer by Gaming and Leisure Properties for Pinnacle's real estate assets.

Activist efforts to do pre-IPO governance cleanup coincides with tougher proxy advisor policies in 2015. At the first post-IPO annual meeting, Glass Lewis will recommend against directors who adopted anti-takeover measures prior to the IPO unless they offer a sound rationale, a sunset, or a shareholder vote on the provision. ISS will similarly hold board members accountable for pre-IPO measures that decrease shareholder rights, taking into account the timing of adoption, the clarity of disclosures, and the continuity of board membership.

### *Corporate Bylaws*

Also beginning this year, ISS and Glass Lewis are taking a harder line approach towards boards that unilaterally adopt bylaws or charter provisions that materially diminish shareholder rights. In addition to adverse governance measures, their withhold policies extend to unilateral provisions that limit shareholders' ability to sue or to nominate directors.<sup>24</sup> These include bylaws that mandate arbitration or require fee-shifting when shareholder plaintiffs are not wholly successful on the merits of their claims, as well as bylaws that disqualify shareholder board nominees who receive third-party compensation. In these instances, ISS will recommend against the full board, and Glass Lewis will recommend against the chairman of the governance committee or the full committee. However, ISS clarified in its February 2015 policy updates that its withhold policy would generally *not* apply to unilateral provisions that are not materially adverse to

shareholders: advance notice bylaws, exclusive forum provisions, and director qualification bylaws that only require disclosure of third-party compensation arrangements. Glass Lewis similarly does not oppose directors for adopting such measures without shareholder approval, other than exclusive forum provisions which limit a shareholder's choice of legal venue.

The impact of these policy changes may ultimately be limited since investors don't regard all of these measures as negative. Forum selection provisions have become commonplace—over 300 companies have unilaterally adopted them since 2013, according to law firm Sidley Austin LLP—and all of those submitted for shareholder approval have passed, notwithstanding opposition from the proxy advisors. From a corporate perspective, the affect has already been positive. According to a report by Cornerstone Research, in 2014 60% of shareholder M&A litigation was filed in only one jurisdiction, compared to about 40% in 2013, and only 4% of deals were challenged in three or more jurisdictions, down from a peak of 20% in 2011.<sup>25</sup>

Issuers are similarly ramping up their advance notice and director qualification bylaws to require more information about dissident nominees, particularly pay arrangements. Notwithstanding the public controversy they have engendered, golden leashes are still cropping up, such as in Third Point's proxy fight with Dow Chemical last year.<sup>26</sup> FactSet reports that 238 Russell 3000 companies have adopted bylaws requiring disclosure of dissident compensation schemes, and some prohibit third-party payments altogether. When put to a vote, shareholders have approved bylaws that bar third-party compensation for board service, but not

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<sup>25</sup> See Cornerstone's report at <https://www.cornerstone.com/GetAttachment/897c61ef-bfde-46e6-a2b8-5f94906c6ee2/Shareholder-Litigation-Involving-M-and-A-2014-Filings.pdf>.

<sup>26</sup> Third Point's two nominees—who were granted board seats under a settlement—stood to receive \$250,000 for their candidacy, \$250,000 upon being appointed to the board, and two additional cash payments for increases in the company's share price after three and five years, even if Third Point doesn't retain its Dow Chemical stock.

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<sup>24</sup> Negative governance provisions include classifying the board, removing a majority voting standard, increasing the vote requirement for shareholders to amend the charter or bylaws, and restricting or repealing shareholders' ability to call special meetings, act by written consent, or remove directors without cause.



for candidacy (Provident Financial Holdings, First Reliance Bancshares, and National Fuel Gas), and they have rejected bylaws that bar any kind of third-party payments (Wynn Resorts and Raymond James Financial).

Only about 50 public companies have adopted fee-shifting provisions after being validated last year for non-stock companies by the Delaware Supreme Court.<sup>27</sup> To date, only one is scheduled for a shareholder vote—at BG Staffing—though a variation was approved by shareholders of the Mexico Equity & Income Fund and Special Opportunities Fund in December 2014.<sup>28</sup> The funds’ “minimum-stake-to-sue” bylaws—initiated by board member Phillip Goldstein—require a shareholder plaintiff to demonstrate that his case is supported by a significant number of other shareholders (3%) before filing a lawsuit against the company. A similar provision will be voted on at Imperial Holdings’ annual meeting in May.

### *E&S Proposals*

E&S proposals will set new records in 2015 with 448 already filed as of mid-March, according to ISS. As reported by As You Sow, resolutions dealing with corporate political activities and environmental matters will continue to take top billing, each accounting for

over a quarter of all E&S submissions.<sup>29</sup> A number of new themes are also emerging this year, though some, such as tax avoidance and rail transportation risk, will not make it to ballots due to omissions or withdrawals. Others are described below.

### *Climate Change*

According to Ceres, 76 resolutions have been filed for 2015 related to climate change, carbon asset risk, and greenhouse gas (GHG) emissions. These include some first-time variations that tie executive compensation and capital allocation strategies to the prospects of reduced oil demand and stranded, unsalable reserves resulting from regulatory efforts to combat climate change.

As You Sow has submitted proposals at Ameren, Dominion Resources, and Entergy to include carbon reduction as a performance measure in executive compensation, while the Unitarian Universalists want ConocoPhillips to refrain from using metrics based on reserves—such as reserve additions or reserve replacement ratios—in determining executives’ incentive pay. Separately, the same proponents, along with Arjuna Capital, are asking Chevron, Exxon Mobil, and Newfield Exploration to return capital to shareholders through dividends and share buybacks rather than invest in costly new high-carbon projects, such as deepwater Arctic drilling and tar sands. The sponsors’ shift from transparency to action on stranded asset risk reflects their dissatisfaction with Exxon’s 2014 report that none of its hydrocarbon assets would become stranded. However, in a controversial ruling, the SEC permitted Exxon to omit the proposal only days after allowing the resolution to move forward to Chevron’s ballot.

Environmental activists scored one breakthrough when oil giants Royal Dutch Shell and BP agreed to endorse resolutions from the “Aiming for A” coalition of U.K.

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<sup>27</sup> See [http://www.cii.org/files/issues\\_and\\_advocacy/legal\\_issues/1-27-15%20Fee-Shifting%20Bylaws.pdf](http://www.cii.org/files/issues_and_advocacy/legal_issues/1-27-15%20Fee-Shifting%20Bylaws.pdf). In early March, the Corporation Law Council of the Delaware State Bar Association proposed amendments to the Delaware General Corporation Law that would prohibit fee-shifting provisions at stock corporations, restrict appraisal lawsuits, and statutorily validate exclusive forum provisions.

<sup>28</sup> Cogent Communications Holdings planned to put its fee-shifting and exclusive forum bylaws to a shareholder vote, but rescinded them after an institutional shareholder sued the company on the grounds that the board did not have the authority to make bylaw amendments. In its recent reorganization into a Delaware holding company, Rocky Mountain Chocolate Factory added fee-shifting, exclusive forum, and supermajority voting provisions to its charter and bylaws. Although ISS opposed the transaction, it was approved with 52.2% support. Tiger Media similarly included fee-shifting and forum selection provisions in its redomestication from the Cayman Islands to Delaware, which was approved by shareholders on March 15.

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<sup>29</sup> See As You Sow’s 2015 Proxy Season Preview at <http://www.proxypreview.org/> and [http://www.proxypreview.org/wp-content/uploads/2015/03/2015ProxyPreviewWebinar\\_final.pdf](http://www.proxypreview.org/wp-content/uploads/2015/03/2015ProxyPreviewWebinar_final.pdf).

and U.S. investors to report annually on their carbon asset risk mitigation. The report will address their plans to stress-test business models against the goal of limiting global warming to 2 degrees Celsius, as well as the companies' efforts to reduce emissions, invest in renewables, delink executive bonuses from climate-harming activities, and align public policy initiatives with climate change mitigation and risk. Proponents are hopeful that this milestone will encourage other fossil fuel companies to comply with the same requests for information.

### *Human Rights and Equal Employment*

Resolutions dealing with labor and human rights have been gaining in prominence among E&S initiatives, with around 50 filed to date for 2015. New propositions in the spring lineup touch on political non-discrimination in the workplace, fair employment, migrant workers, and Internet privacy.

For 2015, the conservative National Center for Public Policy Research (NCPPr) has filed two dozen resolutions to adopt anti-discrimination principles that protect employees' rights to engage in legal activities relating to the political process, civic activities, and public policy without retaliation in the workplace. The campaign—dubbed the “Employee Conscience Protection Project”—arose last year after Mozilla CEO Brendan Eich was forced out of his job because he had donated \$1,000 to a 2008 California referendum that supported traditional marriage.

To date, NCPPr has withdrawn proposals at Home Depot, Pfizer, Visa, and Wal-Mart Stores, after the companies implemented or affirmed policies shielding workers from adverse employment action on the basis of their personal political affiliations or lawful political and civic pursuits. Five other proposals were omitted on ordinary business grounds, after which NCPPr recouched them as a human rights matter—ensuring that employees can take part in their government free from retribution—which the SEC has historically recognized as a significant policy issue. However, these versions are also not surviving corporate challenges.

A new campaign—reminiscent of the 1984 MacBride Principles—is asking 546 U.S. companies doing business in Israel to adopt a code of conduct for fair employment practices covering Israelis and Palestinians. To date, one company—Tenax Therapeutics—has signed onto the eight-point “Holy Land Principles,” while Corning, General Electric, and Intel have received shareholder resolutions asking them to become signatories.<sup>30</sup>

Other new human rights initiatives deal with labor trafficking and Internet privacy. The Midwest Capuchins are asking six tobacco companies to adopt policies throughout their supply chains to prevent the exploitation of migrant workers, who often must pay labor brokers thousands of dollars to cross the U.S. border to work on tobacco farms. Separately, Calvert Investment Management has filed proposals at six insurance, credit card, and banking firms to report on their approaches to identifying and managing civil rights risks related to the companies' collection and use of big data. Calvert argues that data on consumers' ethnicity, health, and socioeconomic status can enable customer profiling and result in discriminatory or predatory marketing practices, such as payday loans or higher insurance rates.

### *Drug Pricing*

After a five-year hiatus, the issue of pharmaceutical price restraint is reappearing this season on corporate ballots. This time, the United Auto Workers (UAW) Retiree Medical Benefits Trust is asking four pharmaceutical firms to explain their approach to pricing specialty drugs, defined as those that cost over \$600/month. The issue made headlines last year when health insurance groups publicly lambasted Big Pharma for the staggering cost of these medicines and its strain on the U.S. healthcare system. One proposal recipient, Celgene, which received a companion piece from the American Federation of State, County and Municipal Employees (AFSCME) on its lobbying activities, argued that the UAW, as a healthcare payer for its

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<sup>30</sup> See the Holy Land Principles at <http://www.holylandprinciples.org/8-holy-land-principles/>.

retired workers, has a vested interest in driving down the price of the company's products—an interest which is not shared by other investors. In all cases, the SEC backed the proponent's view that U.S. drug pricing constituted a significant social policy issue, and the proposals could not be excluded as ordinary business.

### *Conclusion*

In the coming months, shareholder activists hope to reshape the governance landscape by pressing for the adoption of proxy access measures, drawing down takeover defenses, and raising corporate standards on board diversity, climate change, and other social and environmental concerns. The SEC's review of Rule 14a-8(i)(9) and shifting position on other no-action requests could also have broader implications on how companies handle certain shareholder proposals in the future. This year promises to be a challenging annual meeting season, and Alliance Advisors will keep issuers apprised of new developments as they unfold.

*For further information or questions, please contact:*  
**973-873-7700**  
**AllianceAdvisorsLLC.com**

*Table 1: 2014 & 2015 Shareholder Proposal Filings*

<b>Governance</b>	<b>2014 Submitted<sup>1</sup></b>	<b>2015 Submitted<sup>1</sup></b>
Declassify board	42	17
Director removal	1	2
Majority voting	43	12
Proxy access	24	107
Two candidates per board seat	1	0
Poison pill	10	8
Cumulative voting	7	1
Enhanced confidential voting	23	2
Virtual meetings	2	0
Supermajority voting	20	15
Voting requirements	11	3
Dual-class stock	15	8
Special meetings	34	23
Written consent	31	29
Amend bylaws	1	5
Other anti-takeover	9	4
Independent chairman	80	63
Lead director	1	0
Board independence/tenure	5	1
Outside board seats	1	1
Risk oversight committee	1	0
Succession planning	1	0
Reincorporate to Delaware	0	2
Maximize value	15	13
Stock repurchases, dividends	7	6
Proxy advisor competition	1	0
Miscellaneous	5	14
<b>Total Governance</b>	<b>391</b>	<b>336</b>



Compensation	2014 Submitted <sup>1</sup>	2015 Submitted <sup>1</sup>
Severance pay	4	6
Accelerated vesting of equity awards	30	20
Revolving door payments	0	4
Golden coffins	1	0
Tax gross-ups	2	1
SERPS	2	1
Clawbacks	4	15
Retention of equity awards	33	9
Performance-based awards	2	3
Hedging policy	1	0
Pay benchmarking	1	0
Performance metrics	5	3
Pay disparity and ratios	13	19
Pay caps	3	2
Link pay to social issues	3	11
Miscellaneous compensation	7	4
<b>Total Compensation</b>	<b>111</b>	<b>98</b>

Environmental & Social	2014 Submitted <sup>1</sup>	2015 Submitted <sup>1</sup>
Animal welfare	12	13
Board diversity	26	24
Charitable contributions	2	4
Environmental	176	158
Employment/discrimination	27	42
Finance	18	6
Health	7	7
Human rights	60	49
Military sales	0	2
Political activity	147	115
Tobacco	4	7
Firearms	3	1
Proxy policy congruency	0	3
Miscellaneous E&S	2	0
<b>Total Environmental &amp; Social</b>	<b>484</b>	<b>431</b>

<b>Total Proposals Filed</b>	<b>986</b>	<b>865</b>
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1. Submissions are estimates based on SEC filings, proponent websites, and press reports.

**Table 2: Corporate Actions on Proxy Access Proposals**

Management Proposal	Shldr. Prop. on Ballot	Shldr. Prop. Withdrawn	Shldr. Prop. Omitted	Mtg. Date	Terms of Management Proposal				Terms of Original Management Proposal <sup>1</sup>			
					Ownership Thresh.	Group Size	Ownership Years	% Bd. Seats	Ownership Thresh.	Group Size	Ownership Years	% Bd. Seats
Abercrombie & Fitch Co. <sup>2</sup>		x		June	3%	20-25	3	25%				
AES Corp. <sup>3</sup>	x			23-Apr	5%	Not specified	3	20%				
Big Lots Inc. <sup>2</sup>		x		28-May	3%	No limit	3	25%				
Chipotle Mexican Grill, Inc.	x			13-May	5%	20	3	20%	8%	1	5	10%
Cloud Peak Energy Inc.	x			13-May	5%	1	3	10%	5%	1	5	10%
Exelon Corp. <sup>3</sup>	x			28-Apr	5%	20	3	20%	5%	Not specified	5	10%
FirstMerit Corp.		x		15-Apr	3%	20	3	20%	5%	10	3	20%
McKesson Corp. <sup>4</sup>	None filed			June	3%	Not specified	3	25%				
SBA Communications Corp. <sup>3</sup>	x			21-May	5%	10	3	20%	5%	10	5	15%
SLM Corp. <sup>2</sup>	None filed			May	Not specified	Not specified	Not specified	Not specified				
Staples Inc. <sup>5</sup>		x		June	3%	25	3	20%-25%				
Wendy's Co. <sup>5</sup>		x		May	3%	25	3	20%-25%				
Whiting Petroleum Corp.		x		May	3%	Not specified	3	25%				

Adopted Bylaw	Shldr. Prop. on Ballot	Shldr. Prop. Withdrawn	Shldr. Prop. Omitted	Mtg. Date	Terms of Bylaw				Terms of Original Management Proposal <sup>1</sup>			
					Ownership Thresh.	Group Size	Ownership Years	% Bd. Seats	Ownership Thresh.	Group Size	Ownership Years	% Bd. Seats
Arch Coal Inc.	x			23-Apr	5%	20	3	20%	5%	1	5	10%
Bank of America Corp.		x		6-May	3%	20	3	20%				
Biogen Inc.		x		June	3%	20	3	25%				
Boston Properties, Inc. <sup>2</sup>	None filed			May	3%	5	3	25%				
Cabot Oil & Gas Corp.	x			23-Apr	5%	10	3	20%	5	No limit	3	20%
CF Industries Holdings, Inc.	x			May	5%	20	3	20%	5%	20	3	20%
General Electric Co. <sup>6</sup>			x	22-Apr	3%	20	3	20%				
HCP, Inc.	x			May	5%	10	3	20%				
Priceline Group Inc.	x			June	5%	20	3	10%-20%				
Prudential Financial, Inc.	None filed			12-May	3%	20	3	20%				
YUM! Brands, Inc.		x		1-May	3%	20	3	20%	5%	1	4	10%

Endorsing/Neutral on Shareholder Proposal	Board Rec	Mtg. Date	Terms of Shareholder Proposal				Terms of Original Management Proposal <sup>1</sup>			
			Ownership Thresh.	Group Size	Ownership Years	% Bd. Seats	Ownership Thresh.	Group Size	Ownership Years	% Bd. Seats
Apache Corp.	For	14-May	3%	No Limit	3	25%	5%	No limit	3	10%
Citigroup, Inc.	For	28-Apr	3%	10	3	20%	5%	1	5	1 Dir.
Republic Services, Inc.	None	14-May	3%	No Limit	3	25%				

Fighting Shareholder Proposal	Mtg. Date	Terms of Shareholder Proposal				Terms of Original Management Proposal <sup>1</sup>			
		Ownership Thresh.	Group Size	Ownership Years	% Bd. Seats	Ownership Thresh.	Group Size	Ownership Years	% Bd. Seats
Alpha Natural Resources, Inc.	21-May	3%	No Limit	3	25%	5%	5	5	15%
American Electric Power Co., Inc.	21-Apr	3%	No Limit	3	25%				
Anadarko Petroleum Corp.	12-May	3%	No Limit	3	25%	5%	No limit	5	10%
Anthem, Inc.	13-May	3%	No Limit	3	25%				
Apartment Investment and Management Co.	28-Apr	3%	No Limit	3	25%				
Apple Inc.	10-Mar	3%	No Limit	3	25%				
Avon Products Inc.	6-May	3%	No Limit	3	25%				
CBL & Associates Properties, Inc.	4-May	3%	No Limit	3	25%				
Cimarex Energy Corp.	14-May	3%	No Limit	3	25%	4%	Limited <sup>7</sup>	3	10%
Coca-Cola Co.	29-Apr	3%	No Limit	3	25%				
ConocoPhillips	12-May	3%	No Limit	3	25%	5%	No limit	3	20%
CONSOL Energy Inc.	6-May	3%	No Limit	3	25%				
CSP, Inc.	10-Feb	3%	No Limit	2	25%				
Domino's Pizza, Inc.	21-Apr	3%	No Limit	3	25%	5%	1	5	20%
DTE Energy Co.	7-May	3%	No Limit	3	25%				
Duke Energy Corp.	7-May	3%	No Limit	3	25%				
eBay Inc.	1-May	3%	No Limit	3	25%	5%	Not specified	4	15%
EOG Resources, Inc.	30-May	3%	No Limit	3	25%				
EQT Corp.	15-Apr	3%	No Limit	3	25%				
FirstEnergy Corp.	19-May	3%	No Limit	3	25%	5%	1	3	15%
Kohl's Corp.	14-May	3%	No Limit	3	25%	5%	1	5	10%
Level 3 Communications, Inc.	21-May	3%	No Limit	3	25%				
Marathon Oil Corp.	29-Apr	3%	No Limit	3	25%	5%	1	5	10%
Monsanto Co.	30-Jan	3%	No Limit	3	25%				
Murphy Oil Corp.	13-May	3%	No Limit	3	25%				
Noble Energy, Inc.	28-Apr	3%	No Limit	3	25%	5%	1	5	10%

Fighting Shareholder Proposal	Mtg. Date	Terms of Shldr. Prop.				Terms of Original Management Proposal <sup>1</sup>			
		Ownership Thresh.	Group Size	Ownership Years	% Bd. Seats	Ownership Thresh.	Group Size	Ownership Years	% Bd. Seats
NVR, Inc.	5-May	3%	No Limit	3	25%				
Occidental Petroleum Corp.	1-May	3%	No Limit	3	25%				
PACCAR Inc	21-Apr	3%	No Limit	3	25%				
Peabody Energy Corp.	4-May	3%	No Limit	3	25%	7%	1	5	10%
PPL Corp.	20-May	3%	No Limit	3	25%				
Regeneron Pharmaceuticals, Inc.	12-Jun	3%	No Limit	3	25%				
Southern Co.	27-May	3%	No Limit	3	25%				
St. Jude Medical, Inc.	7-May	3%	No Limit	3	25%				
TCF Financial Corp.	22-Apr	3%	No Limit	3	25%				
United-Guardian, Inc.	13-May	3%	No Limit	3	25%				
Urban Outfitters, Inc.	2-Jun	3%	No Limit	3	25%				
VCA Inc.	16-Apr	3%	No Limit	3	25%				

Source: SEC filings, proponent websites, and media reports.

1. These proxy access measures were originally proposed by companies in order to omit the shareholder resolution.
2. Shareholder-sponsored proxy access resolutions at Abercrombie & Fitch, Big Lots, Boston Properties, and SLM received majority support in 2014.
3. The management proposals at AES, Exelon, and SBA Communications are non-binding.
4. McKesson reached an agreement on proxy access with the NYC pension funds in 2014.
5. Staples and Wendy's will submit management proposals in 2016.
6. General Electric was able to omit the shareholder resolution as substantially implemented.
7. Only if affiliated.



**Table 3: Corporate Actions on Special Meeting Proposals**

<b>Management Proposal</b>	Shldr. Prop. on Ballot	Shldr. Prop. Omitted/Withdrawn <sup>1</sup>	Mtg. Date	Ownership Thresh. – Mgmt.	Ownership Thresh. – Shldr.	Orig. Thresh. Proposed by Mgmt.
AES Corp. <sup>2</sup>	x		23-Apr	25%	20%	25%
AGL Resources Inc.		x	28-Apr	25%	10%	25%
BorgWarner Inc.	x		29-Apr	25%	20%	25%
Capital One Financial Corp.	x		30-Apr	25%	20%	25%
Deere & Co. <sup>3</sup>		x	25-Feb	25%	20%	25%
Dun & Bradstreet Corp.	x		6-May	25%	10%	25%
Kate Spade & Co.	x		19-May	25%	10%	25%
NextEra Energy, Inc. <sup>2</sup>	x		21-May	20%	10%	25%
Windstream Holdings, Inc.		x	14-May	20%	20%	20%

<b>Adopted Bylaw</b>	Shldr. Prop. on Ballot	Shldr. Prop. Omitted/Withdrawn <sup>1</sup>	Mtg. Date	Ownership Thresh. – Mgmt.	Ownership Thresh. – Shldr.	Orig. Thresh. Proposed by Mgmt.
Bank of New York Mellon Corp.		x	14-Apr	20%	20%	25%
Huntington Ingalls Industries Inc.		x	30-Apr	20%	20%	25%
ITC Holdings Corp.	x		May	25%	10%	33%
Newell Rubbermaid, Inc.	x		12-May	15%	10%	25%

<b>Endorsing Shareholder Proposal</b>	Shldr. Prop. on Ballot	Shldr. Prop. Omitted/Withdrawn <sup>1</sup>	Mtg. Date	Ownership Thresh. – Mgmt.	Ownership Thresh. – Shldr.	Orig. Thresh. Proposed by Mgmt.
Illinois Tool Works Inc.	x		8-May		20%	25%

<b>Fighting Shareholder Proposal</b>	Shldr. Prop. on Ballot	Shldr. Prop. Omitted/Withdrawn <sup>1</sup>	Mtg. Date	Ownership Thresh. – Mgmt.	Ownership Thresh. – Shldr.	Orig. Thresh. Proposed by Mgmt.
AT&T Inc.	x		24-Apr		10%	
Ford Motor Co.	x		14-May		20%	
Kansas City Southern	x		May		10%	
L-3 Communications Holdings, Inc.	x		5-May		20%	25%
Timken Co.	x		7-May		25%	

Source: SEC filings.

1. The shareholder resolutions were likely excluded as substantially implemented rather than withdrawn.
2. The management proposal at AES is advisory.
3. Deere was granted no-action relief in October 2014 to omit the shareholder proposal as conflicting with a management proposal. Deere's management resolution passed.