THE ADVISOR

2019 PROXY SEASON REVIEW
By Shirley Westcott **July 2019**

Overview

Environmental and social (E&S) issues continued to dominate the shareholder proposal landscape this proxy season with submissions outpacing those on governance and compensation for a third year running. However, this year social issues took center stage, securing 11 majority votes—nearly matching last year's record 12 majority votes across all E&S categories (see Table 1).

The successful votes spanned an array of topics—diversity, human rights, political activities and the opioid crisis—and included three instances where the boards did not oppose the resolutions. Other E&S topics that trended up in support included fair pay and recycling/sustainable packaging.

Political spending resolutions vaulted to the top of the list among E&S submissions, a trend that is likely to continue next year in the runup to the 2020 presidential elections (see Table 2). Proponents also stepped up their filings on human rights—particularly modern-day slavery and illegal immigrant detention—as well as on board diversity, where there was more activity this year by conservative groups.

Climate change resolutions, on the other hand, grew scarcer due to successful engagements and a high degree of omissions, largely on ordinary business and substantial implementation grounds. Contributing to the paucity of ballot-eligible items were punched-up demands to address climate risk by setting explicit carbon reduction goals.

Submissions of governance resolutions were in their third year of decline, primarily due to a sizable drop in proxy access proposals. Last year's deluge of proposals on special meeting rights also failed to rematerialize as the proponents—John Chevedden, James McRitchie, Myra Young and the Steiner family (the "Chevedden group") migrated to other subjects. Among those were requests to repeal supermajority voting provisions, which nearly doubled in volume.

The compensation lineup produced two majority votes on clawback provisions, which saw a resurgence in filings last year as part of an investor campaign targeting opioid manufacturers. As in 2018, almost half of the compensation-related resolutions touched on E&S themes, such as gender pay equity and linking incentive payouts to various sustainability metrics.

Highlights of the 2019 proxy season, including key votes and trends, are discussed in more detail below.

Environmental & Social Issues

Human Rights

Human rights issues were the sleeper hit among E&S resolutions this season with 10 receiving over 30% support, compared to only one last year. The predominant topics included human trafficking, forced labor in supply chains, illegal migrant detention and global content management on social media platforms.

Topping the votes was a proposal by faith-based investors at GEO Group to report on its human rights performance in the wake of controversies over the treatment of people held at its correctional facilities and illegal migrant detention centers. The resolution won an impressive 87.9% support after the company withdrew its opposition statement in a supplemental proxy filing. As a result of ongoing engagement with shareholders, GEO Group decided to accelerate its timeline for issuing a public statement regarding the work it has done to operationalize its commitment to human rights.

Another standout was a new initiative by Christian Brothers Investment Services (CBIS) urging tech and telecom firms to report on how they are protecting children from sexual abuse online. According to Thorn, an international anti-human trafficking organization, 75% of children trafficked or sold for sex are advertised on the Internet. The CBIS proposal received 33.9% support at Verizon Communications—a significant vote for a first-year resolution. A comparable proposal was withdrawn at Apple after the company agreed to disclose partnerships and resources to combat child sexual exploitation online and to expand training for law enforcement officials on digital crimes.

Coming up, religious orders affiliated with the Interfaith Center for Corporate Responsibility (ICCR) are revisiting American Outdoor Brands this August with a proposal to adopt a human rights policy—part of an effort to hold firearms manufacturers accountable for the societal impacts of gun violence. Last year's bruising campaign produced majority votes at both American Outdoor Brands and Sturm Ruger with the backing of the proxy advisors and key investors. Although the resulting gun safety reports have failed to satisfy the proponents, it is unclear whether shareholders will stand behind new demands. After missing Sturm Ruger's revised deadline for submitting a similar proposal, members of the ICCR coalition resorted to a "vote no" campaign against several directors. The protest generated significant—but not overwhelming—support with 28% in opposition votes.

Political Activities

In advance of the 2020 elections, shareholders more than doubled their filings of political spending proposals, a quarter of which were sponsored by the Chevedden group. Three of these, along with a lobbying disclosure resolution, received majority support—the most seen on political activity topics since 2014. Election spending and lobbying proposals also accounted for over half of the E&S resolutions that received support in the 40% and 30% ranges.

Opioid Crisis

The opioid epidemic continues to be of high interest to shareholders following the launch of a campaign in 2017 by the Investors for Opioid Accountability (IOA), a coalition of 54 global investors seeking greater accountability from opioid manufacturers, distributors and retailers. This year, two proposals to report on board risk oversight received majority support at Walgreens Boots Alliance and Mallinckrodt. Shareholders also approved related proposals at Mallinckrodt on the disclosure of misconduct clawbacks and lobbying expenditures. The latter was backed by the board, which plans to issue a political engagement report later this year.

Board Diversity

Consistent with past years, most of the 2019 shareholder resolutions to enhance board diversity were withdrawn, typically after the companies committed to considering gender, race and ethnicity in their director searches. Of the four that went to a vote, two received majority support at Waste Connections and at Gaming & Leisure Properties, where the board made no recommendation because it is in the process of identifying a diverse director candidate to fill a recent vacancy.

Similarly, only one of the nine proposals sponsored by the New York City Comptroller to disclose directors' personal characteristics and skill sets in a standardized matrix reached the ballot. This was a reprisal at Exxon Mobil where support ratcheted up to 29.8% from 16.5% in 2018, despite the company's enhancements to its diversity disclosures.

Aside from proxy proposals, changes to proxy advisor and investor voting policies are spurring action on board gender diversity by holding nominating committee members accountable for inadequate female representation on the board. BlackRock, Neuberger Berman, Putnam Investments, TIAA-CREF, Northern Trust Investments, Charles Schwab Investment Management and MFS Investment Management are among the institutions that adopted or strengthened their board diversity policies this year, as did proxy advisor Glass Lewis. Institutional Shareholder Services (ISS) plans to follow suit in 2020.

A new California law, which requires a minimum number of women on the state's public company boards, also took effect this year.[1] So far, other states have stopped short of mandating quotas. The Illinois

[1] See California's regulation at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB826.

legislature scrapped provisions in House Bill 3394 which would have required public companies headquartered in the state to have at least one woman, one African-American and one Latino on their boards by the end of 2020. Instead, the final legislation requires companies to report the demographics of their board and executive officers to the Illinois Secretary of State beginning in 2021. The data will be made public online and the University of Illinois will publish an annual progress report.[2]

Federal lawmakers are similarly weighing in with diversity disclosure legislation. In recent weeks, the House Financial Services Committee passed two bills—the "Improving Corporate Governance Through Board Diversity Act of 2019 (H.R. 1018) and the "Diversity in Corporate Leadership Act of 2019" (H.R. 3279)—which would mandate proxy disclosure of corporate directors' gender, race and ethnicity.[3] The latter bill would also require the SEC to establish a Diversity Advisory Committee to study the data and make recommendation on strategies to improve diversity.

The impact of these external pressures is already evident in corporate boardrooms. According to ISS, the percentage of women and minorities joining boards reached a record high in 2019 with 45% of new Russell 3000 board seats filled by women—up from 24% in 2018—and 15% filled by ethnically diverse candidates. Currently, 19% of Russell 3000 directors are women and 10% are ethnic minorities.

Executive and Workforce Diversity

Although diversity at the board level has steadily progressed, it has continued to lag in the C-Suite. According to Trillium Asset Management, women hold only 9% of top executive roles at Russell 3000 firms, while the number of female CEOs declined 25% in 2018.

To address this, Trillium launched a new initiative this year calling for an assessment of diversity in the executive ranks and efforts to make it more diverse in terms of gender, race and ethnicity. One of the resolutions received majority support at Newell Brands, while the remaining four were withdrawn after the companies agreed to expand their diversity and inclusion disclosures.

Workforce data can also shed light on the pipeline of women and minorities for senior leadership positions. This year a proposal at Travelers Companies to provide EEO-1 data—a breakdown of the workforce by race and gender across 10 employment categories—won majority approval, bolstered by a change in Glass Lewis's policy to generally endorse these types of resolutions (ISS has been a consistent backer). Average support on workplace diversity proposals has been growing over the years—reaching 42.6% in 2019—but only one prior resolution has received a majority vote—at Palo Alto Networks in 2017.

Coming up, a coalition of 99 investors plan to send letters to 3,000 global companies calling for more transparency around workplace equity policies and practices across gender, race, ethnicity, sexual orientation and other diversity types. The signatories believe that these disclosures are material to investors because unsuccessful or poorly implemented workplace equity programs may harm long-term shareholder value.[4]

Equitable Pay

Shareholder proposals on gender pay equity saw rising support this year—averaging 24.5% compared to 18.8% in 2018—though none have obtained majority approval since 2016 at eBay. Notably, ISS endorsed all but one of the 2019 resolutions, while Glass Lewis backed none. In past years, they each supported between 20% and 67% of the proposals.

The stronger results and shift in proxy advisor recommendations is attributable to a transformation of

[2] See Illinois' amended House Bill 3394 at http://www.ilga.gov/legislation/101/HB/PDF/10100HB3394sam003.pdf.

[3] See the Congressional bills at https://financialservices.house.gov/uploadedfiles/bills-116-hr1018-m001137-amdt-2.pdf and https://financialservices.house.gov/uploadedfiles/bills-116-hr3279-m000087-amdt-4.pdf.

[4] See the investor statement and press release at https://www.asyousow.org/press-releases/investors-demand-workplace-equity-data?rq=equileap and https://docs.google.com/forms/d/e/1FAIpQLScI9dmj2KPsrOOri1khOiAhltyZRb-KSreUs9d2-N2WJq12QQ/viewform.

the campaign. This year, the lead proponent—Arjuna Capital—upgraded its requests at 12 major banks and technology firms to report their unadjusted global median gender pay gap and their U.S. racial pay gap. Unlike equal-pay-for-equal-work metrics, the new measure—akin to the two-year-old U.K. reporting requirement—will ostensibly show whether there is equal opportunity for high-paying jobs. To date, only two companies—Citigroup and Pfizer—have provided or agreed to provide this data, according to Arjuna's latest Gender Pay Scorecard.[5]

Gender pay equity is also factoring into 2020 Democratic campaigns. Senator Kamala Harris (D-Calif.) vows to close the gender pay gap by mandating that companies with 100 or more employees obtain an "equal pay certification" from the Equal Employment Opportunity Commission (EEOC) or else face fines to the tune of 1% of their profits for every 1% wage gap. According to PayScale, women currently earn 98 cents for every dollar earned by men with the same job and qualifications.[6]

Workplace Sexual Harassment

Aside from to diversity and inclusion, shareholder initiatives related to human capital management (HCM) largely focused on workplace sexual harassment, though they produced varying results.

At Amazon.com, a proposal by the conservative National Legal and Policy Center to review and strengthen sexual harassment policies received a respectable 33.3% support as well as the backing of ISS and Glass Lewis. Similarly, an AFL-CIO proposal at CBRE Group to report on how the company's mandatory arbitration policies impact employee sexual harassment claims scored 35.3% support. Broader resolutions calling for an end to "inequitable employment practices," such as mandatory arbitration and involuntary non-disclosure agreements, were withdrawn or omitted as ordinary business.

In contrast, UNITE HERE's proposals at four lodging REITS to report on sexual harassment claims at their hotels generated only single-digit support. In their opposition statements, the companies pointed out that they are ill-suited to implement the request because the hotel employees work for third-party operators who manage their properties. Moreover, the union has a history of submitting resolutions at lodging REITs and hotel operators in order to advance its organizing efforts.

Big Tech on the Hot Seat

Technology titans have come under heightened scrutiny from regulators, policymakers and shareholders alike over their outsized market power and influence, privacy controversies, founder control, and partisan censorship on their platforms.

This year, Amazon.com and Alphabet surpassed fossil fuel companies with the most shareholder proposals submitted—17 and 15, respectively—while Facebook rang in with eight. Some were spurred by employee activism on issues ranging from climate change and sexual harassment to ending the sale of facial-recognition technology to law enforcement agencies. Conservative investors also took aim at Silicon Valley's predominantly left-leaning viewpoints with proposals promoting ideological and political diversity on the board and in the workplace.

Because of the founders' sizable voting stakes, none of the proposals passed though many got strong support. Growing dissatisfaction with founder control was evident at both the Alphabet and Facebook annual meetings where non-insider investors voted by 68% to oust Mark Zuckerberg as Facebook chairman and by 93% and 83%, respectively, to scrap the companies' dual-class stock structures, according to analyses by Open Mic and the American Federation of State, County and Municipal Employees (AFSCME).[7]

Reining in and even breaking up Big Tech has become a central focus of 2020 presidential contenders Senators

[5] See Arjuna Capital's and Proxy Impact's April 2019 Gender Pay Scorecard at https://arjuna-capital.com/wp-content/uploads/2019/04/Gender-Pay-Scorecard-2019-2.pdf.

[6] See PayScale's 2019 report at https://www.payscale.com/data/gender-pay-gap.

[7] See Open Mic's and AFSCME's reports on Facebook and Alphabet at https://www.openmic.org/news/2019/6/4/antitrust-concerns-fb-governance-problems and https://www.corpgov.net/2019/06/alphabet-losers-not-just-unaffiliated-shareholders-and-workers/.

Elizabeth Warren (D-Mass.), Bernie Sanders (I-Vt.) and Amy Klobuchar (D-Minn.). Echoing this sentiment, human rights activist SumOfUs called on Alphabet and Facebook to retain advisors to evaluate strategic alternatives for maximizing shareholder value, including selling subsidiaries or cancelling the super-voting shares. Understandably, shareholders have no appetite for breaking up their firms, expressing less than 1% support for the proposals.

In another novel endeavor, labor activist Change-to-Win Investment Group proposed that Alphabet nominate a non-executive employee to the board in 2020, a demand made by organizers of a global employee walkout last November. The proposal attracted little interest from shareholders, with only 1.8% support, but the concept of worker representation on corporate boards has gained a following among some Senate Democrats.[8] Bernie Sanders even pitched the idea at Walmart's annual meeting in an employee-backed floor proposal—a follow-on to his November 2018 bill—the "Stop WALMART Act" ("Stop Welfare for Any Large Monopoly Amassing Revenue from Taxpayers Act")—which would prohibit corporate stock buybacks unless companies paid a $15/hour minimum wage and capped CEO pay at 150x median employee pay.[9]

The Ghosts of Climate Change

One of the more striking features of the 2019 proxy season is what *did not* appear on ballots. Withdrawals of E&S resolutions kept pace with 2018, reaching close to half of submissions, but omissions took a heavier toll on climate risk proposals. As reported by *Inside Climate News*, nearly two-thirds of climate-related resolutions filed with energy and utility companies this year were contested by companies. By early May, the SEC had sustained 45% of the challenges—the highest percentage in the last five years.

Following last year's precedent at EOG Resources, companies have been more successful in excluding shareholder resolutions to affirmatively address climate change by adopting greenhouse gas (GHG) reduction targets aligned with the goals of the 2015 Paris Agreement. Exxon Mobil, Devon Energy and J.B. Hunt Transport Services prevailed with ordinary business/micromanagement arguments, as did Goldman Sachs and Wells Fargo with regards to reducing the carbon footprint of their loan and investment portfolios. Notably, the SEC did not grant relief to Anadarko Petroleum to exclude a proposal that asked if the company *planned* to reduce its emissions in line with the Paris accord.

In response to these trends, proponents are resorting to more drastic action. Late last year, the New York City Pension Funds sued TransDigm Group to keep a GHG proposal on the 2019 ballot after the company petitioned the SEC for no-action relief. TransDigm ultimately acquiesced and the resolution received 34.9% support.

At Exxon, the New York State Common Retirement Fund (NYSCRF) and Church Commissioners for England launched a "vote no" campaign against the full board after the SEC blocked their first-time proposal to set business-wide, Paris-compliant targets for cutting emissions. The protest vote had little effect—all but two of the directors received over 93% approval. However, climate-linked resolutions calling for an independent board chair and lobbying disclosure gained some traction over previous years with 40.1% and 37.3% support, respectively. The proponents plan to continue to press Exxon and others on climate risk and to "consider all options available" as next steps.

[8] See Senator Tammy Baldwin's (D-Wisc.) letter to the SEC at https://www.baldwin.senate.gov/press-releases/baldwin-leads-effort-to-give-workers-a-greater-voice-at-public-companies.

[9] See Sanders' bill at https://www.sanders.senate.gov/download/stop-walmart-act?id=74820F12-B7DE-4D2A-B8D4-C86DBFB60CE9&download=1&inline=file. Two months earlier, Sanders targeted Amazon.com with the "Stop BEZOS Act" ("Stop Bad Employers by Zeroing Out Subsidies Act"), which would levy a tax on large companies whose low-wage workers have to rely on public assistance programs. Amazon.com subsequently raised its minimum wage to $15/hour, though it also slashed employee bonuses and stock awards. See https://www.sanders.senate.gov/download/stop-bezos-act-2018?id=C2E88AC5-C629-4680-8F8D-9EE74F343560&download=1&inline=file.

Plastic Pollution

Plastic pollution of land and water is gaining prominence as an environmental concern, evidenced by a succession of strong votes this year on resolutions sponsored by As You Sow. A longstanding campaign at consumer goods, fast-food and grocery companies to phase out plastic products and packaging received a record high vote of 44.5% at Starbucks, followed by 38.8% at Kroger and 33.6% at YUM! Brands. In recent years, proposals on sustainable packaging and recycling have averaged only 22% support.

New resolutions targeting petrochemical companies over environmental contamination from plastic production were largely withdrawn after the firms agreed to report on their plastic pellet spills and remediation. The sole vote taken—at DuPont de Nemours—garnered only 6.7% support because the company had spun off its materials science business—which includes specialty plastics and packaging—prior to the annual meeting.

Governance and Compensation

Proxy Access Proposals Recede

As a result of widespread corporate adoptions, proxy access proposals continued to decline in number this year with only 34 filed compared to 55 in 2018. To date, nearly 600 companies have instituted access rights, including 72% of the S&P 500 and 19% of the Russell 3000.[10] Of note this year, two long-time holdouts—Netflix and Hospitality Properties Trust—implemented market standard access bylaws (3/3/20/2-or-20) after multiple years of majority-supported shareholder proposals.

Although proxy access has become mainstream among large-cap firms—largely due to the efforts of the New York City Comptroller—there is no indication that the push for adoptions will migrate downstream. Instead, over 70% of this year's access proposals sought to amend features of existing bylaws. In a new angle, the proponents—the Chevedden group—largely limited their proposed revisions to a single change, such as eliminating renomination vote requirements, allowing for a minimum of two access candidates, or permitting unlimited group aggregations.[11] Although ISS was in favor of more liberal access features, Glass Lewis and most investors were not. "Fix-it" proposals averaged 29% support, in line with previous years.

2019 also marked the second time that proxy access has been put to use following GAMCO Investors' aborted attempt at National Fuel Gas in 2016. This time it was successful. The nominee—Glenn Krevlin, founder of hedge fund Glennhill Capital—was elected to the board of Joint, filling a seat vacated by an incumbent director. Notably, the Schedule 14N was filed only four months after the company adopted a proxy access bylaw in response to a 2018 majority-supported shareholder resolution.

Clawbacks Make a Comeback

For the first time since 2013, two shareholder proposals dealing with compensation clawbacks won majority support. One of the targets—FleetCor Technologies—lacked a formal clawback policy for cases of misconduct or a financial restatement and also experienced recurring say-on-pay (SOP) failures in recent years. The second proposal, which asked Mallinckrodt to annually disclose any recoupment of executive incentive pay, was part of a package of proposed reforms related to the company's manufacture of opioids. A similar resolution filed at Johnson & Johnson received 46.1% support.

A clawback resolution at Mylan also registered majority backing in an unofficial tally. Because the proponent—the UAW Retiree Medical Benefits Trust—did not have standing to submit the proposal under Dutch law or the company's articles—i.e.,

[10] According to SharkRepellent, proxy access has expanded to 48% of the Russell 1000, but remains rare at Russell 2000 firms with only 4% having adopted it.

[11] The provisions being challenged are common features in proxy access bylaws. In a review of the 565 companies that had adopted proxy access from 2015 through 2018, Sidley Austin found that 78% limit board seats to the greater of two directors or 20% of the board, 69% restrict the renomination of an access candidate for two years if he does not receive a minimum level of voting support (25% is most common), and 98% limit the number of shareholders that may form a nominating group (20 shareholders is most common). See https://www.sidley.com/en/insights/newsupdates/2019/01/the-latest-on-proxy-access.

ownership of 3% of the stock—Mylan designated the proposal as an item for discussion only in the proxy statement. A majority of the proxies received indicated support for the matter, excluding abstentions or where no view was expressed.

SOP and CEO Pay Ratios

For the most part, SOP votes through June closely tracked 2018 mid-year results. Average support across all companies held steady at 91%, while the percentage of those receiving a negative ISS recommendation was 13.3%—down slightly from 13.6% during last year's proxy season. In line with mid-2018, average SOP support was 67.2% at companies that received an adverse ISS recommendation and 94.6% at companies that received a favorable ISS recommendation.

The main variation year over year was the dispersion of low votes. Although a higher proportion of companies received less than 70% support—8.3% versus 7.9% in mid-2018—there were fewer outright defeats. The failure rate—at 2.2%—dipped below the 2.5% seen in the first six months of last year, but was still near the high end of the rates observed since 2011. As in the past, most failures appear to have been tied to pay-for-performance misalignment or certain problematic pay practices.

The incidence of multi-year failures also continued to trend down. This year, 75% of the failed SOP votes were first-timers, compared to 72% in mid-2018 and 55% in mid-2017.[12] However, most all of these companies had been experiencing vote slippage on SOP and/or equity plans in prior years, suggesting that they have not been adequately addressing investor concerns about their compensation programs.

Second-year CEO pay ratios and median employee compensation levels also remained largely unchanged from 2018, according to ISS.[13] As such, they appeared to draw little reaction from investors, including in their voting on SOP. However, in advance of the 2019 proxy season, 48 union and government pension plans and social investment funds asked S&P 500 companies for more details around their median employee and workforce demographics—ostensibly to put the pay ratio in the context of the company's HCM.[14] While it is unclear if this impacted 2019 disclosures, Deloitte reported that 26% of companies provided additional information about their median employee.[15] Issuers should expect to see more requests of this sort from investors seeking clarity around workforce diversity and pay equity.

Looking Ahead

Apart from shareholder campaigns, several other developments will be shaping next year's proxy season and the years ahead.

Overboarded Directors: Four is the New Five

Compounding the ongoing challenges of director recruitment—skill sets, experience and diversity factors—investors are imposing stricter standards on the overall amount of board service due to the increasing time demands on directors. According to Russell Reynolds Associates, the average board membership now requires over 200 hours of active work annually. Recognizing this, boards themselves are placing restrictions on their directors' outside board commitments though they often don't go as far as investor policies.[16]

[12] On an historical basis, Semler Brossy found that 8% of S&P 500 firms and 9% of Russell 3000 firms have failed their SOP vote at least once since 2011, while one-third of S&P 500 firms and 28% of Russell 3000 firms have received less than 70% support at least one time. See https://www.semlerbrossy.com/wp-content/uploads/SBCG-2019-SOP-Report-2019-06-20.pdf.

[13] See ISS's report at https://corpgov.law.harvard.edu/2019/04/16/2019-u-s-executive-compensation-trends/.

[14] See the investor letter on pay ratio disclosures at https://nacdblog.site/wp-content/uploads/2018/12/PayRatioLetter.pdf.

[15] See Deloitte's report at https://www2.deloitte.com/content/dam/Deloitte/us/Documents/center-for-board-effectiveness/us-on-the-boards-agenda-ceo-pay-ratio-leading-indicator-of-broader-human-resource-matters.pdf.

[16] According to Spencer Stuart's 2018 Board Index, 64% of S&P 500 firms have established a numerical limit on their directors' outside board service—typically three or four additional directorships—while 27% specifically restrict the outside board activity of their CEOs and fully employed directors—most often to

In April, Vanguard became the latest—and most influential—investor to establish an explicit limit on directors' board activities in its voting policy. Effective for the 2019 proxy season, Vanguard will vote against named executive officers (NEOs) who sit on more than two public company boards and against other directors who sit on more than four public company boards. The adverse vote will not apply to the board where the director serves as NEO or as chairman. The sudden change undoubtedly impacted some issuers this season—particularly those that adhere to more lenient proxy advisor guidelines—because of the short lead time to address the matter.[17] However, some companies may have availed themselves of Vanguard's carveout—namely, a public commitment for overextended directors to step down from some of their directorships.

Several other institutions, including Putnam Investments, Legal & General Investment Management (LGIM) and the California Public Employees Retirement System (CalPERS), also reduced their permissible public company boards from five to four this year. Others, such as BlackRock, JP Morgan Asset Management and Northern Trust Investments, already had a four-seat limit in place for non-CEO directors (see Table 3). Issuers should expect this trend to escalate and to extend to proxy advisor policies as well. Currently, ISS and Glass Lewis maintain a five-seat threshold for non-CEO and non-executive directors, respectively, but may feel compelled to modify their overboarding policies as early as next year so as not to lag behind the investor community.[18]

two other public company boards. See https://www.spencerstuart.com/research-and-insight/ssbi-2018.

[17] According to a PJT Camberview report, stricter investor policies on overboarding had a particularly strong impact this season on public company executives serving on more than two boards. A number of other directors saw their support drop 25 or more percentage points from last year. See https://pjtpartners.com/pjtcamberview/2019-proxy-season-takeaways.

[18] ISS is revisiting overboarded director limits in its newly released policy survey for 2020 annual meetings. See https://www.issgovernance.com/file/policy/2019-iss-policy-survey.pdf.

Regulatory Reforms

Also on the horizon, the SEC is considering updates to Rule 14a-2(b), which exempts proxy advisory firms from certain SEC proxy rules, and to the Rule 14a-8 ownership requirements for submitting and resubmitting shareholder resolutions. The Regulatory Flexibility Agenda released in May includes these items as new rulemaking projects that the SEC expects to address in the coming year.[19] House Democrats are already trying to block any SEC action on these rules through amendments to the fiscal 2020 Financial Services and General Government Appropriations bill.[20] However, it is unlikely that the Republican-controlled Senate will pass legislation containing the same language.

To help inform regulators and lawmakers of concerns regarding proxy advisors, the U.S. Chamber of Commerce and National Association of Manufacturers (NAM) have set up a website where companies can share their perspectives on how proxy advisors engage with them and influence their decision making.[21] ISS has also launched a new web page with resources about its role and business practices to counteract controversies surrounding the proxy advisor industry.[22]

Alliance Advisors will continue to track these and other significant developments and advise issuers accordingly as they begin their preparations for the 2020 annual meeting season.

[19] See the spring 2019 Reg Flex agenda at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235.

[20] See the amendments to H.R. 3351 at https://financialservices.house.gov/news/email/show.aspx?ID=O54U7EKMFWTRHP6ZLLNNNG5GBI.

[21] See the Proxy Reforms website at https://proxyreforms.com/.

[22] See ISS's Proxy Adviser Industry Resources page at https://www.issgovernance.com/compliance/due-diligence-materials/industry-resources.

Table 1: E&S Majority Votes: 2019 and 2018

2019			2018		
Proposal	**Company**	**Vote***	**Proposal**	**Company**	**Vote***
Board diversity	Gaming & Leisure Properties**	78.3%	**Coal ash**	Ameren	53.2%
Board diversity	Waste Connections	64.5%	**Methane emissions**	Range Resources	50.3%
Executive diversity	Newell Brands	56.6%	**2-degree scenario report**	Anadarko Petroleum	53.0%
Workplace diversity	Travelers Companies	50.9%	**2-degree scenario report**	Kinder Morgan	59.7%
Opioid risk report	Mallinckrodt	78.9%	**GHG emissions reduction**	Genesee & Wyoming**	57.2%
Opioid risk report	Walgreens Boots Alliance	60.5%	**Sustainability report**	Kinder Morgan	60.4%
Human rights report	GEO Group**	87.9%	**Sustainability report**	Middleby	57.2%
Lobbying disclosure	Mallinckrodt**	79.7%	**Sustainability report**	Rite Aid	80.0%
Political spending disclosure	Cognizant Technology Solutions	53.6%	**Opioid risk report**	Assertio Therapeutics	62.3%
Political spending disclosure	Macy's	53.1%	**Opioid risk report**	Rite Aid	61.4%
Political spending disclosure	Alliant Energy	54.3%	**Firearms**	American Outdoor Brands	52.2%
			Firearms	Sturm, Ruger & Co.	68.8%

*Vote results are calculated as “for” votes as a percentage of “for” and “against” votes.
**The board did not oppose the proposal.
Source: SEC filings

Table 2: Most Numerous Shareholder Proposal Filings: 2019 and 2018

Proposal	2019 (as of July 24)	Proposal	2018 (full year)
Independent chairman	63	Special meetings	84
Political spending*	62	Independent chairman	58
Supermajority voting	46	Proxy access	55
Written consent	41	Grassroots lobbying	51
Grassroots lobbying	35	Written consent	45
Proxy access	34	Gender pay equity	33
Board diversity - liberal version	33	Political spending*	33
Special meetings	30	GHG emissions reduction	31
Gender pay equity	28	Sustainability report	31
Majority voting	26	Board diversity - liberal version	30
Sustainability report	22	Supermajority voting	26

*Includes hybrid proposals that cover election spending and lobbying.
Source: SEC filings, proponent websites and media reports.

Table 3: Board Seat Limit Policies

Organization	CEOs	All Executive Officers	Other Directors
ISS	3		5
Glass Lewis		2	5
BlackRock	2		4
Vanguard		2	4
LGIM		2	4
Northern Trust	2		4
Putnam		3	4
JP Morgan Asset Management	3		4
T. Rowe Price	3		5
State Street	3		6
BNY Mellon	3		6

Note: The figures are for total board seats. The restrictions apply to public company boards, CEOs and executive officers.