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2019 PROXY SEASON PREVIEW
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Overview

With the 2019 proxy season now underway, several trends are emerging in shareholder campaigns:

Environmental and social (E&S) topics will once again dominate the shareholder proposal landscape. For a third consecutive year, E&S issues account for a majority of all shareholder proposals filed, outpacing those related to governance and compensation. Topping the list of submissions are political spending resolutions, which proponents have ramped up in advance of the 2020 elections (see Table 1).

Withdrawals could approach last year's record. In 2018, nearly half of E&S resolutions were withdrawn as a result of productive engagements, a trend that is likely to continue. Companies are showing more willingness to reach agreements with proponents due to shifts in investor voting, particularly among some of the largest institutional investors, notably BlackRock, Vanguard Group and Fidelity Investments. According to a recent Institutional Shareholder Services (ISS) study, more shareholders are supporting E&S proposals rather than casting abstention votes, which declined from 16% of votes cast in 2010 to 3% in 2018.[1] This in turn translated into a record 12 majority votes on E&S resolutions in 2018, while another 20 received support in the 40% range.[2]

The six-week federal government shutdown in January also spurred a number of withdrawals due to delays in the SEC's processing of no-action requests. At least 17 companies withdrew their petitions after the government reopened as a result of reaching settlements with proponents.

New players are joining the E&S mix. The growing momentum of E&S campaigns is attracting new proponents. Now that many large-cap companies have shareholder-friendly governance provisions, corporate gadflies John Chevedden, James McRitchie, Myra Young and the Steiner family (the "Chevedden group") are broadening their focus in 2019 to E&S proposals, particularly political spending where they account for one-third of all submissions. Although they are still advocating for independent board chairs, simple majority voting and written consent, they have downplayed their calls for amending proxy access bylaws and easing eligibility requirements for shareholders to call special meetings.

Employee activism is also on the rise. Silicon Valley workers are leveraging their stock compensation to agitate for change at their employers via proxy proposals. After staging a massive walkout last fall over their company's handling of sexual harassment claims, Google employees have once again teamed up with Zevin Asset Management on a proposal to link executive compensation to diversity and inclusion goals. Similarly, over a dozen Amazon.com employees have filed a resolution asking the company to release a comprehensive plan to address climate change. Amazon.com holds the distinction this year of receiving the most shareholder resolutions—14 in all.

No-action challenges are usurping a number of new and recurring campaigns. Shareholder proponents and issuers continue to grapple with SEC interpretive guidance issued in 2017 and 2018 (Staff Legal Bulletins (SLB) 14I and 14J), which deal with ordinary business and economic relevance exclusions. Although these clarifications did not substantially impact the outcome of no-action requests in 2018, climate-related proposals were disproportionately affected.

[1] See ISS's study on 2000-2018 voting trends on E&S issues at https://corpgov.law.harvard.edu/2019/01/31/the-long-view-us-proxy-voting-trends-on-es-issues-from-2000-to-2018/.
[2] The 2018 majority votes included resolutions on coal ash (one), methane emissions management (one), greenhouse gas emissions reduction (one—the board made no recommendation), 2° scenario reporting (two), sustainability reporting (three), the opioid crisis (two), and gun safety (two).

Climate resolutions remain in the crosshairs of ordinary business challenges following a 2018 staff decision that a resolution at EOG Resources to set company-wide, quantitative, time-bound targets for reducing greenhouse gas (GHG) emissions constituted micromanagement of the company. This reversal of longstanding precedent has resulted in the omission of five proposals this year to align carbon emissions with the goals of the 2015 Paris Climate Agreement to maintain global warming at well below 2° C. Five similar no-action requests are pending.

Several other staff reversals have occurred this year on compensation topics, based on the micromanagement considerations of SLB 14J. These include proposals to exclude legal and compliance costs from executive pay (AbbVie and Johnson & Johnson) and on revolving door payments (JPMorgan Chase), which were disqualified as ordinary business in past years because they dealt with senior executive compensation.

First-time shareholder initiatives drawn from news headlines—the explosion of stock buybacks, illegal immigrant detention and fair employment practices—are also being squeezed out by ordinary business exclusions. As a result, some of this year's social justice topics are unlikely to generate the level of investor and media attention that occurred last year with resolutions on opioid abuse and gun violence.

A more detailed look at some of the season's key shareholder campaigns follows below.

Governance

Special Meetings

Last year, the most prominent governance initiative—with 84 proposals filed and 65 voted on—called on companies to adopt or reduce the ownership thresholds required for shareholders to call special meetings to 10% or 15%. Notably, seven companies were able to omit the resolutions under the conflicting proposal exclusion by substituting a management resolution to ratify their existing provisions. Although all of these passed, issuers may be reluctant pursue this course of action going forward now that ISS and Glass Lewis have adopted policies to oppose governance committee chairs at companies that engage in this practice.

So far, only two firms are taking this approach this year. At Franklin Resources' February meeting, shareholders backed a management ratification proposal by 88.2% and supported the governance committee chair by 83%, notwithstanding negative proxy advisor recommendations. United Technologies also sought a Rule 14a-8(i)(9) exclusion in favor of ratification of the 15% special meeting threshold it adopted last fall (reduced from 25%). Ironically, the shareholder request (20%) would now result in an *increase* in the special meeting threshold. While that alone may have alleviated any proxy advisor backlash, the proposal was ultimately omitted because the sponsor failed to present a similar proposal at the 2018 annual meeting.

The proponents—the Chevedden group—have backed off from unleashing another deluge of special meeting resolutions this year, including refiling at the seven "offending companies" that knocked out their proposals last year. Instead, they are proposing other measures at those firms, such as an independent board chair, written consent, simple majority voting and more lenient proxy access provisions.

Proxy Access

As in 2018, the volume of proxy access proposals is trending down due to corporate adoptions. To date, about 579 companies have implemented access rights—including 70% of the S&P 500 and 18.6% of the Russell 3000—and over 80% of their bylaws adhere to a 3/3/20/20 structure, typically with a two-director minimum.

Proxy access "fix-it" proposals—sponsored by the Chevedden group—are also receding after averaging only 28% support in 2017 and 2018. Most of those sought a package of enhancements to existing access bylaws or the expansion of group aggregations to 40, 50 or an unlimited number of shareholders. This year, the proponents have toned down their requests to a single, often minor revision, such as adding a two-director minimum to the board seat cap (Apple) or eliminating the vote requirement for renomination of access candidates (AMN Healthcare Services, Bank of America, JPMorgan Chase, Newell Brands, Spirit AeroSystems). So far, even their minimalist approach is not gaining traction. The vote at Apple was 29.5%, suggesting that the proposed change was immaterial to most shareholders.

This season also marks the second attempt to use proxy access after GAMCO's aborted effort two years ago at National Fuel Gas. A Schedule 14N was filed in December at Joint by Steven Colmar, a co-founder and former director of the company, who left the the board in 2017 over disagreements about the company's strategic direction. His nominee, Glenn Krevlin, is the founder of hedge fund Glennhill Capital.

Stock Buybacks

Shareholder activists are reviving proposals related to stock buybacks in the wake of the 2017 Tax Cuts and Jobs Act, which contributed to a record $1 trillion in corporate share repurchases in 2018, according to TrimTabs Investment Research. Critics argue that the tax savings have primarily benefited corporate executives and shareholders rather than being used for job-creating investments, thereby exacerbating wealth inequality.

Several variations of shareholder proposals are being submitted this season, largely by the Chevedden group. The first, which was omitted as ordinary business, would have required shareholder approval of any open-market share repurchase programs or stock buybacks adopted by the board. Another version asks American Express and Boeing to exclude the impact of share repurchases from the financial metrics used for determining senior executive pay. Similar resolutions have typically garnered only single-digit support in the past.[3] The proponents are also referencing stock buybacks in some of their independent chair and simple majority vote proposals as an argument for better board oversight.

Oxfam America has submitted a new resolution, which is pending at Merck, that addresses concerns over executives profiting from buybacks by cashing their equity compensation during the stock price pop that often follows a buyback announcement. In line with recommendations by SEC Commissioner Robert Jackson, the proposal urges the compensation committee to adopt a policy to approve sales of shares acquired through equity compensation programs. If approval is granted, the committee should disclose to shareholders why the sale is in the company's long-term best interest.

Senate lawmakers are also considering legislation to discourage corporate stock buybacks. Tammy Baldwin (D-Wisc.) recently reintroduced the 2018 Reward Work Act, which would ban open-market stock repurchases altogether. In a similar vein, Chuck Schumer (D-N.Y.) and Bernie Sanders (I-Vt.) plan to offer a bill that would precondition share repurchases on a company's commitment to invest in workers and communities through better pay and benefits. A less drastic approach, proposed by Marco Rubio (R-Fla.), would eliminate the preferential tax treatment of share repurchases by taxing them as dividends rather than as capital gains.

Investors, for their part, remain largely supportive of stock repurchase plans. Consistent with past surveys, 43% of institutional investors polled by Corbin Advisors in 2018 believed that buybacks were the best use of a company's cash, second only to M&A, which was preferred by 49% of investors. The Council of Institutional Investors (CII) further cautioned that restricting buybacks would interfere with corporations' decisions about how best to allocate their capital. Instead, CII calls for better disclosure of buyback rationales and links to pay.[4]

[3] In 2018, stock buyback resolutions sponsored by McRitchie and Young received 6.7% at General Electric and 6.1% at Cisco Systems. In 2016, proposals filed by the AFL-CIO and Domini Social Investments received 5.8% at 3M, 5.3% at Illinois Tool Works, and 46.5% at Xerox.

[4] See the Corbin Advisors survey at https://www.corbinadvisors.com/news/general-news/rebecca-corbin-featured-institutional-investor-article-politicians-and-twitter-may-hate-buybacks-institutional-investors-dont. See CII's statement on stock buybacks at https://www.cii.org/files/about_us/press_releases/2019/02_05_19_buybacks.pdf.

E&S

Diversity & Inclusion

Board Diversity

Issuers can expect a greater degree of negative reaction to all-male boards as Glass Lewis's new board gender diversity policy comes online this season. Glass Lewis will begin recommending against the nominating committee chairs of Russell 3000 firms with no female directors unless they disclose a timetable for addressing the lack of gender diversity on the board or specific restrictions in place regarding the board's composition. ISS has adopted a similar policy for Russell 3000 and S&P 1500 firms, which goes into effect in 2020.

The proxy advisor policies follow suit with the positions adopted by some major Institutional investors. Since the launch of its "Fearless Girl" campaign in 2017, State Street Global Advisors (SSGA) has been voting against nominating chairs if there are no female directors on the board. Beginning in 2020, SSGA will expand its dissenting votes to the entire nominating committee. BlackRock also plans to oppose nominating committee members at companies that do not have at least *two women* on the board and have not set a timeframe for improvement.

California-headquartered companies are additionally facing a newly enacted law (Senate Bill No. 826) that mandates gender quotas in the boardroom: at least one female director by the end of 2019 and two to three female directors, depending on board size, by the end of 2021.[5] Based on data from Board Governance Research, some 184 California-based companies would need to add a woman to the board this year to comply with the law, while a total of 1,060 firms would need to appoint female board members to meet the 2021 deadline.[6] New Jersey legislators proposed a nearly identical law last November (NJ Assembly No. 4726), which could impact as many as 42% of New Jersey-based firms, according to estimates by 2020 Women on Boards.[7]

Issuers may also need to review their board diversity disclosures in light of two Regulation S-K Compliance and Disclosure Interpretations (C&DIs) issued by the SEC in February.[8] To the extent that the board or nominating committee, as well as the company's diversity policies, take into account self-identified personal attributes (race, gender, ethnicity, religion, nationality, disability, sexual orientation or cultural background) the staff expects Item 401 and Item 407 discussions to identify those characteristics and how they were considered, assuming the directors and nominees consent to having the information publicized.

Federal lawmakers are similarly promoting more transparency around diversity rather than outright quotas. House and Senate Democrats have introduced companion bills ("Improving Corporate Governance through Diversity Act of 2019") which would require public companies to disclose in their proxy statements data on the racial, ethnic and gender composition, as well as veteran status, of both their board members and executive officers based on voluntary self-identification. It would also require disclosure of any board policy, plan or strategy to promote racial, ethnic and gender diversity. The bills have been endorsed by CII and the U.S. Chamber of Commerce.

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[5] See SB 826 at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB826. The impact of California's mandatory diversity quota is already being felt. In the days following the announcement, researchers at the University of California, Berkeley, observed a significant negative valuation effect on firms affected by the law, which may reflect investor concerns that the quota will result in the appointment of less-qualified directors and subsequent firm underperformance. Indeed, since the introduction of the law, California-headquartered firms have significantly increased female board representation, but the newly appointed directors are younger, less experienced and less independent than incumbent and departing directors. See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3303798.

[6] See the Board Governance Research study at https://static1.squarespace.com/static/56e8489162cd944a6424f542/t/5c381bf51ae6cf0373787ece/1547181050858/California+Women+on+Boards+2018+Report+Final.pdf.

[7] See NJ A 4726 at https://www.njleg.state.nj.us/2018/Bills/A5000/4726_I1.HTM. According to the National Conference of State Legislatures, several other states (Massachusetts, Illinois and Pennsylvania) have passed nonbinding resolutions encouraging companies to diversify their boards. See http://www.ncsl.org/blog/2019/01/04/gender-diversity-on-corporate-boards-what-will-2019-bring.aspx.

[8] See the SEC's C&DIs at https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm#116-11.

For their part, shareholder activists on both the left and right continue to advocate for the inclusion of diversity characteristics in a director skills and qualifications matrix. As part of its Boardroom Accountability Project 2.0, the New York City Comptroller has filed eight resolutions seeking a board diversity matrix, including a resubmission at Exxon Mobil, which received 16.5% in 2018.

Meanwhile, to counter liberal bias in boardrooms, the National Center for Public Policy Research (NCPPR) is proposing an alternative matrix that reflects "true board diversity"—namely, each nominee's skills, experience and ideological perspectives. To date, votes are in line with last year, receiving 1.7% support at both Apple and Starbucks. NCPPR has also reportedly withdrawn a number of its resolutions in exchange for the companies adopting some form of the request.[9]

Executive Diversity

This year, diversity campaigns are increasingly expanding to the C-Suite, where female and minority representation has remained relatively flat.[10] Trillium Asset Management has submitted proposals at five companies to report on the diversity of their executive leadership team and their plans to make it more diverse in terms of race, gender and ethnicity.

In line with this, recent studies by Calvert Impact Capital and ISS suggest that investors' focus on gender diversity at the board level is misdirected. According to the research, the number of women in senior management positions—those reporting directly to the CEO—has a much greater impact on company performance than the number of female directors or the gender of the company founder or CEO.[11]

Workplace Diversity

Trillium and As You Sow are also continuing their bottom-up approach to diversity by asking for workplace diversity reports (EEO-1 data), which break down a company's workforce by race, gender and broad job category. 2017 was a breakout year for this campaign when filings nearly tripled in volume from the prior year, and one proposal (at Palo Alto Networks) received majority support.

This year, the number of submissions has fallen dramatically—to eight from 23 in 2018—but the scope of the requests has expanded in some cases. At Fastenal, for example, the proponents are calling for a more robust report based on the Sustainability Accounting Standard Board's (SASB) industry-specific, material risk metrics. This would include gender data for global operations and EEO-1 racial/ethnic data for U.S. operations, disaggregated into management (executive and mid-level officials) and non-management employees.[12]

Investor demands for EEO-1 reports are likely to accelerate after a federal court recently lifted a stay on a 2016 Equal Employment Opportunity Commission (EEOC) requirement to include pay data. Companies with more than 100 employees will be required to report the gender, racial and ethnic makeup of workers in each EEO-1 job category within 12 pay ranges, along with the total hours worked. The measure was frozen in 2017 after the Office of Management and Budget (OMB) concluded that it was overly burdensome for employers, but labor and women's rights groups successfully sued to have it reinstated. The EEOC and OMB have until April 3 to advise employers on how and when to submit their 2018 EEO-1 data. Given the unexpected court ruling—and the possibility that the OMB will appeal it—the May 31 reporting deadline is likely to be extended.

[9] CVS Health, for example, amended its governance guidelines in January 2019 to include "viewpoint" among the director qualifications that the nominating committee considers in recruitment.

[10] According to ISS data, in 2018 women occupied only 9% of top executive positions in the Russell 3000.

[11] See Calvert's study at https://www.calvertimpactcapital.org/storage/documents/calvert-impact-capital-gender-report.pdf. See ISS's study at http://clsbluesky.law.columbia.edu/2018/11/23/iss-looks-at-gender-diversity-and-company-performance/.

[12] As You Sow has similarly asked five companies this year to utilize the SASB standards in their sustainability reports. One recipient (Advance Auto Parts) is challenging the proposal as micromanagement and substantially implemented since it already produces a comprehensive sustainability report.

Gender Pay Equity

Proposals addressing gender pay disparities are making a comeback this season after highly successful campaigns in recent years. Since 2016, the primary sponsor Arjuna Capital has prodded 22 companies in the technology, consumer and financial services sectors to share their "pay equity" ("equal pay for equal work") data and take steps to close any gaps.

This year, Arjuna is shifting its campaign to request global median gender pay gap disclosures from a dozen financial and technology firms.[13] Median pay gaps measure the median pay of all men versus the median pay of all women in a company's workforce, irrespective of position. Unlike equal pay data, these disclosures shed light on the "leadership gap," namely, the extent that women are underrepresented in the top-ranking, highest-paying jobs. The initiative is in keeping with a new mandate in the U.K. requiring companies with over 250 employees to report their mean and median gender pay gaps.

Among the targeted firms, Citigroup became the first U.S. company to report median pay gap data for women and minorities, resulting in a withdrawal of Arjuna's resolution.[14] Based on its analysis, Citigroup plans to increase representation at the Assistant Vice President through Managing Director levels to at least 40% for women globally and 8% for black employees in the U.S. by the end of 2021.

Corporate Culture and Human Capital Management

The #MeToo movement and high-profile corporate scandals has sharpened investor attention to risks related to corporate culture and human capital management (HCM) that can negatively impact long-term performance. According to Morrow Sodali's 2019 survey of 46 global institutional investors, 83% want more detailed information on HCM and 67% want a better understanding of how the board overseas corporate culture and the tone at the top. Similarly, a survey of 60 institutional investors conducted by the EY Center for Board Matters found that 39% believe HCM and corporate culture should be a top board focus, up from 6% three years ago. Twenty percent of these investors want more transparency around HCM-related topics, such as pay ratios, though most are prioritizing dialogue over disclosure.[15]

In line with this, BlackRock has designated HCM as one of its 2019 engagement priorities, while SSGA has created a framework to assist boards and managements in aligning their corporate culture with their long-term strategies.[16] Similarly, a coalition of California pension funds has developed a set of principles to manage and mitigate HCM-related risks, including company policies on sexual harassment, diversity throughout the organization, restrictive labor practices, and workers' rights.[17]

HCM is additionally factoring into proxy proposals this year, though many are getting withdrawn for technical reasons or omitted as ordinary business. The New York City Pension Funds (NYC Funds) and Change-to-Win (CtW) Investment Group filed resolutions at seven companies to adopt a policy not to engage in any "inequitable employment practices" that keep workplace misconduct in the shadows. These include mandatory arbitration of employment-related claims, non-compete agreements, no-poach agreements and involuntary non-disclosure agreements.[18] Other union-

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[13] In 2018, Arjuna filed proposals at Alphabet and Facebook to disclose their median pay gaps, which received 15.7% and 10% support, respectively.

[14] The targeted companies include Adobe, Alphabet, Amazon.com, American Express, Bank of America, Citigroup, Facebook, Intel, JPMorgan Chase, Mastercard, and Wells Fargo.

[15] A group of 50 public and union pension funds, sustainability investors and religious orders have written letters to S&P 500 firms requesting supplemental information in companies' pay ratio disclosures to provide context around their approach to HCM. See https://corpgov.law.harvard.edu/2019/02/02/pay-ratio-disclosure-at-the-sp-500/.

[16] See Larry Fink's 2019 letter to CEOs at https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter. BlackRock's other engagement priorities are board diversity, corporate strategy and capital allocation, compensation that promotes long-termism, and environmental risks and opportunities. See SSGA's 2019 letter to board members at https://www.ssga.com/investment-topics/environmental-social-governance/2019/01/2019%20Proxy%20Letter-Aligning%20Corporate%20Culture%20with%20Long-Term%20Strategy.pdf.

[17] See the Trustee United Principles at https://www.trusteesunited.com/.

[18] Last August, CtW wrote letters to 31 major companies addressing similar "anti-competitive" employment practices. See the sample letter and target list at http://ctwinvestmentgroup.com/.

sponsored proposals deal with how companies' mandatory arbitration policies are impacting employees and sexual harassment claims and with formalizing the board's oversight responsibility for managing and mitigating risks related to sexual harassment.

Following last fall's global walkout of 20,000 Google employees over exit payments made to executives accused of sexual misconduct, CtW is presenting one of their demands in a first-time proxy proposal. It is asking parent company Alphabet to appoint an employee representative to the board by 2020 to help mitigate risks related to human capital and corporate culture and prevent the reputational damage caused by employee protests. Although the proposal will face certain defeat because of the founders' superior voting rights, the concept of worker representation on corporate boards is featuring in legislation proposed by Senate and House Democrats and the platforms of several 2020 presidential contenders.[19]

Human Rights

Immigrant Detention

In response to the Trump administration's zero-tolerance policy on illegal immigration, faith-based investors and the Service Employees International Union (SEIU) are engaging and submitting proposals at companies in the private prison, technology, and defense sectors deemed at risk for human rights violations as a result of their contracts with Immigration and Customs Enforcement, Customs and Border Protection and other federal agencies.

Specifically, they are asking e-commerce firms, such as Amazon.com, to stop selling facial recognition technology to government agencies unless the board determines, using independent evidence, that it does not cause or contribute to violations of privacy, civil liberties and human rights. Similar risk assessments are being sought from government contractors, such as Northrop Grumman, which is developing biometric identification systems for the Department of Homeland Security. The proponents contend that these technologies facilitate immigrant surveillance and racial profiling.

Shareholder groups are also facing off with CoreCivic and GEO Group, the largest operators of private prisons and illegal immigrant detention centers. Religious orders want more details on the treatment of people held at their facilities and how respect for inmate and detainee human rights is incorporated into senior executive pay arrangements. Alex Friedman of the Human Rights Defense Center—a longstanding agitator for inmate rights—has proposed that the companies refrain from housing unaccompanied minors or illegal adults who have been separated from their children. The Friedman resolutions were successfully challenged as ordinary business.

Activists have made headway with banks that lend to CoreCivic and GEO Group, withdrawing all four of their proposals. Among the targeted firms was JPMorgan Chase, which is ending its financing of private prison operators, and Wells Fargo, which is reducing its exposure to this sector.

Health-Related

Opioid Crisis

The Investors for Opioid Accountability (IOA)—a coalition of over 50 institutional investors—is continuing its highly successful campaign against opioid abuse with drug manufacturers, distributors and retailers. Over the past year, the IOA has reached agreements with a dozen companies on governance measures to more effectively monitor and manage financial and reputational risks related to the opioid crisis. These include producing a board risk report, separating the chair and CEO positions, adopting a misconduct-based clawback policy, enhancing

[19] Senator Elizabeth Warren's (D-Mass.) Accountable Capitalism Act would give workers the right to elect at least 40% of all corporate board members. See https://www.warren.senate.gov/newsroom/press-releases/warren-introduces-accountable-capitalism-act and https://www.warren.senate.gov/newsroom/press-releases/senator-warrens-accountable-capitalism-act-moves-forward-as-representatives-lujn-pocan-lynch-boyle-and-schakowsky-introduce-house-companion. Senator Tammy Baldwin's (D-Wis.) Reward Work Act would entitle workers to elect one-third of corporate board seats. See https://www.baldwin.senate.gov/imo/media/doc/Reward%20Work%20Not%20Wealth%20Baldwin%20Staff%20Report%203.26.19.pdf.

lobbying/political spending disclosure, and not adjusting executive compensation performance metrics to exclude legal costs.[20] In addition, three resolutions on board risk reporting received majority support at Assertio Therapeutics, Rite Aid and, most recently, Walgreens Boots Alliance.

Nine opioid-related resolutions are currently pending for 2019 annual meetings, including three calling for risk management reports and the remainder for governance reforms.[21] Given the strong investor and proxy advisor support for this initiative, some of these could ultimately be settled.

Drug Pricing

For a fifth year, faith-based investors are revisiting the issue of high prescription drug costs at major pharmaceutical companies. To avoid the ordinary business exclusions that have occurred in the past, the proponents are asking nine companies for compensation committee risk reports to show the extent that their drug pricing strategies are tied into senior executive compensation. Last year, these proposals averaged 23.3% support and were backed by ISS, but opposed by Glass Lewis.

Other proposal variations may not make it to ballots due to negotiated withdrawals. These include a new resolution to formalize board oversight of prescription drug pricing in a new or existing board committee and to add drug pricing risk expertise to the director qualifications matrix.

Environmental-Related

Climate Change

Risks related to climate change will be a top priority for investors this year, both in their discussions with issuers and in proxy proposals. Morrow Sodali's recent survey of 46 global investors found that 85% considered climate change their most important engagement topic, up from 31% last year.

According to ISS, companies will face a record 75 or more climate-related resolutions this year. Yet despite the onslaught, some of the largest index investors (BlackRock, Vanguard and Fidelity) have historically backed only a small fraction of the proposals.[22] BlackRock, in particular, has been called out by a dozen environmental groups and social investment funds for its voting practices and "poor contribution to environmental goals."[23]

This year's climate campaigns are going beyond stress-testing business plans and are asking carbon-intensive companies to establish hard targets for reducing their emissions. The Church of England, New York State Common Retirement Funds (NYSCRF) and other filers have submitted a first-time proposal, which is pending at Exxon Mobil, to set and disclose short-, medium- and long-term targets for cutting GHG emissions—for both its own operations and the products it sells—that are aligned with the goals of the Paris climate agreement.[24] This follows after rival Royal Dutch Shell relented to investor pressure last fall and announced that it would introduce three- and five-year carbon reduction targets that would include customers' use of its fuels (Scope 3 emissions) and tie-ins to executive pay. BP and

[20] More details on IOA's campaign can be found at https://www.iccr.org/our-issues/health/opioid-crisis and https://www.iccr.org/sites/default/files/page_attachments/ioa_2018-2019_successes.pdf.

[21] A proposal to exclude legal and compliance costs from executive compensation—particularly those related to opioid-related litigation—received 11.7% support at AmerisourceBergen's 2019 annual meeting. Several others were omitted as ordinary business/micromanagement, in keeping with SLB 14J, issued in October 2018. This is a reversal of the SEC's position last year when staff concluded that the proposal transcended ordinary business because it dealt with senior executive compensation.

[22] According to a Ceres/Fund Votes review of the proxy voting of the 40 largest mutual fund companies in 2018, BlackRock supported 10% of climate-related proposals, Vanguard supported 12% and Fidelity supported 16%. See https://www.ceres.org/news-center/blog/climate-change-causes-maelstrom-financial-risks-and-opportunities-your-money.

[23] See "BlackRock's Big Problem" at https://www.blackrocksbigproblem.com/ and letter to BlackRock CEO Larry Fink at https://justshare.org.za/wp-content/uploads/2019/01/BlackRock_joint-letter_climate-change.pdf.

[24] Similar resolutions were omitted at Devon Energy as ordinary business and at Chevron as duplicative of another proposal.

Chevron have similarly pledged to link employee bonuses to GHG reduction targets.

Aside from aggressive carbon reduction demands, one proponent (the NYC Funds) went to so far as to sue aerospace parts manufacturer TransDigm Group in federal district court for trying to omit their resolution to adopt goals for managing GHG emissions. The plaintiffs sought both declaratory and injunctive relief, claiming that exclusion of the proposal would cause them "irreparable injury."[25] Rather than fight the matter, TransDigm withdrew its no-action request and let the proposal go to a vote, which registered 34.9% support. However, the incident has raised concerns that the NYC Funds—or other proponents—will pursue judicial intervention to keep resolutions on the ballot.

Separately, the New York City Comptroller and a coalition of 19 public pension systems, social investment funds and faith-based investors have launched an ambitious campaign to eliminate carbon pollution from the country's 20 largest electric power utilities, which account for nearly half of the sector's emissions. In recent letters, they asked the utilities to commit to achieving net-zero carbon emissions by 2050, with near-term benchmarks in 2025 and 2030, and to adopt policies to ensure that their executive compensation and political activities are aligned with that goal. Of the companies targeted, only one (Xcel Energy) has committed to the net-zero-by-2050 objective.[26] If the others fail to make this commitment by their 2020 annual meetings, the coalition will recommend that asset owners and managers vote against the board chair and/or lead director.

Plastic Pollution

For 2019, As You Sow and a coalition of 40 international investors—the Plastic Solutions Investor Alliance—are stepping up their efforts to combat plastic waste and marine pollution. In their first vote of the season, a repeat proposal at Starbucks to boost plastic recycling and transition to sustainable packaging won 44.5% support, a record high on this topic. Similar resolutions are pending at three other consumer goods companies.

This year, the proponents are broadening their campaign to include petrochemical companies (Chevron, DowDupont, Exxon Mobil and Phillips 66) to annually report on plastic pellet spills and cleanup measures during the resin production process and actions taken to prevent future contamination. Studies estimate that plastic pellets ("nurdles") are the second largest direct source of microplastic pollution in the ocean by weight. So far, one resolution has been withdrawn at Exxon Mobil after the company agreed to the reporting.

Aside from proxy proposals, Walden Asset Management and the Sierra Club have written letters to a dozen companies to drop their support of the Plastics Industry Association (PLASTICS), which has lobbied for statewide preemption of local ordinances that ban or tax plastic bags. One recipient (Becton, Dickinson) decided to withdraw its association membership, while privately-held SC Johnson will ensure that its dues do not go towards funding plastic bag lobbying.

Conclusion

This year's annual meetings will give issuers additional insight into two key matters which will help frame post-season engagements and shape next year's shareholder campaigns: the extent that investor views are shifting on E&S issues and how the SEC is applying new guidance on Rule 14a-8(i)(7) and 14a-8(i)(5) exclusions. As the season progresses, Alliance Advisors will keep issuers apprised of these and other key developments as they arise.

[25] See the NYC Funds' complaint at https://www.courthousenews.com/wp-content/uploads/2018/12/transdign.pdf. The proponents reportedly took this course of action, rather than wait for the SEC to weigh in, because of the staff's 2018 decision allowing EOG Resources to omit a similar resolution on ordinary business grounds, reversing years of precedent.

[26] See the Climate Majority Project's "Net Zero by 2050" report, investor statement and target list at https://static1.squarespace.com/static/5c33155fec4eb7e2b8479aeb/t/5c77b5bbe4966bf9556f1554/1551349208857/net-zero-report.pdf, https://www.climatemajority.us/investorstatement-20190228 and https://www.climatemajority.us/20companies.

Table 1:

Proposal	2019 (as of March 31)	Proposal	2018 (full year)
Political spending	56	Special meetings	84
Independent chairman	46	Independent chairman	58
Supermajority voting	35	Proxy access	55
Grassroots lobbying	35	Grassroots lobbying	51
Written consent	33	Written consent	45
Gender pay equity	28	GHG emissions reduction	31
Proxy access	21	Sustainability report	31
Board diversity - liberal version	21	Board diversity - liberal version	30
Sustainability report	21	Political spending	27
GHG emissions reduction	19	Gender pay equity	27
Link pay to social issues	19	Supermajority voting	26

Source: SEC filings, proponent websites and media reports.