

2015 PROXY SEASON REVIEW

By Shirley Westcott

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Overview

This proxy season marked a pronounced shift in the corporate governance landscape with over three dozen companies adopting or committing to adopt proxy access rights, which allow shareholders to nominate board candidates and have their nominees appear in company proxy statements. Turbo-charged by a campaign led by New York City Comptroller Scott Stringer, over 100 proxy access proposals have been filed this year and 49 have received majority support based on votes cast “for” and “against,” making it one of the most successful shareholder efforts at private ordering in recent years.

Due to the surge of proxy access resolutions, shareholder proposal submissions overall reached over 1,000 this season (see Table 1). As in 2014, environmental and social (E&S) issues constituted the largest portion of the mix (44%), though they did not reach last year’s record-breaking levels due to a significant decline in political activity proposals. Activists also shifted their priorities among governance and compensation topics, which constituted 43% and 13% of this year’s filings, respectively. Shareholder proposals calling for annual board elections and majority voting continued their declining trend as a result of investor engagement and corporate adoptions. Also in retreat were shareholder initiatives on executive stock retention, while proposals on compensation clawbacks, pay disparity, and linking pay to social issues—particularly climate change—were on the upswing.

The proposal remix also impacted the number of majority votes, which stood at 99 through June, up from 81 for all of 2014. However, excluding proxy access, only 50 majority votes were recorded, reflecting the decline in traditional governance resolutions. In line with last year, five compensation proposals dealing with severance and change-in-control payouts won majority backing, while only one E&S resolution (on

sustainability reporting) received majority support, down from seven in 2014 which largely dealt with political spending and lobbying disclosure.

Aside from shareholder resolutions, investors registered strong approval for corporate pay practices in 2015, which received similar levels of support as in 2014. However, this trend could change in the coming years when shareholders will start factoring in additional disclosures on CEO/worker pay ratios, pay-for-performance (PFP), and clawback policies, which are moving through the SEC’s rulemaking process.

Finally, hedge fund activism remained robust during the first half of the year, though fewer campaigns culminated in full-fledged proxy battles due to a wave of settlements. In contests that ran full course, incumbents won more often than they lost, indicating that companies have become more judicious in gauging when to fight and when to settle.

This article reviews some of the key developments and trends from this year’s proxy season and looks at what lies ahead for 2016.

Proxy Access

Proxy access was clearly the defining issue of the 2015 proxy season. So far this year, 117 shareholder-sponsored access resolutions have been filed and 84 have come to a vote. Over half (58%) have received majority support, and of those that failed, 74% received over 40% support. By the end of July, 25 issuers had adopted proxy access rights—bringing the total number of adopters to 37—while another dozen companies have committed to enacting proxy access in 2016 (see Table 2).

The sweeping campaign was spearheaded by the New York City Pension System whose Boardroom Accountability Project targeted 75 large-cap companies based on three “priority issues”: inadequate board

diversity, failure to address climate change, and low or failed SOP votes in 2014. The remaining proposals were sponsored by public pension plans, labor unions, and individual investors.¹ Essentially all followed the formulation of the vacated SEC rule whereby holders of at least 3% of the shares for three years could nominate up to 25% of the board.

The remarkable showing was aided by an unexpected turn of events. In January, the SEC stopped issuing direct conflict no-action letters in the wake of investor protests over the exclusion of a shareholder proposal at Whole Foods Market in favor of a more rigid management version. Over two dozen companies had planned to omit the shareholder resolutions on this basis—and there likely would have been more were it not for the SEC suspension. In the interim, the SEC is reviewing the scope and applicability of Rule 14a-8(i)(9), which is expected to be completed in advance of the 2016 proxy season.

In view of the uncertainty surrounding Rule 14a-8(i)(9)—not to mention the prospect of investor and proxy advisor backlash against boards that blocked votes on access proposals—a majority of targeted firms (66 to date) chose to simply oppose the shareholder resolution rather than adopt any form of proxy access at this time (see Table 3). Another 33 companies proposed, adopted, or committed to adopting proxy access by next year, with a near-even divide of those choosing a 3% versus a 5% ownership threshold. Other common parameters included a three-year holding period, a limit on nominating group size (typically 20-25 shareholders), and a cap on shareholder board nominees (typically 20%-25% of the board). Three other firms endorsed or made no recommendation on the shareholder proposal, while several companies—Merck, Prudential Financial and Regency Centers—implemented proxy access in the absence of any shareholder resolution.

¹ According to a recent Proxy Monitor report, issuers targeted by labor-affiliated investors may have been singled out due to ongoing wage disputes and union-organizing campaigns (Community Health Systems, Kohl's, McDonald's, and Walgreens Boots Alliance). See <http://www.proxymonitor.org/Forms/2015Finding4.aspx>.

Aside from the SEC moratorium, corporate responses to proxy access proposals have been influenced by the views of the proxy advisory firms and major institutional investors. While Glass Lewis has maintained its case-by-case approach, Institutional Shareholder Services (ISS) changed its policy this year to support shareholder and management proxy access resolutions that are no more restrictive than a 3%/3-year formulation. ISS prefers minimal or no limits on the number of shareholders that may form a nominating group and caps on shareholder nominees of generally 25% of the board.

In keeping with this revision, ISS uniformly supported all 3/3 shareholder proposals this season and rejected any company alternative that was more restrictive when there was also a shareholder resolution on the ballot. This extended to companies that proposed or preemptively adopted 3/3 proxy access structures—Expeditors International, Boston Properties, and Rite Aid—but restricted the size of the nominating group (the shareholder resolution imposed no such limit.)² In all three cases, however, the companies' version of proxy access still prevailed over the shareholder resolution.

While there has been no silver bullet to defeating proxy access proposals, the views of the two largest mutual fund families, Fidelity Investments and the Vanguard Group, have impacted both corporate actions and voting outcomes. Fidelity will not support proxy access at all—whether proposed by a company or by a shareholder—while Vanguard's default position is to support 5%/3-year access structures. According to the NYC Comptroller's office, these two fund complexes often swung close votes, including 18 instances where the shareholder proposal would have passed rather than failed if Fidelity had supported it. Similarly, the

² It is unclear why the NYC Comptroller did not withdraw the resolution at Expeditors International. Other companies that negotiated withdrawals had similar proxy access formulations: 3%/3 years with caps on group size of 20-25 shareholders and caps on shareholder nominees at 20%-25% of the board. Boston Properties, on the other hand, restricted nominating group size to five shareholders. At Rite Aid, the proponent was an individual investor (Steven Krol).

shareholder proposal success rate was somewhat less (53%) at companies that proposed or adopted a 5/3 proxy access regime (Vanguard's preference) than at companies that simply opposed the shareholder resolution (60%).

Going forward, the proponents promise that this will be a multi-year campaign, and Comptroller Stringer hopes to establish proxy access at all of the NYC Systems' portfolio companies, regardless of their financial performance. In the near term, the proponents can be expected to continue their focus on large-cap companies and avoid those with a controlling shareholder, dual-class stock, or high insider ownership where the proposal has little chance of success. Beyond that, it remains to be seen what selection criteria they will use in preparing their 2016 focus lists.

Two things are evident from the 2015 season. First, in many cases, submission of a proxy access proposal had the desired effect of spurring corporate action on the issue underlying the targeting. For example, half of the companies singled out for inadequate board diversity have appointed one or more female directors since the fall of 2014.³ This underscores a primary concern issuers have with proxy access, namely that it will be used as leverage by special interest groups to promote narrow sociopolitical agendas.⁴ Indeed, many companies with the worst track records in responding to majority-approved shareholder proposals, consecutive years of failed SOP votes, and "zombie" directors managed to escape the proponents' dragnet altogether.

³ Half of the companies targeted for poor pay practices also made sufficient reforms to receive over 80% SOP support in 2015. However, this may have occurred without a proxy access proposal in response to low or failed SOP votes in 2014.

⁴ In early July a number of business groups formed the Corporate Governance Coalition for Investor Value out of concern over the exponential rise in special-interest activism. In addition to advocating for long-term value creation and constructive investor dialogues, the group will assist regulators and policymakers in developing balanced, thoughtful laws and regulations impacting corporate governance. See <http://www.centerforcapitalmarkets.com/wp-content/uploads/2015/07/2015-7-2-CGCV-Mission-Statement-Letter1.pdf>.

Second, the key determinant of voting outcomes was an individual company's shareholder base, not the targeting criteria. In fact, the proposals sponsored by institutional investors and their accompanying exempt solicitation materials were generic in nature, resulting in a frequent corporate characterization of the initiative as "a solution in search of a problem." The votes demonstrate that there are many shareholders who are supportive of proxy access purely in principle.

In view of this, all boards should consider engaging their key shareholders on proxy access and be monitoring off-season developments and additional corporate adoptions. Already, Monsanto has followed up on a majority vote by adopting a 3/3 access bylaw, while PayPal Holdings, which was spun off from eBay in July, included 3/3 proxy access rights in its organizational documents.⁵ Whole Foods Market, H&R Block, and Broadridge Financial Solutions also adopted 3/3 bylaws ahead of their fall annual meetings. Although James McRitchie withdrew his resolutions at these companies, he remains dissatisfied with their proxy access "lite" formulations which limit nominating groups to 20 shareholders and, in two cases, ratchet down shareholder slates to 20% of the board. He has indicated that he may circle back to these issuers at a future date with precatory or binding proposals to bring them up to the 25% board level, eliminate the restrictions on group participants, and address other concerns with their proxy access bylaws.⁶ Other proponents could follow suit.⁷

⁵ Pay Pal's decision follows the approval of a shareholder proxy access proposal at eBay's annual meeting.

⁶ See McRitchie's posts at <http://www.corpgov.net/2015/07/proxy-access-lite-victories-at-whole-foods-hr-block/> and <http://www.corpgov.net/2015/07/broadridge-adopts-proxy-access-another-victory/>.

⁷ The NYC Systems echoed McRitchie's concerns at a July SEC Investor Advisory Committee meeting, noting that private ordering has resulted in some potentially unworkable provisions. These include limits on shareholder aggregations, requirements that nominators hold their shares for one year after the annual meeting, prohibitions on loaned shares counting towards the ownership threshold, and bans on third-party compensation to shareholder nominees. A webcast of the meeting is available at

Where the shareholder proposals received majority support, companies will need to evaluate how best to respond in order to avoid repercussions against their board members in 2016. Priceline, for example, followed up on a majority vote by amending its 5/3 bylaw to conform to the terms of the shareholder proposal, including dropping its limit on group size and raising the number of shareholder nominees from 20% to 25% of the board. At this stage, it is unclear whether the proxy advisors will expect companies to implement the exact dictates of the shareholder proposal or will accept alternative formulations worked out with companies' major investors. ISS is weighing different factors in its 2016 policy survey.⁸ Issuers should stay apprised of any updates to their voting policies in this regard.

Impact of SEC Moratorium

In addition to proxy access, other categories of proposals were affected by the SEC's suspension of guidance on same subject matter resolutions. In a June letter to the Commission, a group of law firms reported that there were 43 no-action requests this year involving Rule 14a-8(i)(9) where the SEC expressed no views.⁹ Many of these pertained to shareholder proposals that sought special meeting rights for 10% or 20% of the shares. Six of the targeted companies took the side-by-side approach, offering a more restrictive management proposal in tandem with the shareholder proposal (see Table 4). In all but one vote (BorgWarner), the management resolution prevailed over the shareholder resolution.

Unlike its approach to competing proxy access proposals, where ISS uniformly favored the shareholder

resolutions over the company versions, ISS's recommendations on special meeting resolutions were less straightforward. Where the management proposal was non-binding (AES and NextEra Energy), ISS opted in favor of the less restrictive shareholder resolution. Where the company proposal was binding, ISS supported *both* resolutions. ISS's logic was to guarantee that shareholders had special meeting rights while expressing a preference for the lower ownership threshold in the shareholder resolution.

Because of these types of inconsistencies, business groups have urged the SEC to return to its historical practice of allowing exclusion of shareholder resolutions when there is a conflicting management resolution on the ballot. They argue that multiple proposals on the same topic not only create confusion for investors but also for boards who must interpret the meaning of the votes. For example, BorgWarner's binding resolution on special meeting rights received significantly more votes than the precatory shareholder resolution. However, the company proposal, which was supported by 76% of the shares outstanding, fell short of the 80% approval requirement. The shareholder resolution, on the other hand passed by 52% of the votes cast, although this represented only 43% of the shares outstanding.¹⁰

Investor groups, along with SEC Chair Mary Jo White, contend that the votes on this year's same-subject proposals have not been inconsistent or ambiguous, particularly since there were no instances where shareholders approved both resolutions.¹¹ The investors want a narrow application of Rule 14a-8(i)(9) and are pressing the SEC to permit the submission of alternative management and shareholder proposals unless both are binding, which would pose a fundamental conflict.¹² Some want the exclusion to

<https://www.sec.gov/news/otherwebcasts/2015/investor-advisory-committee-071615.shtml>.

⁸ See ISS's 2016 policy survey at <http://www.issgovernance.com/file/publications/2016-iss-policy-survey.pdf>. The Council of Institutional Investors (CII) has highlighted the most troublesome provisions in a "best practices" table. See

http://www.cii.org/files/publications/misc/08_05_15_Best%20Practices%20-%20Proxy%20Access.pdf.

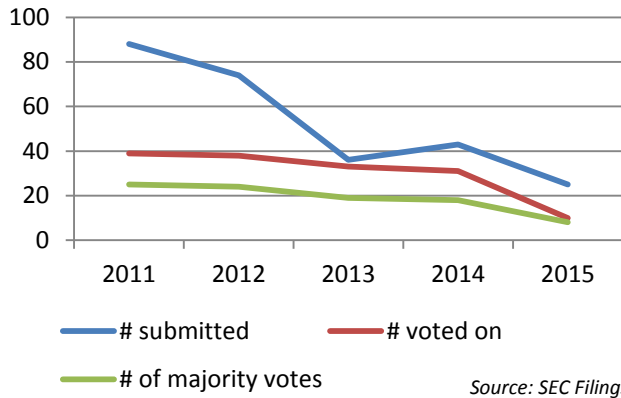
⁹ See <http://www.sec.gov/comments/i9review/i9review-5.pdf>.

¹⁰ At BorgWarner, ISS supported both the management and the shareholder resolutions, while Glass Lewis backed the management proposal and rejected the shareholder proposal.

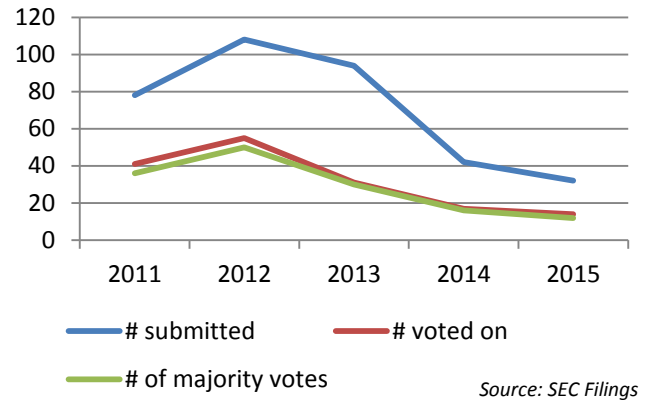
¹¹ See Chair White's comments at <http://www.sec.gov/news/speech/building-meaningful-communication-and-engagement-with-shareholders.html>.

¹² See investor comment letters at <http://www.sec.gov/comments/i9review/i9review.shtml>.

Graph 1: Shareholder Proposals on Majority Voting



Graph 2: Shareholder Proposals on Board Declassification



disappointingly when companies disingenuously produce “after-the-fact” counter-proposals—a longstanding complaint of retail activists. In their comment letter, the NYC Systems observed that 25 companies sought omission of shareholder proxy access proposals by promising to offer a competing management resolution. Yet 13 of those companies failed to follow through on their commitment, and 11 even argued against the concept of access rights in their proxy statement rebuttals.

Only one company this year—the embattled Hospitality Properties Trust (HPT)—omitted a shareholder proposal on the basis of a conflicting management resolution without SEC guidance. The proposal—a repeat by labor union UNITE HERE—asked HPT to opt out of Maryland’s Unsolicited Takeover Act (MUTA), which allows boards to implement various takeover defenses without shareholder approval. Rather than include the shareholder resolution, the company instead produced a compromise proposal to allow the board to opt into MUTA at any time, but on the condition it would obtain shareholder approval within 18 months. The company proposal was ultimately defeated, while the shareholder initiative, which UNITE HERE presented in a counter-solicitation, received overwhelming support.

Declassification and Majority Voting

With the Harvard Law School Shareholder Rights Project absent from the scene, relatively few shareholder proposals seeking board declassification appeared on ballots this season, largely introduced by gadfly investors (see Graph 1). Nevertheless, some companies, such as Airgas, Netflix, Texas Roadhouse, and Vornado Realty Trust, have been persistent resisters despite multiple years of majority-supported shareholder proposals on the topic.¹³

Management declassification resolutions far outpaced shareholder requests and continued migrating down to small and mid-cap companies. Only seven of the 52 company proposals submitted through June occurred at S&P 500 firms, and four of those were repeat efforts to attain the requisite 80% supermajority approval.

Similar trends were seen with shareholder proposals calling for a majority vote standard in director elections (see Graph 2). According to ISS’s 2015 Board Practices study, 75% of S&P 500 firms now have annually elected boards, and 86% have majority voting

¹³ Three Airgas directors faced a “vote no” campaign from the International Brotherhood of Teamsters at the August 4 annual meeting for failing to implement past shareholder proposals on board declassification. They received withhold votes of 53%.

in director elections. A majority of mid- and small-cap companies (56% and 51%, respectively) have annually elected boards, while 56% of mid-caps and 28% of small-caps have majority voting.

Having majority voting requirements in place, however, offers shareholders no assurance that failed directors will actually depart. Through June, 39 directors at 59 companies received less than 50% support, comparable to last year's numbers. Most often it was for poor attendance at board and committee meetings or for failing to implement a successful shareholder proposal. Eight of the firms had majority voting and/or director resignation policies, but only one board accepted the resignations—at Macerich whose directors received the highest opposition votes seen this year (80%) for unilaterally opting into MUTA. Five boards rejected the directors' resignations, typically citing the need to retain their expertise and familiarity with the company's business and operations, and two others are pending review.¹⁴ Noteworthy, at three companies with pure plurality voting (BioScrip, Malvern Bancorp, and Rock Creek Pharmaceuticals), the directors resigned following the high dissent vote even though they were technically re-elected.¹⁵

Independent Chairman

This was the first season that ISS applied a new, holistic approach towards shareholder proposals calling for an independent board chairman. In addition to its past criteria—board and key committee independence and the role of the lead director—ISS is also factoring in long-term financial performance, board and CEO tenure, and other governance and board leadership

¹⁴ The boards that did not accept the resignations included Dex Media, Grand Canyon Education, Hospitality Properties Trust, Nabors Industries, and Senior Housing Properties Trust. Those still considering director resignations are 4Licensing and Wave Systems.

¹⁵ A recent academic study revealed that high opposition votes from shareholders result in negative consequences for directors, including a greater likelihood of their leaving the board, being moved to less prominent board roles, and facing reduced opportunities in the market for directors. See "The Power of Shareholder Votes: Evidence from Director Elections," by Reena Aggarwal, Sandeep Dahiya, and Nagpurnanand Prabhaha at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2609532.

concerns. The revision was brought about in part by shareholder outrage over Bank of America's recombination of its chair/CEO positions last year, which the company has since decided to put to a shareholder vote prior to its 2016 annual meeting.

As a result of this policy shift, ISS has endorsed significantly more independent chair proposals this year (two-thirds) compared to the previous two years (half). At six companies, ISS flipped its recommendation from opposing the proposal in past years to supporting it this year.¹⁶ In only one instance—Staples—did ISS switch from a "for" recommendation in 2014 to "against" in 2015.

Notwithstanding greater backing from ISS, support for independent chair proposals averaged 29.5% through June (30% excluding a floor proposal), continuing a declining trend from past years.¹⁷ Two resolutions received majority support: at Omnicom Group, whose long-time chairman is the former CEO, and at Vornado Realty Trust, which has repeatedly failed to implement majority-supported shareholder proposals, including resolutions to appoint an independent board chair. One company—Perry Ellis International—struck a compromise with tag-team dissidents Legion Partners and CalSTRS to replace two incumbent directors and adopt a leadership succession plan in exchange for withdrawing their independent chair proposal along with their proxy fight.

Proxy Voting Mechanics

Concerns continue to be raised this season over leveling the playing field between activists and issuers regarding interim proxy votes, universal proxy ballots, and fair vote counting standards.

In a recent speech, SEC Chair White encouraged companies and shareholders to work together to resolve these and other divisive issues rather than look to the

¹⁶ See AvalonBay Communities, Boston Properties, Gilead Sciences, Johnson & Johnson, Mattel, and UMB Properties.

¹⁷ Support for independent chair proposals averaged 31.1% in 2014, 32.4% in 2013, and 34.8% in 2012.

SEC for clarifications or rulemaking.¹⁸ She advised companies to voluntarily share preliminary vote tallies with shareholder proponents and consider using some form of universal proxy ballot in contested elections, thereby allowing investors to vote for a mix of dissident and company nominees rather than for one slate or the other. The SEC staff has been directed to prepare rulemaking recommendations on universal proxy cards, while any rulemaking on running vote tallies could take several forms, such as a requirement that everyone or no one receives preliminary vote results, or that brokers only provide issuers with the total votes cast in order to determine quorum.

Separately, for a sixth year, Investor Voice reprised its advocacy for uniform vote counting whereby all matters other than director elections would be decided by a simple majority of the shares voted “for” and “against” and exclude abstentions. The proponent argues that this would make it easier for shareholder proposals to pass, noting that between 2004 and 2014, there were 63 instances where a shareholder resolution failed simply because of the abstention gap.¹⁹

Although a number of companies have adopted the proposed simple majority standard, proxy advisor and investor support for the practice remains weak, averaging 6.3% across seven proposals this season.²⁰

¹⁸ See Chair White’s speech at <http://www.sec.gov/news/speech/building-meaningful-communication-and-engagement-with-shareholders.html>. White additionally advised companies to voluntarily disclose their reasons for retaining a director who does not receive majority support, regardless of the election standard, and to consider alternative responses to shareholder proposals other than exclusion. Similarly, she cautioned shareholder proponents to use the shareholder proposal process responsibly, to be mindful of the costs to issuers, and to first seek engagement with companies on matters of concern.

¹⁹ See Investor Voice’s study at http://www.investorvoice.net/wp-content/uploads/2015/03/Vote-Counting_Synopsis_Version-9e_2015.0315.pdf.

²⁰ The proxy advisors have generally not supported Investor Voice’s proposals as long as the company’s vote calculus is transparent, consistent, and fair. Several companies have adopted the simple majority vote standard in recent years, including Plum Creek Timber, Cardinal Health, ConAgra, and J.M. Smucker. McDonald’s is studying the matter and may implement the practice at its 2016 annual meeting. At this year’s annual meetings, TE

Many companies follow Delaware’s default voting standard whereby on most matters (other than director elections) abstentions are included in the denominator of the vote calculation—and this is applied equally to both management and shareholder resolutions. Removing abstentions from the vote count, however, could run counter to the proponent’s intent. As noted in a 2013 CalPERS/GMI Ratings study, some institutional investors purposely cast an abstention vote on shareholder proposals when they wish to convey support for the general subject matter but have reservations about the specific action requested. Vanguard, for example, has a policy to abstain on most environmental and social resolutions. But in cases where abstentions are excluded from the vote tabulation, Vanguard will oppose the proposal rather than support it.

Litigation Bylaws

Companies are facing a more challenging environment this year for adopting measures to curb meritless shareholder litigation that often accompanies mergers.²¹ In June, Delaware enacted legislation amending the Delaware General Corporation Law (DGCL) to restrict litigation-related bylaw and charter amendments. The new law prohibits publicly traded companies from adopting fee-shifting provisions that require shareholder plaintiffs to pay companies’ legal fees and expenses if they are unsuccessful in intra-corporate litigation. It also clarifies that Delaware corporations

Connectivity amended its articles to provide that abstentions and broker non-votes will not count in determining whether a shareholder has passed or a person has been elected by shareholders to a particular position. Nabors Industries also responded to a 2014 CalPERS resolution by amending its bylaws to eliminate broker non-votes in the calculation of votes on shareholder proposals and other non-discretionary ballot items.

²¹ According to the U.S. Chamber of Commerce’s Institute for Legal Reform, between 2011 and 2014, 93% of all transactions valued at over \$100 million drew one or more lawsuits, compared to only 39% in 2005. The vast majority of these cases settled for nothing more than additional disclosures, while only 6% resulted in a monetary benefit for shareholders. The plaintiffs’ lawyers, on the other hand, received an average fee award of over \$465,000 for disclosure-only settlements. See http://www.instituteforlegalreform.com/uploads/sites/1/de-bar-letter-4_8_2015.pdf.

may designate Delaware, but not other jurisdictions, as the exclusive venue for adjudicating internal corporate claims. However, it does not address the validity of provisions that select a jurisdiction other than Delaware as an additional forum in which internal claims may be brought. The legislation will take effect on August 1, 2015.

Although the legislation has drawn controversy, its impact may be limited. In a letter to the Delaware bar, Stanford Law Professor Joseph Grundfest pointed out that of the 1,029 companies with forum selection provisions, every Delaware firm designated Delaware as the exclusive forum. Similarly, a Thomson Reuters survey indicates that 31 Delaware public companies have adopted fee-shifting bylaws since May 2014 after they were upheld by the Delaware Supreme Court at a non-stock company. However, 59% of these bylaws go beyond internal corporate disputes (i.e., derivative claims) and cover any action brought by a shareholder, including violations of federal securities laws.²² As a result, they would only be partially invalidated by the new law.

Investors and proxy advisors have expressed mixed views on measures limiting shareholders' legal recourse. This season, 25 companies put their exclusive forum provisions to a shareholder vote—up from 16 in 2014—thereby avoiding backlash from Glass Lewis and like-minded investors who will oppose the governance committee chair if the provisions are adopted unilaterally. Although votes have sometimes been close, forum selection proposals have proven to be more difficult to pass this year. Six failed (at Avery Dennison, Bristol-Myers Squibb, Caleres, Commercial Vehicle Group, DSP, and Novavax), while a proposal at American Water Works squeaked by with 52% support after the company adjourned the annual meeting to solicit additional votes.²³ As in past years, ISS opposed

virtually all of the proposals, primarily because companies failed to demonstrate past economic harm arising from multi-forum litigation.²⁴

Other types of litigation bylaws are regarded more harshly. Both ISS and Glass Lewis will recommend against full boards or governance committee members who unilaterally adopt provisions that mandate fee-shifting or that require a minimum shareholding to sue (typically 3%). This prompted two companies—RPA Group and GWG Holdings—to repeal their bylaws ahead of or immediately after their 2015 annual meetings. Cogent Communications Holdings also pulled its fee-shifting and exclusive forum bylaws after being sued by the City of Sunrise Firefighters' Retirement Fund for improperly adopting them (the company's charter does not allow the board to unilaterally amend the bylaws).

Fee-shifting and minimum stake proposals fared better at companies with high insider ownership. A minimum stake provision passed at Imperial Holdings, as did a fee-shifting bylaw at Biolase, though the latter only applied to current or former directors, and not shareholders, who were unsuccessful in any claim or proceeding against the company or its current directors and officers. Biolase adopted the provision after former Chair/CEO Federico Pignatelli and former director Norman Nemoy launched a proxy fight in 2014. Companies that did not seek shareholder approval of their fee-shifting bylaws typically had significant insider holdings. As a result, their directors received strong voting support at their annual meetings, notwithstanding opposition from the proxy advisory firms.²⁵

²² See the Thomas Reuters survey at <http://blog.legalsolutions.thomsonreuters.com/practice-of-law/survey-of-fee-shifting-bylaws-suggests-dgcl-amendments-wont-end-debate/>.

²³ Relatively few management proposals to designate an exclusive forum have failed in the past: one in 2011 (Allstate) and two in 2012 (Cameron International and Suburban Propane Partners).

²⁴ ISS supported one exclusive forum resolution this year at Standard Pacific, which was simply amending its current provision to give the board the flexibility to waive the selection of Delaware courts. In evaluating exclusive venue proposals, both ISS and Glass Lewis take into account the board's rationale for adopting the provision, evidence of past harm from shareholder lawsuits in other non-favored jurisdictions, the breadth of application of the provision, and the company's corporate governance practices.

²⁵ These companies include Barnwell Industries, GAMCO Investors, Insys Therapeutics, Interactive Brokers Group, IDI,

Proxy Fights

Following last year's high volume of proxy fights, hedge fund activism has continued unabated this season but with several new trends emerging. First, companies are winning contests that go to a vote more frequently. According to FactSet Research, the company win rate was 62% through early June, compared to 39% in 2014. Settlements, however, are also on the rise. Over the same period, there were 33 proxy contests that were formally settled or withdrawn—the most seen by FactSet since 2001—and 46 non-proxy fight activist campaigns that resulted in the activist getting board seats.²⁶ Clearly, companies are becoming more circumspect about the costs and distraction of a lengthy proxy battle—not to mention the risk of losing, particularly after last year's high-profile board defeat at Darden Restaurants. Indeed, following the eight-month duke-out between Trian Fund Management and E.I. du Pont de Nemours, longtime corporate champion Marty Lipton advised clients to consider reasonable settlements rather than pursue a protracted, potentially damaging proxy showdown with an activist.²⁷

This season has also seen lesser known activists heading up the fight roster—primarily at mid-cap companies—while top-tier players, such as Carl Icahn, Bill Ackman, Paul Singer, and Jeffrey Smith, were noticeably absent from the scene having reached accords with targets early in the year.²⁸ The seven-year-old Land & Buildings took aim at Macerich, Associated Estates Realty, and MGM Resorts International—settling at one and withdrawing at two—

Iradimed, Juno Therapeutics, Marine Products, Nature's Sunshine Products, Rollins, RPC, and Smart & Final Stores.

²⁶ See FactSet's report at:

<http://www.factset.com/insight/2015/06/activist-influence-us-corporations-continues-rise-2015#.VZZ9qaGh3IU>.

²⁷ See excerpts of Lipton's client memo at:

<http://corpgov.law.harvard.edu/2015/04/30/some-lessons-from-dupont-trian/>.

²⁸ According to an April ISS report, there has been an increase in contests going to a vote at companies with market values of over \$1 billion, but fewer at companies with market values of less than \$10 million. ISS estimated the median market cap for contests in the first half of the year to be \$623 million, compared to \$255 million in the first half of 2014.

while Harry Wilson's coalition of hedge funds got General Motors to concede to a \$5 billion stock buyback. Fights involving company founders, on the other hand, went the full distance in a sheer battle of wills—or egos. Groveland Capital's efforts to unseat Sardar Biglari ultimately led to his further ownership consolidation—an expanded 49% stake via a post-proxy fight tender offer. Meanwhile, the soap opera drama between Steve Wynn and dissident ex-wife Elaine left even ISS in support of “none of the above.”

“Vote no” campaigns also proved to be an effective and cheaper alternative when it was too late to run a traditional proxy fight. At Tempur Sealy, H Partners Management persuaded fellow shareholders to vote out the CEO, board chair, and governance committee chair, while at Altera, TIG Advisors' agitation against the lead director helped propel the company to pen a merger with Intel.

Executive compensation is receiving closer scrutiny from activist investors and factored into several proxy fights this season. Typically, it is not the size of the CEO pay package that activists fault, but the formulas used to determine it. At Shutterfly, Marathon Partners uncovered a compensation scheme that had “run amok” by rewarding scale over profitability. Although Shutterfly agreed to make concessions, including changing the metrics for setting executive bonuses and adding new directors, shareholders resoundingly rejected SOP with a 78% “against” vote and gave the dissidents two board seats. QUALCOMM may similarly face a proxy contest in 2016 after receiving a large negative pay vote this year, primarily due to one-time executive retention grants. Dissident JANA Partners wants the company to shift its compensation performance metrics away from revenue and operating income, which incentivize growth at any cost, towards shareholder-friendly measures such as earnings per share and return on invested capital.

Following last year's bruising board ouster at Commonwealth REIT, real estate investment trusts (REITs) are getting caught more frequently in the crosshairs of activists—not only hedge funds but long-time antagonist UNITE HERE, which this year needed

almost a dozen hotel and casino REITS to drop their takeover defenses and enhance shareholder rights. While many of the union's proposals passed, some companies fought back vehemently, often citing UNITE HERE's underlying objective of organizing employees or influencing labor disputes. Ashford Hospitality Trust and its spun-off units, Ashford and Ashford Hospitality Prime, went a step further by proposing bylaw amendments which would restrict shareholders from proposing board candidates to the nominating committee or business at shareholders' meetings unless they owned at least 1% of the shares for one year. The provision passed at Ashford, but failed at the other two affiliates.

Finally, individual investors are playing a key role in the outcome of proxy fights, as witnessed at DuPont, where the retail vote proved decisive in turning the board election in the company's favor. A recent survey by Brunswick Group found that retail investors are not only receptive to activist agendas— particularly returning cash to shareholders and curbing excessive executive pay—but overwhelmingly believe activists add value to companies.²⁹ Over 80% of the retail respondents said they want to hear from all sides during a campaign, so issuers and dissidents alike should be expanding their communication efforts to reach this pivotal segment of the investor base.

²⁹ See Brunswick Group's survey at <https://www.brunswickgroup.com/publications/surveys/retail-investor-shareholder-activism-survey-infographic/>.

Executive Compensation

Say on Pay

Companies received strong shareholder and proxy advisor approval for their pay practices in 2015. Through June, average SOP support was 91% and the failure rate was 2%, essentially in line with the same period in 2014. This year, however, there were only 11 instances of multi-year failed SOP votes, compared to 14 in the first half of 2014.³⁰ Negative ISS recommendations also declined from 11% during last year's proxy season to 10% in 2015, and the proportion of pay programs receiving less than 70% support—the threshold which draws additional ISS scrutiny—fell slightly from 7.1% to 6.8% year-over-year.

SOP votes and associated shareholder outreach are having a positive impact on keeping CEO pay growth in check, according to a recent *Wall Street Journal*/Hay Group study.³¹ Not only have chief executive pay raises been significantly lower than increases in total shareholder returns, but the proportion of pay tied to performance has been steadily rising over the past five years. Issuers have become more attuned to shareholder feedback, recognizing that high SOP approval in one year does not guarantee the same result in subsequent years. Of the 49 companies that lost their pay votes through June of this year, 15 (31%) had received over 80% SOP approval in 2014. Conversely, 38% of the companies that failed SOP in the first half of 2014 received over 80% approval of their pay programs in 2015.

³⁰ This was the fifth year that SOP failed at Tutor Perini; the fourth year at Cogent Communications and Masimo; the third year at Biglari Holdings, Patriot Scientific, and Spectrum Pharmaceuticals; and the second year at Carriage Services, Mack-Cali Realty, Monster Worldwide, TCF Financial, and United Therapeutics.

³¹ See the *Wall Street Journal*/Hay Group 2014 CEO compensation study at <http://www.haygroup.com/downloads/us/WSJ%20Hay%20Group%202014%20CEO%20compensation%20study.pdf>.

Compensation-Related Proposals

The bulk of this year's pay-related shareholder proposals focused on severance payments, clawback policies, and stock retention. As in the past, ISS backed virtually all of these resolutions, but its endorsement did not translate into any gains in voting support (see Table 1). Only five proposals received majority approval: two advocating pro rata vesting of stock awards following a change in control (FirstMerit and Rite Aid) and three seeking shareholder approval of future severance payments exceeding 2.99 times salary and bonus (Hologic, Staples, and TCF Financial). With the exception of Rite Aid, all of these companies experienced failed SOP votes in 2014.

A new initiative by the AFL-CIO to disclose revolving door payments for financial executives entering government service made a respectable first-time showing with 21.5% average support. Other novel proposals that would tie executive compensation to environmental goals, such as the reduction of carbon emissions or exclusion of carbon-intensive reserves, fared poorly with only single-digit support. Similarly, the surge of resolutions dealing with pay disparities were largely omitted as ordinary business or in some cases withdrawn after the targeted firms—mostly retailers—increased their hourly wages. The two that came to a vote—at eBay and Exxon Mobil—dealt with gender-based pay gaps and received negligible support.

Regulatory Developments

On the regulatory front, the latest Regulatory Flexibility Agenda shows a target date of April 2016, rather than October 2015, for SEC rulemaking on compensation provisions mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. These include compensation clawback policies and reporting on pay-for-performance (PFP), CEO/worker pay ratios, and hedging policies. Although the timetable has proven to be fairly fluid, progress has been made on several items. In February and April, the SEC proposed rules on PFP disclosure and employee and director hedging, which will likely be effective for the 2016 proxy season. In early July, the Commission issued a

proposed rule on clawbacks, which is open to a 60-day comment period. Once finalized by the SEC, the stock exchanges will have one year to incorporate the clawback rule into their listing standards. The SEC is also expected to complete the pay ratio rule this year.

As proposed, the PFP rule will require tabular disclosure of actual compensation paid to the CEO and an average of actual compensation paid to the other NEOs. The figures will be based on the total compensation reported in the summary compensation table with adjustments for pension plan and equity valuations (the latter will be valued on vesting rather than grant date). Issuers must also provide the company's and the peer group's cumulative total shareholder return (TSR) over the past five years (three years for smaller reporting companies), and describe the relationship between compensation and performance in a narrative and/or graphic format. Although commentators have criticized the rule's use of TSR as the sole performance measure, which was part of the Dodd-Frank directive, issuers are free to include additional metrics in their PFP discussion.

The draft rule on hedging requires companies to disclose whether they allow employees, directors, or their designees to engage in transactions that have the effect of hedging or offsetting any decrease in the company's share price, as well as the categories of hedging transactions that are permitted or prohibited. The proposed rule does not prohibit hedging, nor does it require companies to adopt hedging policies or disclose any particular hedging transaction. However, the proxy advisory firms frown on any hedging of company stock by executives, and ISS will oppose the reelection of directors at companies that permit it.

The proposed clawback rule will expand the circumstances, timing, and executives who would be subject to incentive pay recoupment from the existing 2002 Sarbanes-Oxley rules. Currently, CEOs and CFOs must reimburse companies for excessive incentive pay earned in the year prior to a financial restatement arising from misconduct or a violation of

federal securities laws.³² The broadened clawback rule extends to all manner of restatements, including those issued to correct mistakes; covers any current or former executive who performs a policy-making function for the company; and applies to incentive pay earned over three years—defined as compensation that is based on accounting, stock price, or TSR metrics. Companies would have the discretion not to pursue recovery if the costs of doing so would exceed the amount recovered. Issuers must disclose their clawback policies, and report the aggregate sum of money that executives returned following a restatement and any instances where the company did not pursue recovery.

Critics, including the two Republican Commissioners, fault the proposed clawback rule for being too prescriptive by limiting companies' flexibility in determining when and how to recoup pay, and by extending to smaller reporting companies and to executives who are not responsible for the preparation of financial statements. It could also have the unintended consequence of increasing executive compensation to cover the risk of a clawback.

Following harsh criticism from Senator Elizabeth Warren (D-Mass.) over rulemaking delays, the SEC finalized the CEO pay ratio rule in early August, ahead of its fall timetable. To reduce the costs of compliance—a point of controversy among business groups—the rule gives companies some flexibility in determining median employee compensation.³³ This includes allowing issuers to use statistical sampling or other reasonable methodologies, to exclude 5% of overseas workers from the calculation, and to perform the median employee computation only once every three years. The compromises, however, have drawn criticism from both advocates and opponents of the rule, and court challenges are anticipated. Companies will be required to disclose their pay ratios for their first fiscal year beginning on or after January 1, 2017.

³² According to ISS, over 85% of S&P 500 companies have clawback policies in place that are more stringent than the current SEC standards.

³³ See <http://www.sec.gov/news/pressrelease/2015-160.html>.

Auditors

Regulators are also moving forward in providing investors with more transparency on audit committees' oversight of the independent auditors, detailed in several concept releases issued in June and July.³⁴ The SEC is considering additional reporting requirements on how the audit committee selects, communicates with, and evaluates the performance of the outside auditor. Among other matters, these would include disclosure of the audit firm's engagement partner and key members of the engagement team, the tenure of the audit firm, the nature and extent of non-audit services provided by the auditor, and any board policy to seek shareholder ratification of the auditor. Comments are due by September 8.

Concurrently, the Public Company Accounting Oversight Board (PCAOB) is seeking comments by August 31 on a requirement that firms name the audit engagement partner and other public accounting firms that performed work on the audit in a new Form AP. Previous PCAOB proposals would have required disclosure of the lead engagement partner in the audit report, which met with resistance from the industry because of the potential for greater legal liability. PCAOB inspections have found that even within a single audit firm, audit quality varies with different engagement partners. Separately, the PCAOB issued a concept release on the content and possible uses of audit quality indicators, which is open to public comment until September 29.

Auditor independence, particularly auditor tenure, has been a longstanding advocacy issue of the United Brotherhood of Carpenters. For a third consecutive year, the Carpenters, in collaboration with the UAW Retiree Medical Benefits Trust, wrote letters to Fortune 500 companies with long-tenured auditors urging them

³⁴ See the SEC's concept release at <https://www.sec.gov/rules/concept/2015/33-9862.pdf>. See the Public Company Accounting Oversight Board's concept releases at http://pcaobus.org/Rules/Rulemaking/Docket029/Release_2015_004.pdf and http://pcaobus.org/Rules/Rulemaking/Docket%20041/Release_2015_005.pdf.

to enhance their proxy statement disclosures on six items. These include the following representations:

- The audit committee is directly responsible for the appointment, compensation, retention and oversight of the audit firm,
- The year in which the audit firm was retained,
- The audit committee is responsible for the audit fee negotiations,
- The audit committee periodically considers regular rotation of the audit firm,
- The audit committee is directly involved in the selection of the lead engagement partner, and
- The audit committee and the board believe that continued retention of the audit firm serves the best interests of the company and its shareholders.

Of the 91 firms contacted this year, over half provided a portion of the requested verifications and 17 disclosed all of them. Companies were most reluctant to verify whether the board periodically considers rotating the audit firm. The Carpenters suggest that if issuers refuse to provide this information, shareholders should vote against auditor ratification or the audit committee chair.

The letters are a follow-on to a 2012 shareholder proposal campaign where the Carpenters asked some 45 companies to adopt a policy that every seven years the outside auditor rotate off the engagement for at least three years. All of the proposals were withdrawn or omitted as ordinary business.

E&S Proposals

Environment

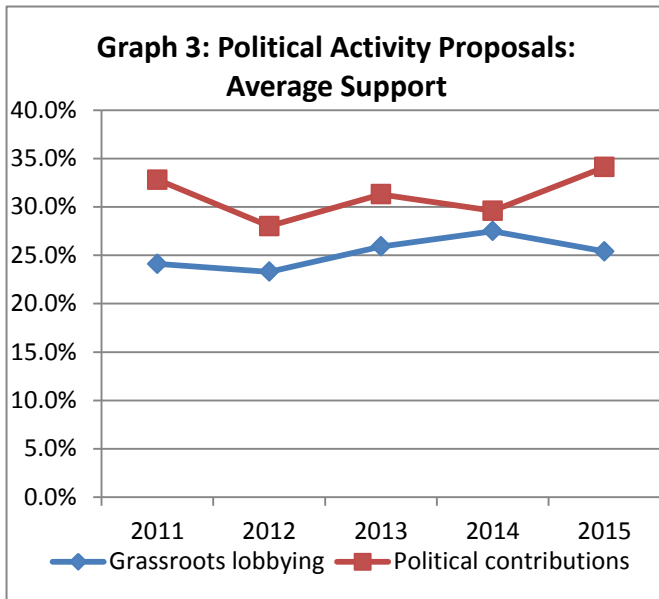
Along with proxy access, environmental issues constituted the largest category of shareholder proposals appearing on ballots in 2015 and, among E&S initiatives, recorded the only majority vote excluding abstentions (sustainability reporting at Nabors Industries). Most environmental resolutions dealt with repeat themes related to climate change, such as energy efficiency, carbon asset risk disclosure, and greenhouse gas (GHG) emissions reduction.

A first-time proposal asking oil and gas producers to shift capital spending away from costly, unconventional projects to dividend payments received only 3.2% approval at Chevron, and was omitted at Exxon Mobil and withdrawn at Newfield Exploration. Climate activists faced another setback when a GHG resolution at Exxon Mobil received only 9.4% support, down from 22% in 2014 and below the threshold for resubmission. The proponents attributed the drop to ISS, which opposed the resolution this year after having backed it every year since 2007.

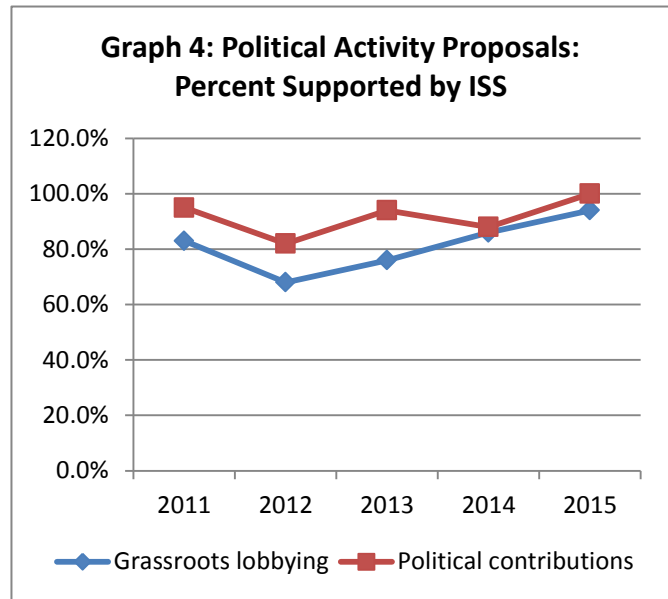
Labor and Human Rights

Other new E&S initiatives included a campaign launched in October 2014 to persuade U.S. companies doing business in Israel to adopt a code of conduct for fair employment practices covering Israelis and Palestinians. Patterned after the 1984 MacBride Principles on Northern Ireland, the three “Holy Land Principles” resolutions made a tepid initial showing, but two (at General Electric and Intel) received the requisite 3% support to be refilled next year. Another proposal is scheduled for Cisco System’s fall annual meeting.

Notwithstanding the slow start, the campaign may pick up steam in coming years. The proponents, led by Friar Sean McManus, observe that it took five years for the first American companies to sign the MacBride Principles, but eventually 116 companies endorsed them.



Source: SEC Filings



Source: ISS

Political Spending

Political activity proposals were down in count this year due to a variety of factors. First, there were fewer tangential resolutions on offer, such as those calling for a prohibition on all corporate political spending, which have fared poorly in past votes. The lower volume is also the result of more agreements reached with issuers, with nearly one-third of this year’s campaign finance resolutions withdrawn. According to the Center for Political Accountability (CPA), 60% of the top 300 companies in the S&P 500 Index disclose political spending made directly to candidates, parties, and committees—or else do not make such contributions—while almost half disclose some information about payments to trade associations that contribute to election campaigns.

Even when companies expand their disclosures, they may still fall short of proponent expectations. Zevin Asset Management withdrew its lobbying resolution at Wal-Mart Stores as a “good faith” gesture after the company agreed to report its expenditures on state-level lobbying. However, the proponent plans to re-file the resolution next year because Wal-Mart still does not divulge what it spends on indirect lobbying through

tax-exempt organizations, which is a key sticking point for activists.

Votes continue to be buoyed by strong ISS support. Political contribution resolutions received the highest average support in five years (34.1%), and for the first time won across-the-board ISS endorsement (see Graphs 3 and 4). On the other hand, average support for grassroots lobbying proposals (25.4%) receded from the 2014 level (27.5%) even though a higher proportion (94%) were backed by ISS than in prior years.

Recent months have seen continued calls for SEC rulemaking on political spending disclosure, including from a group of state treasurers and foundations and from three former SEC commissioners.³⁵ Nevertheless, the FY 2016 Financial Services Bill, approved by the

³⁵ See the foundations’ letter at <https://www.documentcloud.org/documents/2083992-fdns-corp-disclo-sec-19may15.html> and the State Treasurers’ letter at [http://op.bna.com/car.nsf/id/ywik-9vssdd/\\$File/Treasurer%20SEC%20Letter%20042115.pdf](http://op.bna.com/car.nsf/id/ywik-9vssdd/$File/Treasurer%20SEC%20Letter%20042115.pdf). See the letter from Commissioners Bevis Longstreth, William Donaldson, and Arthur Levitt at http://www.thecorporatecounsel.net/nonmember/docs/05_27_15_letter.pdf. A 2011 rulemaking petition by a group of law professors has generated over a million comment letters.

U.S. House Appropriations Committee in June, explicitly prohibits the SEC from implementing a rule to require disclosure of political contributions.

Board Diversity

Proponents of board diversity made headway in their campaign this year primarily through dialogue and negotiations with issuers. Investors affiliated with the Thirty Percent Coalition, which is dedicated to achieving at least 30% female board representation, conducted a third-letter writing campaign last fall calling on 100 Russell 1000 firms to improve their boards' gender diversity. Thirty-eight companies responded. This was followed by over two dozen shareholder proposals in 2015 asking companies to report on their plans to increase board diversity and assess the effectiveness of these efforts. Most of these were withdrawn and the five that came to a vote received 13.3% average support.

Two long-time hold-outs, Urban Outfitters and Monster Beverage, finally reached accords with the proponents, prompting a withdrawal of the resolutions. After four years of shareholder proposals, Urban Outfitters elected an independent female director to the board in December 2014. (The prior year's female appointee was a long-time company employee and the wife of the founder/chair/CEO.) Monster Beverage similarly nominated its first female director in June 2015 after having made a commitment six years ago to diversify its board.³⁶ The lead filer, the New York State Common Retirement Fund (NYSCRF), also broke new ground at Monster Beverage and Standard Pacific as the first companies to include sexual orientation and gender identity among their diversity factors for evaluating board candidates.

³⁶ Urban Outfitters and Monster Beverage were also among the recipients of proxy access proposals for having inadequate board diversity. The proxy access proposal failed at Urban Outfitters with 40.6% support and will come to a vote at Monster Beverage on August 7.

Looking Ahead

The off-season presents a number of developments to watch. In view of the momentum generated this year, proxy access will clearly be a prominent feature of future proxy seasons. Issuers that are weighing whether or not to proactively adopt access rights should consider that the next generation of shareholder proposals could be more prescriptive and the grounds for exclusion may be more limited following the SEC's review of Rule 14a-8(i)(9). Because market practices and investor views on this topic are still evolving, direct engagement with major shareholders offers companies the best opportunity to tailor access rights to their specific circumstances.

Additional Dodd-Frank disclosures in the pipeline will also draw continued debate. Once effective, the new rules, particularly on CEO pay ratios, are likely to shift shareholder attention to compensation and spark more activism from unions and other groups seeking employee wage hikes.

Finally, the run-up to the 2016 elections will likely bring about a revival of political activity resolutions. Firms that are heavy spenders on campaign contributions and lobbying or that have Republican leanings are typically the most frequent recipients.³⁷

With these and other issues looming on the horizon, the 2016 proxy season is poised to be as challenging for issuers as 2015. Alliance Advisors will keep companies apprised of key developments as they prepare for their upcoming annual meetings.

³⁷ See "Active Firms and Active Shareholders: Corporate Political Activity and Shareholder Proposals," by Geeyoung Min and Hye Young You at http://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/26582a95-d501-4284-afd8-8e18fa9426a2/UploadedImages/Landing%20Page%20Documents/SRN_polit%20activity%20and%20SH%20proposals.pdf.

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Table 1: 2014 & 2015 Shareholder Proposals

Governance Proposals	2014 Submitted	2014 Voted On ¹	2014 Majority Votes ²	2014 Average Support ²	2015 Submitted	2015 Voted On ¹	2015 Majority Votes ²	2015 Average Support ²
Declassify board	42	17	16	82.5%	32	14	12	67.3%
Director removal	1	0	0	N/A	2	1	0	23.5%
Majority voting	43	31	18	56.6%	25	10	8	69.3%
Proxy access	24	16	6	31.9%	117	84	49	54.4%
Two candidates per board seat	1	1	0	3.2%	0	0	0	N/A
Poison pill	10	7	5	67.0%	8	4	2	43.3%
Cumulative voting	7	6	0	27.4%	2	2	0	23.8%
Enhanced confidential voting	23	5	0	36.2%	2	0	0	N/A
Virtual meetings	2	0	0	N/A	0	0	0	N/A
Supermajority voting	20	12	8	67.3%	25	12	7	56.1%
Voting requirements	11	4	1	22.8%	9	7	0	6.3%
Dual-class stock	15	10	0	25.8%	12	11	1	33.6%
Special meetings	34	14	5	45.3%	31	21	4	42.4%
Written consent	31	28	0	38.4%	44	36	2	39.4%
Amend bylaws	1	0	0	N/A	7	6	3	49.2%
Other anti-takeover	9	4	3	72.1%	6	5	3	54.2%
Independent chairman	80	63	4	31.1%	82	61	2	29.5%
Lead director	1	0	0	N/A	0	0	0	N/A
Board independence/tenure	5	0	0	N/A	1	1	0	7.1%
Outside board seats	1	1	0	4.8%	2	2	0	1.9%
Risk oversight committee	1	0	0	N/A	0	0	0	N/A
Succession planning	1	0	0	N/A	0	0	0	N/A
Reincorporate to Delaware	0	0	0	N/A	2	1	0	13.8%
Maximize value	15	5	2	54.3%	15	4	0	21.2%
Stock repurchases, dividends	7	3	0	29.0%	9	2	0	4.7%

Governance Proposals	2014 Submitted	2014 Voted On ¹	2014 Majority Votes ²	2014 Average Support ²	2015 Submitted	2015 Voted On ¹	2015 Majority Votes ²	2015 Average Support ²
Proxy advisor competition	1	0	0	N/A	0	0	0	N/A
Miscellaneous	5	1	1	80.7%	16	1	0	1.0%
Total Governance	391	228	69		449	285	93	

Compensation Proposals	2014 Submitted	2014 Voted On ¹	2014 Majority Votes ²	2014 Average Support ²	2015 Submitted	2015 Voted On ¹	2015 Majority Votes ²	2015 Average Support ²
Severance pay	4	2	1	56.2%	8	8	3	37.2%
Accelerated vesting of equity awards	30	21	4	36.2%	39	27	2	34.3%
Revolving door payments	0	0	0	N/A	4	4	0	21.5%
Golden coffins	1	1	0	34.6%	0	0	0	N/A
Tax gross-ups	2	1	0	34.7%	3	0	0	N/A
SERPS	2	2	0	35.7%	1	1	0	36.5%
Clawbacks	4	3	0	28.7%	22	15	0	28.4%
Retention of equity awards	33	28	0	22.3%	16	12	0	23.4%
Performance-based awards	2	2	0	28.0%	3	2	0	28.3%
Performance metrics	5	4	0	15.6%	3	2	0	2.4%
Pay disparity and ratios	13	1	0	6.5%	19	2	0	7.2%
Pay caps	3	0	0	N/A	2	1	0	3.8%
Link pay to social issues	3	1	0	2.5%	11	5	0	6.2%
Miscellaneous compensation	9	3	0	N/A	5	1	0	N/A
Total Compensation	111	69	5		136	80	5	

E&S Proposals	2014 Submitted	2014 Voted On ¹	2014 Majority Votes ²	2014 Average Support ²	2015 Submitted	2015 Voted On ¹	2015 Majority Votes ²	2015 Average Support ²
Animal welfare	12	6	1	15.0%	17	10	0	6.5%
Board diversity	26	3	0	30.1%	32	5	0	13.3%
Charitable contributions	2	1	0	1.7%	4	1	0	4.5%
Environmental	176	66	0		164	84	1	
Climate change - conservative	0	0	0	N/A	2	2	0	0.8%
Hydraulic fracturing	6	2	0	27.3%	6	4	0	29.1%
Fugitive methane	15	11	0	26.1%	9	6	0	29.0%
Environmental impact - water	5	3	0	25.7%	3	1	0	11.1%
Climate change report	12	7	0	21.6%	12	10	0	22.9%
GHG emissions reduction	27	9	0	22.8%	36	17	0	20.5%
Finance and climate change	8	2	0	23.7%	2	1	0	8.8%
Energy efficiency and renewable energy	11	1	0	21.6%	13	3	0	16.7%
Nuclear	4	2	0	4.9%	2	1	0	2.1%
Palm oil and deforestation	11	0	0	N/A	12	5	0	21.1%
GMOs	7	6	0	5.9%	3	2	0	4.8%
Nanomaterials	2	1	0	18.6%	1	0	0	N/A
Recycling	9	6	0	19.2%	7	4	0	30.0%
Toxic substances	6	1	0	14.3%	9	2	0	5.2%
Board environmental oversight	1	0	0	N/A	5	4	0	3.7%
Director with environmental expertise	3	2	0	14.1%	4	2	0	20.5%
Environmental - conservative	0	0	0	N/A	1	1	0	4.7%
Sustainability report	36	12	0	30.7%	29	19	1	30.9%
Supplier sustainability report	8	1	0	2.4%	1	0	0	N/A
Miscellaneous environmental	5	0	0	N/A	7	0	0	N/A
Employment/discrimination	27	12	0		43	7	0	

E&S Proposals	2014 Submitted	2014 Voted On ¹	2014 Majority Votes ²	2014 Average Support ²	2015 Submitted	2015 Voted On ¹	2015 Majority Votes ²	2015 Average Support ²
EEO report	4	3	0	23.4%	3	3	0	24.4%
EEO - sexual orientation	15	6	0	37.5%	18	1	0	33.7%
Civic and political non-discrimination	0	0	0	N/A	16	1	0	6.0%
Miscellaneous employment/discrimination	8	3	0	2.3%	6	2	0	3.3%
Finance	18	3	0		6	0	0	
Tax risk and policy	2	1	0	1.0%	4	0	0	N/A
Loan/mortgage servicing	2	1	0	20.1%	0	0	0	N/A
Indemnification	1	1	0	2.4%	0	0	0	N/A
Miscellaneous finance	13	0	0	N/A	2	0	0	N/A
Health	7	1	0		9	4	0	
Healthcare reform principles - conservative	5	0	0	N/A	1	0	0	N/A
Drug pricing	0	0	0	N/A	5	3	0	11.0%
Childhood obesity	2	1	0	0.8%	1	0	0	N/A
Miscellaneous health	0	0	0	N/A	2	1	0	7.5%
Human rights	60	24	0		58	24	0	
Country selection/divestiture	5	3	0	16.9%	6	3	0	11.6%
Holy Land principles	0	0	0	N/A	4	3	0	3.0%
Tobacco workers	0	0	0	N/A	8	5	0	3.5%
Code of conduct	4	2	0	16.3%	3	1	0	20.8%
Vendor code of conduct and human rights in supply chain	16	9	0	26.0%	13	6	0	12.6%
Human right to water	2	1	0	11.2%	1	1	0	7.5%
Internet and phone privacy and net neutrality	14	3	0	15.9%	11	2	0	22.5%

E&S Proposals	2014 Submitted	2014 Voted On ¹	2014 Majority Votes ²	2014 Average Support ²	2015 Submitted	2015 Voted On ¹	2015 Majority Votes ²	2015 Average Support ²
Board committee on human rights	9	6	0	5.0%	6	3	0	7.2%
Miscellaneous human rights	10	0	0	N/A	6	0	0	N/A
Military sales	0	0	0	N/A	2	0	0	N/A
Political activity	147	96	6		121	63	0	
Political - conservative	5	2	0	3.3%	0	0	0	N/A
Grassroots lobbying	56	43	3	27.5%	61	32	0	25.4%
Lobbying - ALEC	6	2	0	17.6%	3	2	0	17.5%
Public policy advocacy	7	0	0	N/A	6	1	0	19.3%
Incorporate values	5	3	0	3.7%	3	3	0	6.7%
Contributions - CPA	53	39	3	29.5%	46	24	0	34.1%
Board oversight	1	1	0	5.3%	1	0	0	N/A
Prohibit political spending	11	4	0	1.8%	1	1	0	3.6%
Advisory vote on political spending	3	2	0	3.7%	0	0	0	N/A
Tobacco	4	2	0	3.5%	7	2	0	3.8%
Miscellaneous E&S	5	0	0	7.8%	4	0	0	N/A
Total Environmental & Social	484	214	7		467	200	1	
Total Proposals (All)	986	511	81		1,052	565	99	

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

1. Includes floor proposals; excludes proposals on ballots that were not presented or were withdrawn before the annual meeting. 2014 figures are for the full year and 2015 figures are for the first half of the year.
2. Based on votes FOR as a percentage of votes FOR and AGAINST.

Table 2: Companies with Proxy Access

Company	Year Adopted	Ownership %	# Holders	Ownership Years	% of Board	S&P 500
American Railcar Industries, Inc. ¹	2009	5%	No limit	2	None specified	
KSW, Inc. ²	2012	5%	1	5	1 director	
Hewlett-Packard Co.	2013	3%	20	3	20%	x
Panhandle Oil & Gas Inc. ¹	2013	5%	No limit	1	1 director	
Western Union Co.	2013	3%	No limit	3	20%	x
CenturyLink, Inc.	2014	3%	10	3	20%	x
Chesapeake Energy Corp.	2014	3%	No limit	3	25%	x
Darden Restaurants, Inc.	2014	3%	10	3	25%	x
Enterprise Financial Services Corp. ¹	2014	3%	No limit	3	1 director	
Kilroy Realty Corp.	2014	5%	10	3	25%	
Nabors Industries Ltd.	2014	5%	1	3	1 director	
Verizon Communications Inc.	2014	3%	20	3	20%	x
Arch Coal Inc.	2015	5%	20	3	20%	
Bank of America Corp.	2015	3%	20	3	20%	x
Big Lots Inc.	2015	3%	20	3	25%	
Biogen Inc.	2015	3%	20	3	25%	x
Boston Properties, Inc.	2015	3%	5	3	25%	x
Broadridge Financial Solutions, Inc.	2015	3%	20	3	25%	
Cabot Oil & Gas Corporation	2015	5%	10	3	20%	x
CF Industries Holdings, Inc.	2015	5%	20	3	20%	x
FirstMerit Corp.	2015	3%	20	3	20%	
General Electric Co.	2015	3%	20	3	20%	x
H&R Block Inc.	2015	3%	20	3	20%	
HCP, Inc.	2015	5%	10	3	20%	x
Marathon Oil Corporation	2015	5%	20	3	20%	x
McKesson Corp.	2015	3%	20	3	20%	x
Merck & Co., Inc. ¹	2015	3%	20	3	20%	x
Monsanto Co.	2015	3%	20	3	20%	x
New York Community Bancorp, Inc.	2015	5%	10	3	20%	
PayPal Holdings, Inc. ¹	2015	3%	15	3	20%	
Priceline Group Inc. ³	2015	3%	No limit	3	25%	x

Company	Year Adopted	Ownership %	# Holders	Ownership Years	% of Board	S&P 500
Prudential Financial Inc. ¹	2015	3%	20	3	20%	x
Regency Centers Corp. ¹	2015	3%	No limit	3	25%	
Rite Aid Corp.	2015	3%	20	3	20%	
SLM Corp.	2015	3%	20	3	25%	
United Therapeutics Corp.	2015	3%	20	3	25%	
Whole Foods Market, Inc.	2015	3%	20	3	20%	x

Source: SEC filings

1. The company enacted proxy access in the absence of a shareholder proposal. American Railcar Industries adopted proxy access upon reincorporating in North Dakota. PayPal Holdings adopted proxy access upon being spun off from eBay in July 2015.

2. KSW is now privately held.

3. Priceline Group revised its 5%/3-year proxy access bylaw following its 2015 annual meeting.

Table 3: Company Responses to 2015 Proxy Access Proposals

Management Proposal	SP on Ballot	SP Withdrawn	Meeting Date	SP Vote ¹	Mgt Proposal Vote	Ownership %	# Holders	Ownership Years	# of Nominees
AES Corporation ²	x		23-Apr	66.4%	Failed	5%	Reasonable group	3	20%
Chipotle Mexican Grill, Inc.	x		13-May	49.9%	Failed (<67%)	5%	20	3	20%
Cloud Peak Energy Inc.	x		13-May	71.1%	Failed (<67%)	5%	1	3	10%
Exelon Corp. ²	x		28-Apr	43.6%	Passed	5%	20	3	20%
Expeditors International of Washington, Inc. ²	x		21-May	35.0%	Passed	3%	20	3	20%
SBA Communications Corporation ²	x		21-May	46.3%	Passed	5%	10	3	20%
Visteon Corporation ²	x		11-Jun	75.7%	Failed	5%	None specified	3	25%
Abercrombie & Fitch Co. ³		x	18-Jun		Failed (<75%)	3%	20-25	3	25%
Big Lots Inc. ³		x	28-May		Passed	3%	20	3	25%
FirstMerit Corp.		x	15-Apr		Passed	3%	20	3	20%
McKesson Corp.		x	29-Jul		Passed	3%	20	3	20%

Adopted Bylaw	SP on Ballot	SP Omitted or Withdrawn	Meeting Date	SP Vote ¹	Ownership %	# Holders	Ownership Years	# of Nominees
Arch Coal Inc.	x		23-Apr	36.3%	5%	20	3	20%
Boston Properties, Inc.	x		19-May	46.3%	3%	5	3	25%
Cabot Oil & Gas Corporation	x		23-Apr	45.3%	5%	10	3	20%
CF Industries Holdings, Inc.	x		15-May	57.4%	5%	20	3	20%
HCP, Inc.	x		30-Apr	55.5%	5%	10	3	20%
Marathon Oil Corporation	x		29-Apr	62.7%	5%	20	3	20%
New York Community Bancorp, Inc.	x		3-Jun	44.4%	5%	10	3	20%
Priceline Group Inc. ⁴	x		4-Jun	53.7%	5%	20	3	10%-20%
Rite Aid Corp.	x		25-Jun	37.5%	3%	20	3	20%

Adopted Bylaw	SP on Ballot	SP Omitted or Withdrawn	Meeting Date	SP Vote ¹	Ownership %	# Holders	Ownership Years	# of Nominees
Bank of America Corp.		x	6-May		3%	20	3	20%
Biogen Inc.		x	10-Jun		3%	20	3	25%
Broadridge Financial Solutions, Inc.		x	Nov.		3%	20	3	25%
General Electric Co.		x	22-Apr		3%	20	3	20%
H&R Block Inc.		x	10-Sep		3%	20	3	20%
United Therapeutics Corp.		x	26-Jun		3%	20	3	20%
Whole Foods Market, Inc.		x	15-Sep		3%	20	3	20%

Commitment to Adopt	SP on Ballot	SP Withdrawn	Meeting Date	SP Vote ¹	Ownership %	# Holders	Ownership Years	# of Nominees
EOG Resources, Inc.	x		30-Apr	50.7%	5%	20	3	20%-25%
Freeport-McMoRan Inc.	x		10-Jun	64.9%	Not specified	Not specified	Not specified	Not specified
Pioneer Natural Resources Company	x		20-May	49.4%	5%	No limit	3	20%
Kindred Healthcare, Inc.		x	27-May		3%	20-25	3	20%-25%
Splunk Inc.		x	11-Jun		3%	Not specified	3	Not specified
Staples Inc.		x	1-Jun		3%	25	3	20%-25%
Wendy's Co.		x	1-Jun		3%	25	3	20%-25%
Whiting Petroleum Corporation		x	2-Jun		3%	25	3	25%
YUM! Brands, Inc.		x	1-May		3%	20	3	20%

Endorsed/Neutral on SP	SP on Ballot	Meeting Date	SP Vote ¹	Ownership %	# Holders	Ownership Years	# of Nominees
Apache Corporation	x	14-May	92.7%	3%	No limit	3	25%
Citigroup, Inc.	x	28-Apr	86.9%	3%	20	3	20%
Republic Services, Inc.	x	14-May	89.9%	3%	No limit	3	25%

Opposed SP	SP on Ballot	Meeting Date	SP Vote ¹
Alexion Pharmaceuticals, Inc.	x	6-May	49.2%
Alliance Data Systems Corporation	x	3-Jun	55.7%
Alpha Natural Resources, Inc.	x	21-May	67.1%
Amazon.com Inc.	x	10-Jun	41.3%
American Electric Power Company, Inc.	x	21-Apr	67.2%
Anadarko Petroleum Corporation	x	12-May	59.4%
Anthem, Inc.	x	13-May	66.5%
Apartment Investment and Management Company	x	28-Apr	57.7%
Apple Inc.	x	10-Mar	39.2%
AvalonBay Communities, Inc.	x	21-May	65.0%
Avon Products Inc.	x	6-May	75.7%
CBL & Associates Properties, Inc.	x	4-May	69.0%
Cheniere Energy, Inc.	x	11-Jun	63.1%
Chevron Corp.	x	27-May	55.3%
Cimarex Energy Corp.	x	14-May	56.2%
Coca-Cola Co.	x	29-Apr	40.6%
Community Health Systems, Inc.	x	19-May	49.8%
Comstock Resources, Inc.	x	7-May	Withdrawn
ConocoPhillips	x	12-May	54.3%
CONSOL Energy Inc.	x	6-May	47.0%
CSP, Inc.	x	10-Feb	49.0%
DaVita Healthcare Partners, Inc.	x	16-Jun	43.7%
Devon Energy Corp.	x	3-Jun	58.2%
Domino's Pizza, Inc.	x	21-Apr	45.7%
DTE Energy Company	x	7-May	61.7%
Duke Energy Corp.	x	7-May	62.7%
eBay Inc.	x	1-May	59.4%
Electronic Arts Inc.	x	14-Aug	

Opposed SP	SP on Ballot	Meeting Date	SP Vote ¹
EQT Corporation	x	15-Apr	66.3%
Equity Residential	x	24-Jun	56.1%
Exxon Mobil Corp.	x	27-May	49.4%
Fidelity National Financial, Inc.	x	17-Jun	60.9%
FirstEnergy Corp.	x	19-May	71.4%
FleetCor Technologies, Inc.	x	10-Jun	46.9%
Hasbro, Inc.	x	21-May	68.6%
Hess Corp.	x	6-May	51.1%
Kohl's Corp.	x	14-May	73.3%
Level 3 Communications, Inc.	x	21-May	43.6%
McDonald's Corp.	x	21-May	61.7%
Monsanto Co.	x	30-Jan	53.5%
Monster Beverage Corp.	x	7-Aug	
Murphy Oil Corporation	x	13-May	53.0%
Nabors Industries Ltd.	x	2-Jun	67.0%
Netflix, Inc.	x	9-Jun	71.0%
Noble Energy, Inc.	x	28-Apr	42.4%
NVR, Inc.	x	5-May	41.5%
Occidental Petroleum Corp.	x	1-May	62.0%
PACCAR Inc	x	21-Apr	42.0%
Peabody Energy Corporation	x	4-May	48.7%
PPL Corporation	x	20-May	61.4%
Precision Castparts Corp.	x	11-Aug	
Range Resources Corporation	x	19-May	60.9%
Regeneron Pharmaceuticals, Inc.	x	12-Jun	28.0%
Roper Technologies, Inc.	x	29-May	67.6%
Southern Co.	x	27-May	46.2%
Southwestern Energy Company	x	19-May	56.4%
St. Jude Medical, Inc.	x	7-May	72.5%
TCF Financial Corp.	x	22-Apr	59.9%

Opposed SP	SP on Ballot	Meeting Date	SP Vote ¹
T-Mobile US Inc.	x	2-Jun	17.6%
United-Guardian, Inc.	x	13-May	11.7%
Urban Outfitters, Inc.	x	2-Jun	40.6%
VCA Inc.	x	16-Apr	45.9%
Vertex Pharmaceuticals Inc.	x	4-Jun	58.4%
Walgreens Boots Alliance Inc.	x	28-May	40.0%
Wal-Mart Stores, Inc.	x	5-Jun	17.2%
Westmoreland Coal Company	x	19-May	35.8%

Source: SEC filings.

1. Vote results for the shareholder proposals are based on "for" votes as a percentage of "for" and "against" votes.
2. The management proposal was non-binding.
3. A shareholder proposal on proxy access received majority support in 2014.
4. Following its annual meeting, Priceline Group amended its bylaw to conform to the terms of the shareholder proposal.

Table 4: Corporate Actions on Special Meeting Proposals

Management Proposal	SP on Ballot	SP Omitted/ Withdrawn ¹	Meeting Date	Ownership Threshold - Mgt	Ownership Threshold - SH	SP Vote ²	Mgt Proposal Vote
AES Corp. ³	x		23-Apr	25%	20%	36.6%	Passed
BorgWarner Inc.	x		29-Apr	25%	20%	52.3%	Failed (<80%)
Capital One Financial Corp.	x		30-Apr	25%	20%	48.9%	Passed
Dun & Bradstreet Corp.	x		6-May	25%	10%	45.6%	Passed
Kate Spade & Co.	x		19-May	25%	10%	37.5%	Passed
NextEra Energy, Inc. ³	x		21-May	20%	10%	40.1%	Passed
AGL Resources Inc.		x	28-Apr	25%	10%		Passed
Deere & Co. ⁴		x	25-Feb	25%	20%		Passed
Windstream Holdings, Inc.		x	14-May	20%	20%		Failed (<67%)

Adopted Bylaw	SP on Ballot	SP Omitted/ Withdrawn ¹	Meeting Date	Current Ownership Threshold	Ownership Threshold - SH	SP Vote ²
ITC Holdings Corp.	x		20-May	25%	10%	39.7%
Newell Rubbermaid, Inc.	x		12-May	15%	10%	29.7%
Bank of New York Mellon Corp.		x	14-Apr	20%	20%	
Huntington Ingalls Industries Inc.		x	30-Apr	20%	20%	

Endorsed SP	SP on Ballot	Meeting Date	Current Ownership Threshold	Ownership Threshold - SH	SP Vote ²
Illinois Tool Works Inc.	x	8-May	Not allowed	20%	87.6%

Opposed SP	SP on Ballot	Meeting Date	Current Ownership Threshold	Ownership Threshold - SH	SP Vote ²
Alexion Pharmaceuticals, Inc.	x	6-May	50%	10%	44.7%
Ashford Hospitality Trust Inc.	x	12-May	Not allowed	25%	Not presented
AT&T Inc.	x	24-Apr	15%	10%	32.6%
Chevron Corp.	x	27-May	15%	10%	30.3%
Ford Motor Co.	x	14-May	30%	20%	26.4%
Home Depot Co.	x	21-May	25%	10%	40.8%
JPMorgan Chase & Co.	x	19-May	20%	10%	35.2%
Kansas City Southern	x	7-May	25%	10%	38.7%
L-3 Communications Holdings, Inc.	x	5-May	Not allowed	20%	73.9%
Morgans Hotel Group Co.	x	13-May	Not allowed	25%	24.5%
Pinnacle Entertainment, Inc.	x	12-May	Not allowed	50%	15.9%
Southwestern Energy Co.	x	19-May	20%	10%	39.0%
Timken Co.	x	7-May	50%	25%	70.2%

Source: SEC filings.

1. The shareholder resolutions were likely excluded as substantially implemented rather than withdrawn.
2. Based on "for" votes as a percentage of "for" and "against" votes.
3. The management proposal was non-binding.
4. Deere was granted no-action relief in October 2014 to omit the shareholder proposal as conflicting with a management proposal.