

Lessons from the 2021 Proxy Season

*S&C Client Webinar
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Rule 14a-8 Shareholder Proposals

Overview of Rule 14a-8 Shareholder Proposals

- A total of 733 shareholder proposals were submitted in H1 2021, the highest number in recent years, reversing the previous downward trend.
- Submissions on environmental and social/political topics (“ESP”) continued to increase and represented the majority of proposals submitted for the first time (56% of all submissions).
- Governance proposals continued to decline in prevalence, with nearly three quarters of governance proposals focusing on structural governance.
- The number of compensation proposals remained low, notwithstanding a 29% increase in proposals linked to environmental performance metrics.

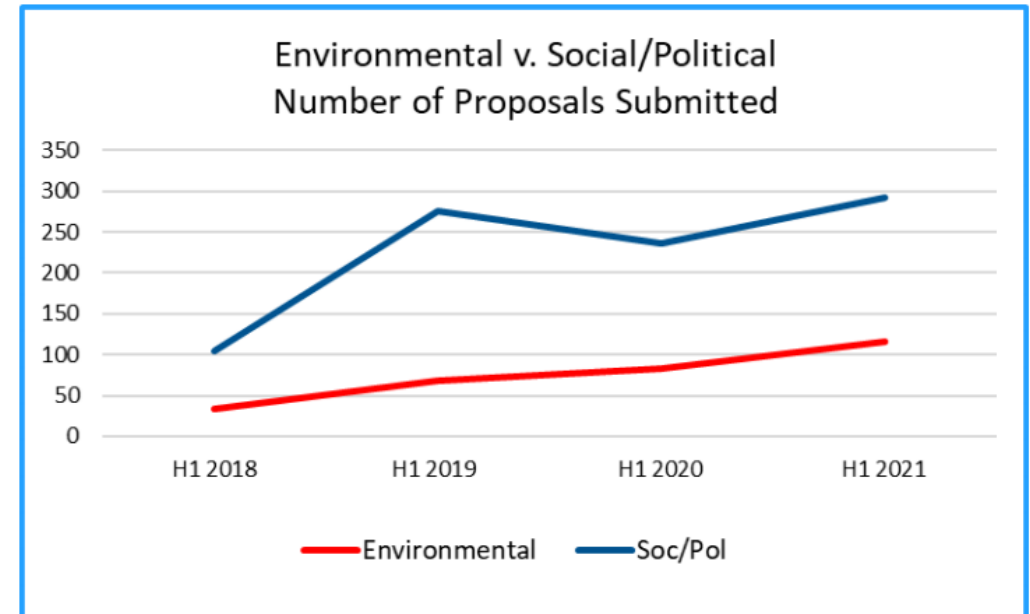
| Type of Proposal | Shareholder Proposals Submitted | | Shareholder Proposals Voted On | | Average % of Votes Cast in Favor | | Shareholder Proposals Passed | |
|----------------------|---------------------------------|------------|--------------------------------|------------|----------------------------------|------|------------------------------|------|
| | 2021 YTD | 2020 | 2021 YTD | 2020 | 2021 YTD | 2020 | 2021 YTD | 2020 |
| Social/Political | 293 | 231 | 114 | 133 | 30% | 28% | 18 | 12 |
| Governance-related | 277 | 328 | 199 | 231 | 40% | 34% | 36 | 29 |
| Environmental | 115 | 89 | 33 | 26 | 41% | 32% | 12 | 5 |
| Compensation-related | 56 | 52 | 28 | 30 | 23% | 24% | 1 | 2 |
| Total | 733 | 706 | 370 | 419 | | | | |

Changes to Rule 14a-8

- The SEC amended Rule 14a-8 in September 2020:
 - Increasing the share ownership requirements for submissions
 - Increasing shareholder support thresholds for resubmissions
- In June 2021, Chair Gensler announced a recommendation to reconsider and revisit the 2020 amendments.
- The amendments will otherwise be effective for the 2022 season.

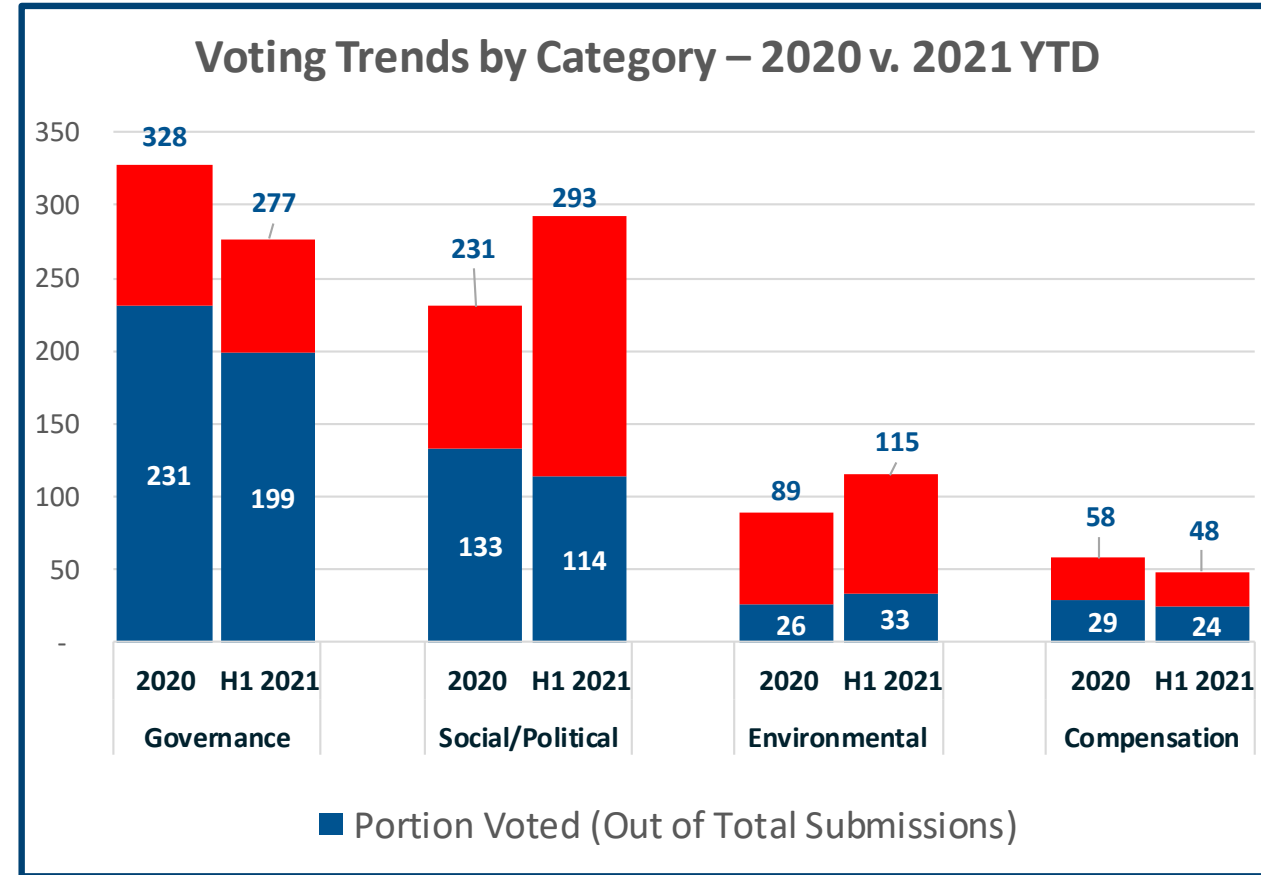
Social/Political v. Environmental Proposals

- Social/political proposals became, for the first time, the largest category of submissions (40% of total submissions), increasing by 27% over H1 2020.
 - Main drivers of growth were employee-related diversity, equity and inclusion (DEI) proposals (93% increase) and social capital management (SCM) proposals (43% increase).
- Environmental proposals represented only 16% of total submissions, but increased more significantly than any other category in 2021 (by 40% over H1 2020).
 - The growth was driven by a dramatic 77% increase in proposals relating to climate, which comprised nearly three quarters of all environmental proposals submitted in H1 2021.



Governance Proposals Most Likely to Be Voted

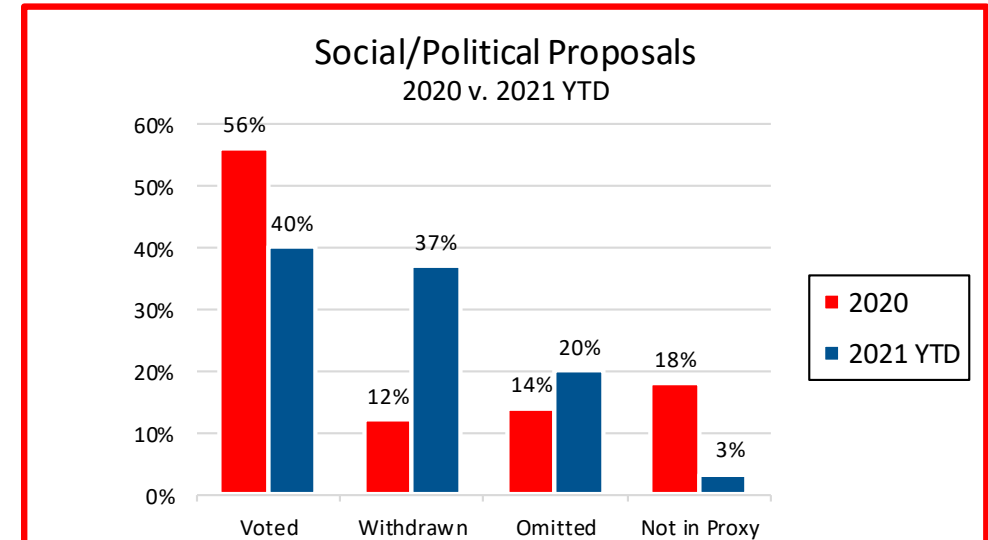
- Once again, a majority of governance proposals went to a vote (72%) and voted proposals continued to receive high support.
- In contrast, environmental proposals were least likely to go to a vote (29%). However, average support for voted proposals increased from 32% to 41%.
- The percentage of social/political proposals that went to a vote also remained low (39%), and average support for voted proposals increased slightly from 28% to 30%.



Social/Political Proposals

- Social/political proposals were three times more likely to be withdrawn this year than last year.
- Of the 293 social/political proposals submitted, 37% were withdrawn (compared to 12% in 2020).
- Most of the submitted social/political proposals related to EEO-1 reporting and political spending/lobbying.
- The largest subcategory of proposals this year was social capital management, which increased by 43% over FY 2020, driven by the emergence of new categories of civil rights, human rights and racial justice proposals.

| | SOCIAL/POLITICAL PROPOSALS | | | | | | | |
|-----------------------------|---------------------------------|------|--------------------------------|------|----------------------------------|------|------------------------------|------|
| | Shareholder Proposals Submitted | | Shareholder Proposals Voted On | | Average % of Votes Cast in Favor | | Shareholder Proposals Passed | |
| | 2021 YTD | 2020 | 2021 YTD | 2020 | 2021 YTD | 2020 | 2021 YTD | 2020 |
| Social Capital Management | 123 | 86 | 55 | 38 | 17% | 19% | 1 | 1 |
| Employee-Related DEI | 89 | 46 | 17 | 25 | 47% | 24% | 6 | 3 |
| Political Spending/Lobbying | 64 | 76 | 36 | 60 | 41% | 35% | 9 | 6 |
| Non-DEI HCM | 17 | 23 | 6 | 10 | 27% | 23% | 2 | 2 |



Human Rights & Racial Justice Proposals

- Two types of proposals were submitted in meaningful numbers for the first time this year:
 - Racial equity audit proposals (12 companies).
 - Requests for human rights due diligence procedures (17 companies).
- Racial equity audit proposals:
 - Asked companies to commission audits on their impacts on civil rights and DEI.
 - Shareholder support ranged from 17% to 41%.
 - Proposals at Morgan Stanley, Blackrock and CoreCivic were withdrawn after the companies agreed to conduct racial equity audits.
- Human rights due diligence proposals:
 - Asked companies to report on human rights due diligence processes.
 - ISS recommended voting for five of six management-opposed proposals, which received moderate shareholder support (between 18% and 35%).
 - A management-supported proposal at Wendy's received 95% of votes cast.

Employee-Related DEI

- Proposals on employee-related DEI matters nearly doubled.
- 47% of these proposals focused on disclosure of EEO-1 reports:
 - Most were withdrawn after companies agreed to release the report.
 - Three made it to a vote and two passed with overwhelming support (84% and 86%), with one failing to pass although still receiving 41% support.
- Almost all other employee-related DEI proposals requested disclosure of DEI efforts and/or resulting statistics through one-time or annual workforce diversity reports:
 - These proposals also received high support; of the eight that went to a vote, three passed.
 - In many cases, the proponent focused on the company's stated commitment to DEI and requested that the company provide evidence to demonstrate concrete and measurable DEI progress.
 - Although many companies settled before a vote, this year some companies made the decision to let these proposals go to a vote with management support.

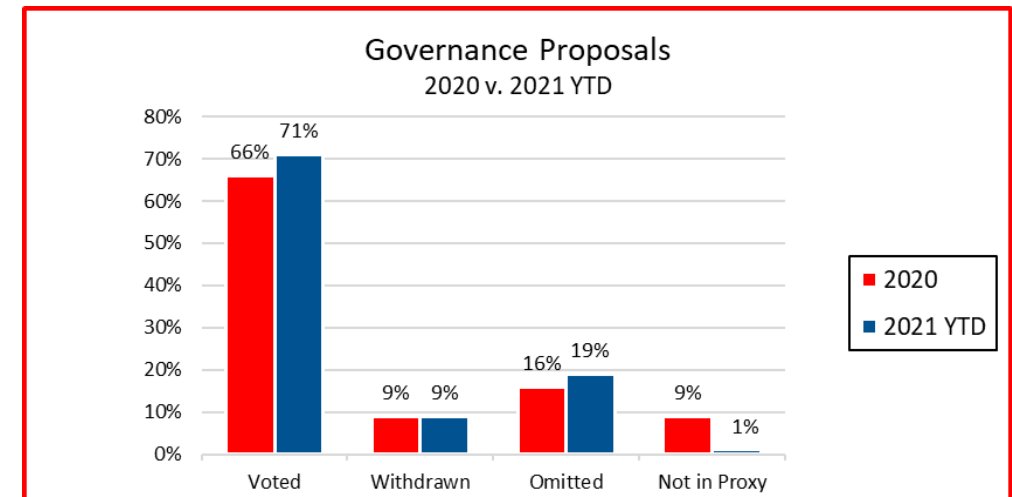
Political Spending & Lobbying

- Political spending/lobbying proposals declined by 16%, continuing a downward trend.
- 63 of 64 proposals requested that companies disclose political spending (e.g., contributions to candidates, lobbying expenditures and related policies).
 - The one other proposal asked Best Buy to evaluate and report on how its lobbying efforts align with racial equity goals but was withdrawn.
- Consistent with prior years, many of the companies that received a political proposal this year were high-profile American brands or companies in sectors that attract public attention (such as the healthcare, pharmaceutical, technology, banking and energy sectors).
- In response to the armed insurrection at the U.S. Capitol, NYC's Comptroller called on certain public companies to reassess political spending practices and suspend contributions.
- Average shareholder support rose from 35% in 2020 to 41% in 2021.
 - ISS supported 83% of the proposals that were voted.

Governance Proposals

- As in 2020, nearly three quarters of governance proposals went to a vote.
- Reversing a downward trend since 2015, average shareholder support increased to 40% this year.
- Structural governance proposals represented approximately 73% of submitted governance proposals and 78% of those that were voted. In contrast, board composition proposals decreased in prevalence, representing only 26% of submitted governance proposals, and 22% of those that were voted.

| | GOVERNANCE | | | | | | | |
|-----------------------|---------------------------------|------------|--------------------------------|------------|----------------------------------|------|------------------------------|------|
| | Shareholder Proposals Submitted | | Shareholder Proposals Voted On | | Average % of Votes Cast in Favor | | Shareholder Proposals Passed | |
| | 2021 YTD | 2020 | 2021 YTD | 2020 | 2021 YTD | 2020 | 2021 YTD | 2020 |
| Structural Governance | 201 | 195 | 155 | 157 | 44% | 37% | 34 | 25 |
| Written Consent | 72 | 65 | 65 | 60 | 40% | 36% | 7 | 4 |
| Special Meetings | 36 | 44 | 30 | 40 | 38% | 41% | 5 | 5 |
| Proxy Access | 31 | 19 | 24 | 14 | 32% | 33% | 0 | 1 |
| Other Structural | 62 | 67 | 36 | 43 | 62% | 37% | 22 | 15 |
| Board Composition | 72 | 103 | 44 | 67 | 28% | 25% | 2 | 3 |
| Misc. Governance | 4 | 30 | 0 | 7 | - | 31% | 0 | 1 |
| Total | 277 | 328 | 199 | 231 | | | | |



Structural Governance

- Certain “shareholder-friendly” structural governance measures have become widely adopted among the S&P 500 (e.g., majority voting, annual election of directors, elimination of supermajority voting).
- Recently, governance-focused proponents have shifted their attention to:
 - Shareholder right to act by written consent (adopted by 31% of S&P 500)
 - Largest category of governance submissions (26%) this year, with the vast majority of proposals being “adopt” proposals (79%); average support remained high at 40%.
 - However, this year saw a three-fold increase in the number of “amend” written consent proposals (15 compared to five in 2020); average support increased from 17% to 41%.
 - Shareholder right to call special meetings (adopted by 81% of S&P 500)
 - Proposals to either adopt or amend special meeting rights continued to receive relatively high levels of shareholder support (57% for “adopt” and 33% for “amend”), but were down slightly year-over-year (36 submitted and 30 voted, compared to 44 and 40, respectively, in 2020).
 - Proxy access (adopted by two thirds of S&P 500)
 - In 2021, 31 proxy access proposals were submitted, only two of which were “adopt” proposals (compared to four in 2020); “adopt” proposals only received 5% average support, whereas “amend” proposals received 33% support.

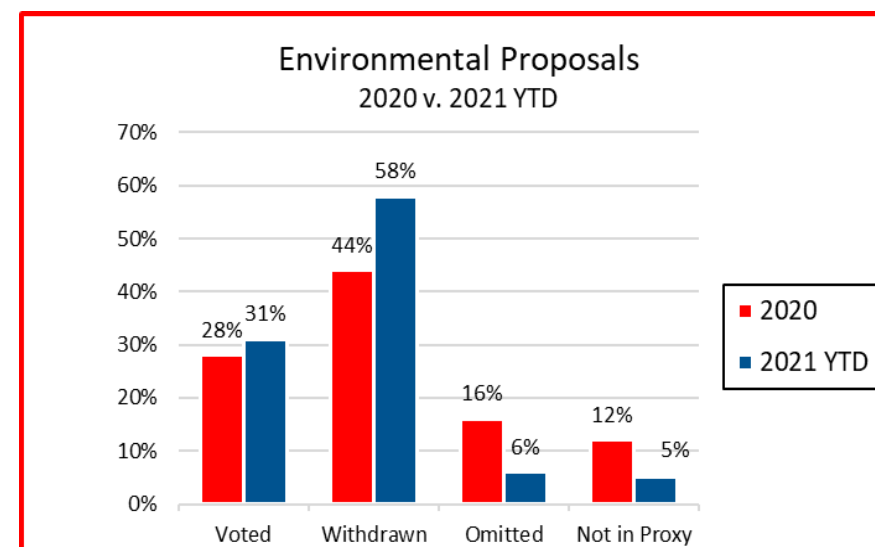
Board Composition

- The total number of board composition submissions fell significantly year-over-year.
- Independent chair:
 - Submissions on independent board chair proposals, which remained the largest subgroup of board composition proposals, fell from 51 in 2020 to 38 in 2021.
 - Shareholder support on independent chair proposals remained relatively high (at 32% compared to 35% in 2020), although none passed (compared to two in 2020).
- Board diversity:
 - Submissions on board diversity dropped significantly from H1 2020, when many companies announced their commitment to board diversification efforts. The low number of submissions may be related to the attention that this topic has received from other stakeholders, including regulators, legislators, stock exchanges and public companies.
 - As in prior years, board diversity proposals rarely went to a vote (only three did in 2021), but two of the three that went to a vote received very high support, resulting in average support of 59% (compared to 15% in 2020).

Environmental Proposals

- Companies seemed to have preferred engaging with a proponent rather than taking the proposal to a vote, as over half (70) of environmental submissions were withdrawn, representing a meaningfully high withdrawal rate.
- Environmental proponents (e.g., As You Sow) rarely settled with a company unless the company committed to take actions towards the specified environmental goals or disclose future plans to curtail environmental damage.
- Voted proposals received 41% average support, up from 32% in 2020, and a record 12 proposals passed this year, 11 of which were climate related (receiving between 57% and 98% shareholder support).

| | ENVIRONMENTAL | | | | | | | |
|--|---------------------------------|------|--------------------------------|------|----------------------------------|------|------------------------------|------|
| | Shareholder Proposals Submitted | | Shareholder Proposals Voted On | | Average % of Votes Cast in Favor | | Shareholder Proposals Passed | |
| | 2021 YTD | 2020 | 2021 YTD | 2020 | 2021 YTD | 2020 | 2021 YTD | 2020 |
| Climate | 85 | 48 | 28 | 14 | 41% | 33% | 11 | 3 |
| Actions/Demands | 52 | 16 | 8 | 3 | 62% | 23% | 6 | 0 |
| Climate-Related Reporting | 27 | 32 | 17 | 11 | 35% | 36% | 5 | 3 |
| Say-On-Climate | 6 | 0 | 3 | 0 | 25% | - | 0 | 0 |
| Sustainability (Reporting and Other Efforts) | 30 | 41 | 5 | 12 | 36% | 31% | 1 | 2 |
| Total | 115 | 89 | 33 | 26 | | | | |



Environmental Proposals

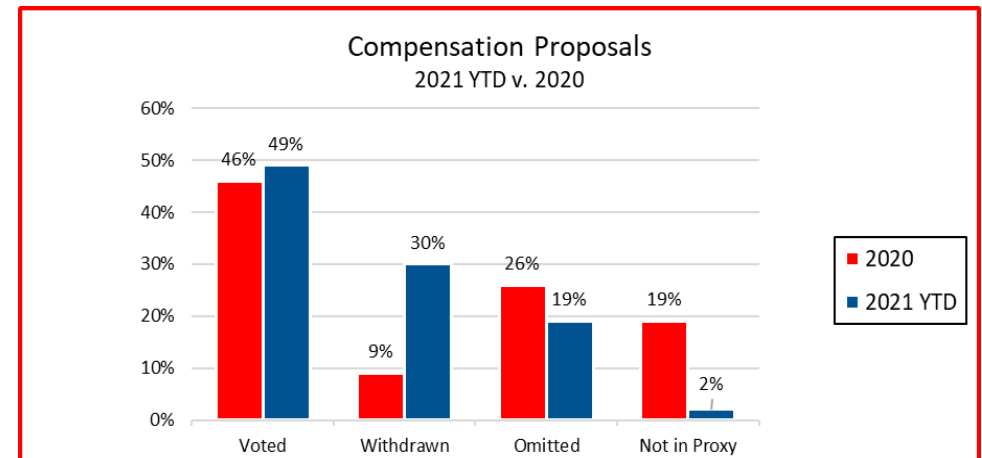
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- **Say-on-climate:**
 - Six proposals requested companies adopt an annual shareholder vote on climate transition plans.
 - Three of these so-called “say-on-climate” proposals went to a vote where they received between 7% and 37% support, respectively.
 - Institutional investors’ attitudes on say-on-climate may dictate whether annual say-on-climate votes become the norm:
 - Vanguard, for instance, currently evaluates these proposals by observing whether climate change is a material risk for the company and considers a number of factors, including (i) the reasonableness of the request, (ii) whether the proposal addresses a gap in disclosure and (iii) the proposal’s alignment with industry standards.
- **Standardized environmental/ESG reporting:**
 - Despite the increasing attention from key stakeholders (e.g., ISS, institutional investors, U.S. federal and state legislators/regulators), only one 2021 shareholder proposal requested standardized disclosure based on the SASB framework and none requested standardized disclosure based on the TCFD framework. The SASB-linked proposal received only 11% shareholder support.
 - Most environmental proposals focused more generally on companies’ commitment to publishing sustainability disclosures and adopting sustainability policies rather than demanding a specific reporting framework.

Compensation Proposals

- Compensation proposals submitted this year dropped by approximately 20% from FY 2020.
- Consistent with 2019 and 2020, around half of these proposals reached a vote in 2021. Voted proposals received relatively low support (averaging 20%) and none passed.
- As was the case in both 2019 and 2020, the most common type of compensation-related proposals in 2021 were proposals to link executive compensation to ESP issues, such as diversity, social inequality, sustainability and environmental impact.
 - Overall, there were slightly fewer ESP compensation-related proposals in 2021 than in 2020, notwithstanding the media focus on executive compensation during the height of the COVID-19 pandemic and the racial justice protests.
 - Shareholder support for these proposals also continued to drop, falling to 9% this year, compared to 16% in 2020 and 24% in 2019.

| | COMPENSATION | | | | | | | |
|------------------------------|---------------------------------|-----------|--------------------------------|-----------|----------------------------------|------|------------------------------|------|
| | Shareholder Proposals Submitted | | Shareholder Proposals Voted On | | Average % of Votes Cast in Favor | | Shareholder Proposals Passed | |
| | 2021 YTD | 2020 | 2021 YTD | 2020 | 2021 YTD | 2020 | 2021 YTD | 2020 |
| Compensation – Social | 13 | 16 | 8 | 7 | 9% | 17% | 0 | 0 |
| Compensation – Environmental | 9 | 7 | 3 | 4 | 11% | 14% | 0 | 0 |
| Clawbacks | 3 | 2 | 3 | 2 | 34% | 45% | 0 | 1 |
| Stock Retention | 2 | 5 | 0 | 5 | - | 22% | 0 | 0 |
| Compensation – Other | 21 | 28 | 10 | 11 | 28% | 26% | 0 | 0 |
| Total | 48 | 58 | 24 | 29 | | | | |





Say-on-Pay Votes and Equity Compensation Plan Approval

Overview of Say-on-Pay Votes and Equity Compensation Plan Approval

- **Say-on-pay:**
 - Public companies continued to perform strongly, with support levels averaging 93% and less than 3% of companies failing.
 - Continued turnover in failed votes, with 79% of companies that failed last year achieving over 70% support this year and only five companies failing in both 2020 and 2021.
 - ISS negative recommendations highlighted the continuing importance of the pay-for-performance assessment, with the most important factor continuing to be the alignment of CEO pay with relative total shareholder return.
 - The most important qualitative factors were performance standards that were not deemed sufficiently rigorous or were not clearly explained, followed by the use of subjective criteria for determining compensation.
 - ISS also frequently cited the adjustment of previously granted awards, often due to the impact of COVID-19.
- **Equity compensation plans:**
 - Only three Russell 3000 companies failed to obtain shareholder approval for an equity compensation plan.
 - Support levels at Russell 3000 and S&P 500 companies averaging around 91%.

Drivers of 2021 Say-on-Pay Results

| | RUSSELL 3000 | | S&P 500 | |
|--|--------------|------|----------|------|
| | 2021 YTD | 2020 | 2021 YTD | 2020 |
| Percentage passed (majority support) | 97% | 97% | 97% | 98% |
| Percentage with >70% support | 93% | 93% | 92% | 93% |
| Percentage with ISS “Against” recommendations | 11% | 11% | 10% | 11% |
| Average support with ISS “For” recommendations | 94% | 94% | 92% | 93% |
| Average support with ISS “Against” recommendations | 64% | 66% | 57% | 62% |

- Overall, U.S. companies had similar say-on-pay results in 2021 and 2020.
- Of the 52 Russell 3000 companies that failed their say-on-pay votes in 2020 and have had their 2021 votes, 39 received majority support in 2021, with 37 getting >70% support.
 - Results reflect companies’ continued efforts to engage with shareholders and proxy advisors notwithstanding the COVID-19 pandemic presenting an obstacle to hosting face-to-face meetings with shareholders, as well as clearer compensation disclosure.
- Past success no guarantee of continued success:
 - Of the 51 companies in the Russell 3000 that failed say-on-pay votes in H1 2021, none had failed their 2020 vote and 24 had 2020 support levels below 70%.
 - None of the fourteen S&P 500 companies that failed say-on-pay in H1 2021 failed their vote in 2020, although two had support levels below 70%.

ISS Pay-for-Performance Analysis

- Relative alignment of CEO pay and total shareholder return over three years
- Relative alignment of CEO pay to peer group median over one year
- Absolute alignment of CEO pay and TSR over five years
- Relative alignment of CEO pay and financial performance over three years

ISS Qualitative Pay-for-Performance Analysis

- Under ISS's policies, the qualitative review takes into account a range of factors, including:
 - the ratio of performance-based equity awards to time-based equity awards;
 - the overall ratio of performance-based compensation to total compensation;
 - the completeness of disclosure and rigor of performance goals;
 - application of compensation committee discretion;
 - peer group benchmarking practices;
 - financial and operational performance (both absolute and relative to peers);
 - realizable pay compared to grant pay; and
 - any special circumstances, such as a new CEO or anomalous equity grant practices.
- Notably, despite the uncertainty created by COVID-19, the exercise of discretion by compensation committees can be viewed negatively by ISS. For example, ISS FAQs on compensation policies and the COVID-19 pandemic indicate that changes to in-progress long-term incentive awards will generally be viewed negatively, especially with respect to companies having a pay-for-performance misalignment.

Equity Compensation Plan Approvals

- Since 2015, ISS has applied an “equity scorecard” approach to assessing equity plans. The scorecard method considers factors under three main categories: plan cost, plan features, and grant practices.
- ISS recommended against approximately 22% of equity plan proposals in the case of Russell 3000 companies, but recommended against only 6% in the case of S&P 500 companies.

| Adoption or Amendment of Omnibus Stock Plans | RUSSELL 3000 | | S&P 500 | |
|---|--------------|------|----------|------|
| | 2021 YTD | 2020 | 2021 YTD | 2020 |
| Number of proposals voted on | 562 | 661 | 97 | 101 |
| Percentage with ISS “Against” recommendations | 22% | 22% | 6% | 13% |
| Average level of support with ISS “For” recommendations | 94% | 93% | 94% | 94% |
| Average level of support with ISS “Against” recommendations | 74% | 77% | 77% | 73% |
| Number of failed proposals (<50% support) | 3 | 4 | 0 | 0 |



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The background features a blurred city skyline at night, with various skyscrapers and lights. The lights are out of focus, creating a bokeh effect with soft, glowing circles in shades of yellow, orange, and blue. The overall color palette is warm and atmospheric.

SULLIVAN & CROMWELL