

Lessons from the 2020 Proxy Season

*S&C Client Webinar
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Roadmap

- Significant developments related to the 2020 U.S. annual meeting proxy season
 - Virtual Shareholder Meetings
 - Rule 14a-8 Shareholder Proposals
 - Say-on-Pay Votes and Equity Compensation Plan Approval
 - Rule 14a-8 No-Action Requests

Roadmap

Continued

- Subsequent Developments
 - Regulatory activity:
 - Rule 14a-8 modernization
 - Human capital disclosure
 - Proxy advisor and voting reform
 - Schedule 13F update
 - Diversity and inclusion:
 - ISS
 - State Street
 - Derivative litigation
 - Continued focus on ESP

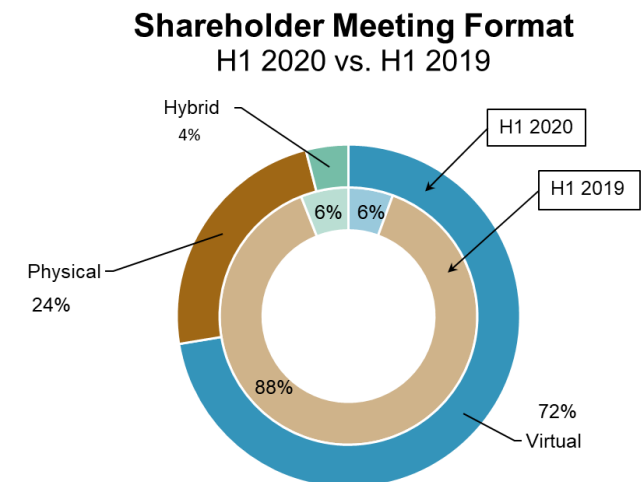
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Virtual Shareholder Meetings

Test Year for Virtual Meetings

- COVID-19 has indisputably impacted the 2020 proxy season, perhaps most significantly in terms of the format of shareholder meetings
 - There was general agreement among investors this year that a shift to virtual meetings was necessary
 - Glass Lewis and ISS both issued policy updates that temporarily relaxed their positions on virtual-only meetings, and several prominent institutional investors issued statements on their willingness to be flexible during the pandemic
 - Of the 1,290 annual shareholder meetings held by U.S. S&P 1500 Composite companies during H1 2020, 72.4% were in a virtual format (compared to 5.6% in 2019)
 - Hybrid meetings remained relatively uncommon, with 51 (4.0%) such meetings held in this format, compared to 78 (6.0%) during the same period in 2019

Index	VIRTUAL		PHYSICAL		HYBRID	
	H1 2020	H1 2019	H1 2020	H1 2019	H1 2020	H1 2019
Large-Cap (S&P 500)	353	28	73	359	18	54
Mid-Cap (S&P 400)	239	18	91	310	16	15
Small-Cap (S&P 600)	342	27	141	481	17	9
S&P Composite 1500	934	73	305	1150	51	78



Test Year for Virtual Meetings

Continued

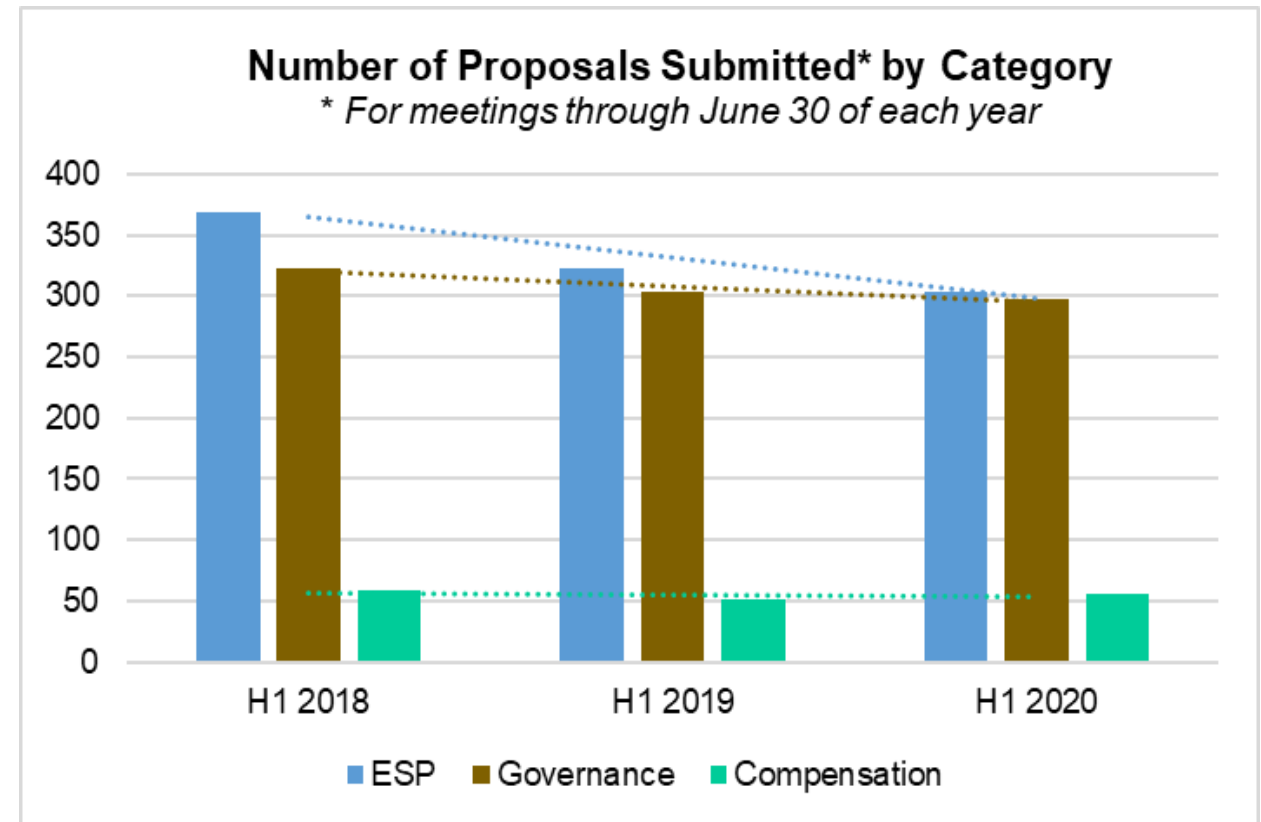
- Due to positive experiences this year, many companies have suggested that they are interested in maintaining at least some components of virtual meetings in the future
- Investor expectations evolving:
 - While investors reported benefits (*e.g.*, ability to participate in a greater number of meetings), some have since voiced that the virtual meetings have not been able to effectively replicate the experience of an in-person meeting, especially where Q&A sessions and shareholder proposals presentations are concerned
 - Some investors have suggested better practices
 - Potential cybersecurity threats may be present at all stages

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Rule 14a-8 Shareholder Proposals

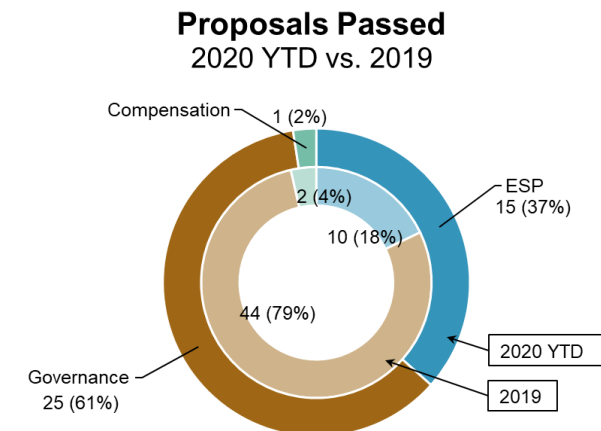
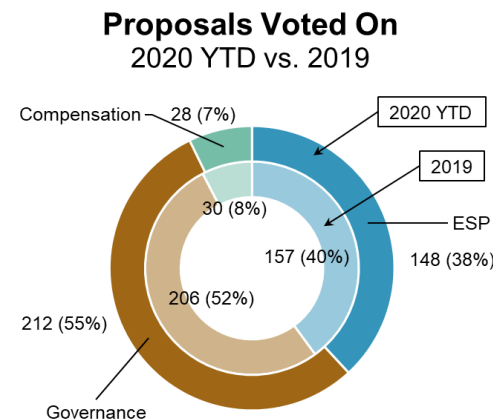
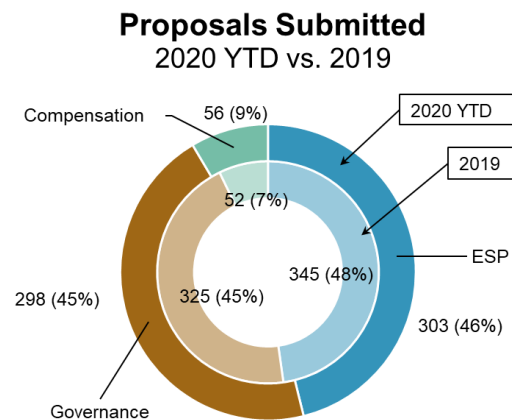
Overview of Rule 14a-8 Shareholder Proposals

- A total of 657 shareholder proposals were submitted in H1 2020, relative to 678 during the same period last year, 722 for 2019 as a whole and 788 for 2018. The decline relative to last year was led by a 6.2% drop in ESP proposals, with governance-related proposals declining by a smaller proportion (1.7% drop)
- To a lesser extent, the decline in the number of submitted proposals also reflected a decrease in the number of proposals against investing or managing on the basis of ESP factors (“anti-ESP” proposals), which in 2019 bolstered the number of ESP and governance-related proposals



ESP Submissions Outnumbered Other Categories For 4th Consecutive Year

Type of Proposal	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019
ESP-related	303	345	148	157	27%	28%	15	10
Governance-related	298	325	212	206	33%	37%	25	44
Compensation-related	56	52	28	30	23%	24%	1	2
Total	657	722	388	393				



ESP Hot Topics

- Environmental proposals predominate
- Record 15 ESP proposals passed in 2020 to date (including five political proposals and five human capital management proposals)

	ESP PROPOSALS							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019
Environmental	82	69	24	22	30%	24%	4	0
Political	67	99	54	63	36%	34%	5	4
Human capital management	65	60	32	33	24%	25%	5	2
Social capital management	57	55	27	20	18%	22%	0	2
Sustainability report	6	25	0	4	-	30%	-	0
Animal rights	3	8	2	1	6%	7%	0	0
Other ESP issues	23	29	9	14	25%	30%	1	2

Standardized ESG Reporting

- Although the SEC has not adopted an ESG disclosure framework outside its general principles-based approach, investors are increasingly demanding standardized, quantitative disclosures from companies that conform to SASB or TCFD standards
 - In the past year, large institutions such as BlackRock, State Street and Vanguard have publicly indicated that they are in support of companies making ESG disclosures aligned with both the SASB and TCFD frameworks
 - Proponents—mostly social investment entities—have submitted proposals across a range of different ESP categories, demanding reporting (either generally or on specific issues) that align with SASB and TCFD criteria
- As You Sow made SASB-aligned disclosures a priority this proxy season, submitting at least seven proposals that endorsed the SASB standards
 - As You Sow withdrew three such proposals, in two instances (at Ulta Beauty and Advance Auto Parts) following the companies' commitment to provide SASB-aligned disclosure
 - Although As You Sow's proposal at Sanderson Farms received only 11% support, the company subsequently committed to providing complete SASB-aligned disclosures following engagement with BlackRock on the topic

Environmental Proposals

- Both the prevalence and pass rate of environmental proposals this year are more consistent with the trends in 2017 and 2018—when shareholders proposed that companies voluntarily adopt Paris Agreement reporting after the U.S.’s withdrawal from the Agreement—than in 2019
 - This year, there was a meaningful increase in the number of environmental proposals submitted (82 compared to 69 in 2019)
 - A larger percentage of environmental proposals went to a vote (29.3% compared to 26.1% in 2019), and four passed this year (none passed in 2019)
- Average shareholder support increased from 24% in 2019 to 30%, largely due to decrease in anti-ESP proposals
 - Excluding the two anti-ESP environmental proposals that reached a vote, the 2020 average shareholder support was only slightly higher than in 2019 (around 34.5% compared to 31.5% in 2019)
- ISS supported 63% of environmental proposals (64% in 2019)
 - ISS recommended against the anti-ESP proposals from Burn More Coal at Exxon Mobil and Xcel Energy (which received 4.1% and 3.3% of votes cast, respectively), as well as 7 others (mostly reporting on specific issues)
 - Excluding the anti-ESP proposals, proposals without ISS support received only 14.3% of votes cast on average compared to 40.8% of votes cast with ISS support

Political Proposals

- Political proposals continued to represent a large portion (22.1%) of ESP proposals, although submissions declined sharply from 2019
- A significantly larger percentage went to a vote (80.6% compared to 63.6% in 2019), and five political proposals passed (compared to four in 2019; prior to 2019, none had passed since 2016)
- All but two of the proposals submitted in this category were requests for companies to disclose their political spending (expenses and/or policies), including contributions to candidates, trade organizations and political non-profits, lobbying expenditures and related policies
 - The two other proposals (at Coca Cola and PayPal, both withdrawn) were proposals to report on, or rebuke the board for failing to ensure, alignment between company values and political expenditures
 - The 2019 proposal at Intel to allow annual advisory votes on political contributions (which received only 6% of votes cast) was not submitted at any S&P Composite 1500 companies this year
- Average shareholder support remained relatively high (36% compared to 34% in 2019), with ISS supporting almost all these proposals (94% compared to 95% in 2019)

Human Capital Proposals

- Shareholders began to submit a meaningful number of proposals related to management of human capital for the first time in 2018
 - In contrast to 2018, when only 22% of these proposals went to a vote, approximately half of human capital management proposals went to a vote in 2019 and 2020
 - Overall average shareholder support for these proposals remained relatively low at 24% (compared to 25% in 2019), but five passed (compared to only two in 2019)
- In the wake of the COVID-19 pandemic and the #BlackLivesMatter movement, these proposals may become more prevalent, and shareholder support may well increase
- More companies are likely to adopt or expand public disclosure on human capital management in response to growing pressure from investors and regulators
 - SEC adopted amendments to Regulation S-K in August that would require disclosure of material “human capital measures or objectives that the registrant focuses on in managing” its business, which could include information on developing, recruiting, and retaining employees

Workplace Diversity

WORKPLACE DIVERSITY							
Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
2020 YTD	2019	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019
31	12	11	8	34%	37%	3	2

- Workplace diversity proposals increased substantially compared to 2019
 - Once again, these proposals were predominantly sponsored by Trillium Asset Management
 - Only 35.5% went to a vote (likely due to engagement) representing a significant decrease from 2019, when two-thirds reached a vote
- The vast majority of workplace diversity proposals requested companies to implement or refine diversity reports and/or policies at the general workplace level
 - Two proposals were directed at management-level diversity
 - A new subcategory this year was a request to amend existing anti-discrimination policies to prohibit discrimination based on sexual orientation and gender identity—six of these proposals were submitted in H1 2020
- Voted on proposals continued to receive significant shareholder support (34% compared to 37% in 2019)
 - Excluding the three voted anti-ESP proposals (which received average shareholder support of 1.3%), average shareholder support was 45.7%, up from 36.6% in 2019
 - Three proposals passed (compared to two in 2019 and none in 2018)

Gender/Racial Pay Gap

GENDER / RACIAL PAY GAP							
Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
2020 YTD	2019	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019
13	34	12	18	13%	22%	0	0

- Pay gap disclosure proposals dropped significantly (13) compared to 2019 (34), when pay gap (in particular gender pay gap) was the most prevalent human capital management proposal topic
 - As in 2019, targets were mainly financial services and technology companies
 - Arjuna Capital and Proxy Impact submitted all pay gap proposals this year; NYC Comptroller submitted none in 2020 (compared to 10 in 2019)
- Average shareholder support declined sharply, and once again none passed
 - Three of Arjuna Capital's proposals received support above 30% in 2019, but only one received a similar level of support this year (38.1% at Pfizer); support for repeat proposals at Adobe, Amazon, Facebook and JPMorgan Chase fell by an average of 13.7%
- In 2019, Citigroup became the first U.S. company to disclose unadjusted global median gender pay gap; this year, Starbucks and Mastercard joined Citigroup in reporting unadjusted gender pay gap

Arbitration of Employee Claims

ARBITRATION OF EMPLOYEE CLAIMS							
Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
2020 YTD	2019	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019
10	7	2	1	34%	13%	1	0

- In the wake of #MeToo, shareholder proponents and other stakeholders have expressed concerns with the potentially coercive nature of mandatory arbitration clauses in employee agreements
- In 2019, seven proposals were submitted by CtW Investment Group and NYC Comptroller that require companies to adopt policies against mandatory arbitration as a condition of employment; two were excluded and four were withdrawn
- This year, several proponents, including CtW Investment Group and NYC Comptroller, submitted 10 proposals requesting reporting on this topic
 - Five were excluded through the no-action process on the basis of ordinary business, and two were withdrawn
 - Of the two that came to a vote, the proposal at Chipotle passed with 51% of votes cast, but the proposal at Alphabet received 16.1% support (compared to 13% in 2019)
- In light of the EEOC's December 2019 rescission of its 1997 Policy Statement against Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment, companies should expect shareholder proponents interested in this issue to continue to submit proposals on the topic, but also should evaluate whether they may be able to obtain no-action relief with respect to such proposals, as several companies have done this season

Social Capital Proposals

- Social capital management (*e.g.*, human rights, health and safety, corporate purpose) has become an ESP focus over the last year, in particular following the release of the Business Round Table's August 2019 "Statement on the Purpose of a Corporation"
- Proposals relating to the human rights impact of supply chain composition or operations in certain communities (*e.g.*, Indigenous People's rights), as well as those relating to the health and safety ramifications of certain products and corporate practices, increased in 2020
- In addition, Citigroup, Bank of America, Goldman Sachs, BlackRock and JPMorgan (signatories to the Business Round Table Statement) received proposals from Harrington Investments or James McRitchie to review the Statement and/or report on recommended changes to governance documents in light of the Statement
 - These proposals received low support (between 3.9% and 9.3% of votes cast)
 - However, many U.S. companies have proactively reviewed their corporate governance guidelines, committee charters and/or other governance documents or policies in light of the growing focus on stakeholder interests
- In light of COVID-19, companies may face growing pressure to review their policies and practices with respect to customers and other stakeholders, as well as to provide greater transparency on ways in which their social capital management risks can impact financial and operational performance

ESP-Related Governance/Compensation Proposals

- Some of the hottest topics in both compensation and governance were also linked to ESP
- Board composition (*i.e.*, board diversity / disclosure of director qualifications / employee board representation) was the third most prevalent topic among governance proposals:

BOARD COMPOSITION							
Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
2020 YTD	2019	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019
44	41	17	9	9%	8%	1	0

- In addition to board diversity (see next slide) and director qualification proposals, which continued to make up the majority of board composition proposals, this year there were 10 proposals demanding employee representation on boards, which had not been submitted in previous years
 - In most cases, these proposals requested a board seat for an employee, but some also requested observer or non-voting representative positions
 - Of the 10 proposals submitted, eight came to a vote, averaging only 4% shareholder support
 - However, the increased focus on employee-related issues due to COVID-19 could lead to greater traction in coming years
- The most prevalent topic in compensation proposals was to link executive compensation to social issues, such as sustainability or social or environmental impact

Board Diversity

- Whereas proponents have focused on gender representation in past years, this year saw an intensified focus on racial/ethnic diversity
 - Of the 30 board diversity proposals in H1 2020 (down from 34 in 2019), 16 were from NYC Comptroller as part of his “Boardroom Accountability Project 3.0” initiative and covered both gender and racial diversity board/CEO recruitment policies—three of these proposals went to a vote (including the passing proposal at Expeditior International)
- Lawmakers and regulators are also increasing their focus on racial/ethnic representation
- ISS and Glass Lewis now both recommend against nominating committee chair of boards with no female members; State Street will vote against the nominating committee if the board has no female directors and the company has not engaged in successful dialogue on State Street’s board gender diversity program for four consecutive years; BlackRock encourages companies to have at least two women on their board

More Governance Proposals Went to a Vote

- Structural governance proposals resumed center stage
 - Written consent proposals were the most prevalent governance-related submissions (20.4% of all governance-related submissions; 61% increase year-over-year)
 - Proposals on special meeting rights also increased (by nearly one-third year-over-year)
 - A new proposal (submitted by John Chevedden at 17 companies) requested shareholder approval of bylaw amendments made unilaterally by a board of directors
- Decreased emphasis on independent chair proposals
 - Proposals requiring the chair be an independent director decreased by 30%
 - However, average shareholder and ISS support both increased meaningfully (from 29% to 34%, and from 39% to 56%, respectively), and two such proposals narrowly passed this year (whereas none have since 2015)

	GOVERNANCE PROPOSALS							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019
Act by Written Consent	61	38	56	33	35%	39%	2	6
Independent Chair	47	67	41	58	34%	29%	2	0
Board Composition	44	41	17	9	9%	8%	1	0
Special Meeting	40	30	37	25	42%	44%	5	5
Eliminate Supermajority Thresholds	18	39	10	21	79%	69%	9	18
Shareholder Approval of Bylaw Amendments	17	0	16	0	4%	-	0	-
Proxy Access	17	34	13	27	29%	33%	0	3
Declassify Board	12	7	5	4	78%	76%	5	4
Majority Voting in Uncontested Elections	10	13	4	7	22%	58%	0	4
Dual Class Voting	7	7	6	6	28%	27%	0	0

Written Consent Proposals

RIGHT TO ACT BY WRITTEN CONSENT							
Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
2020 YTD	2019	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019
61	38	56	33	35%	39%	2	6

- Proponents submitted a record number of written consent proposals this year, perhaps spurred by the meaningful portion of passing proposals in 2019 (18.2% of voted proposals passed)
- ISS supported 77% (compared to 88% in 2019) of the proposals that went to a vote, and average shareholder support continued to drop; only two proposals passed (at Stanley Black & Decker with 51% of votes cast and OGE Energy with 79.8% of votes cast)
- The relatively low success rate of written consent proposals since 2018 seems to reflect continuing agreement by a majority of shareholders that special meeting rights adequately address this concern and render written consent rights unnecessary; only 31% of S&P 500 companies currently allow for shareholders to act by written consent

Shareholder Right to Call Special Meetings

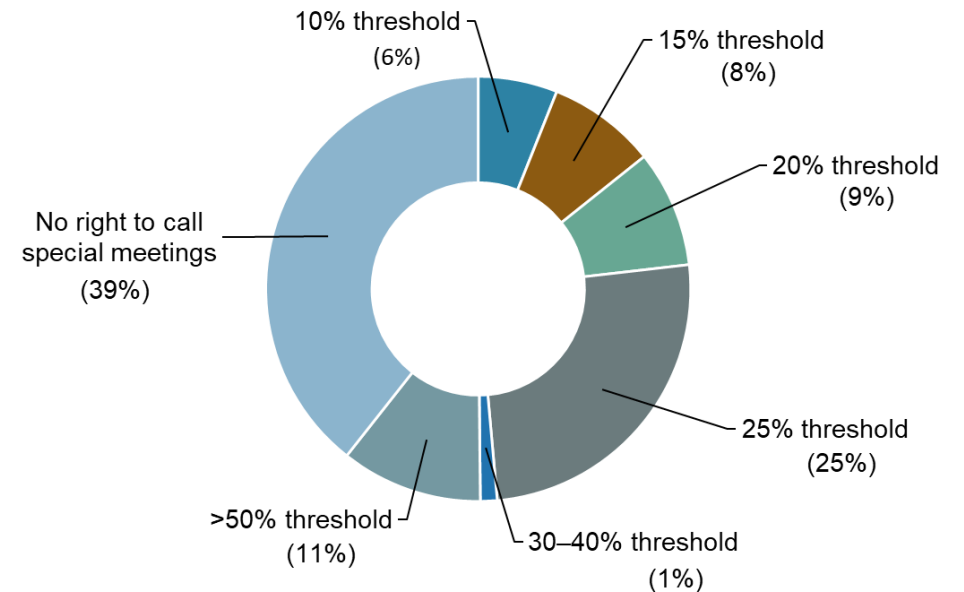
- Proxy advisory firms and shareholders support the right of shareholders to call a special meeting
- Enables shareholders to act on matters that arise between annual meetings

	RIGHT TO CALL SPECIAL MEETINGS							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019
Adopt new right	3	2	3	2	62%	50%	2	1
Lower % on existing rights	37	28	32	22	40%	44%	3	4

Special Meetings – Ownership Threshold

- Proposals to reduce the ownership threshold to call a special meeting are significantly more common than proposals to add a special meeting right
 - Over 2/3 of S&C 500 companies provide shareholders with some right to call a special meeting
- 25% threshold has historically been the most common
- BlackRock recommends a threshold between 15-25%

Thresholds to Call Special Meetings at Delaware S&P 500 Companies*



* Percentage of S&P 500 companies with relevant threshold shown in parentheses.

Other Structural Governance Proposals

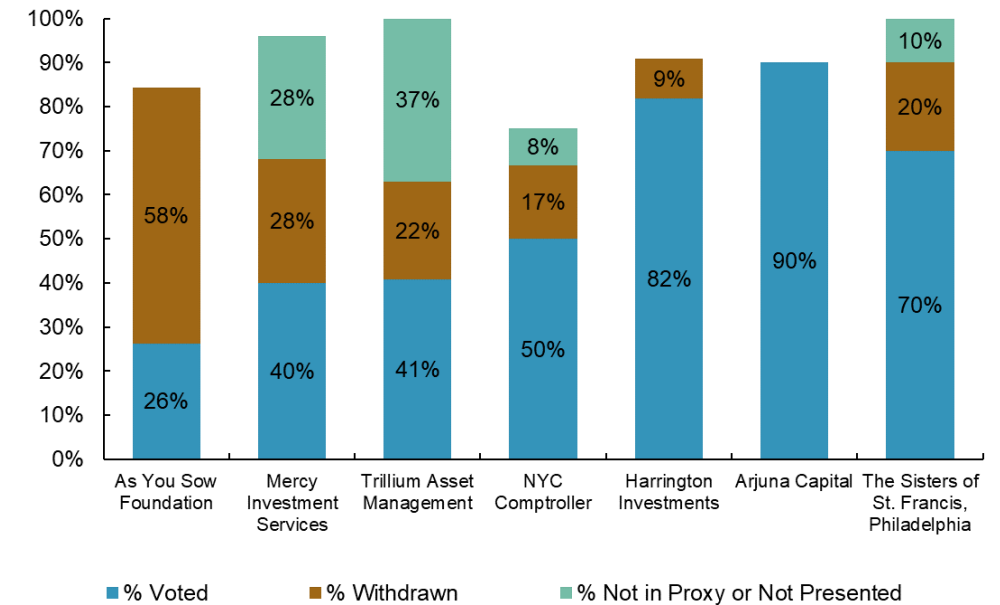
	OTHER STRUCTURAL GOVERNANCE PROPOSALS							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019	2020 YTD	2019
Eliminate Supermajority Thresholds	18	39	10	21	79%	69%	9	18
Proxy Access	17	34	13	27	29%	33%	0	3
Declassify Board	12	7	5	4	78%	76%	5	4
Majority Voting in Uncontested Elections	10	13	4	7	22%	58%	0	4

- Most large-cap companies have already adopted destaggered boards, majority election of directors, special meeting rights, simple majority vote thresholds and, more recently, proxy access
 - The large-cap companies that have not are often unappealing targets because of structural hurdles, such as dual class voting or large insider holdings, that limit the efficacy of shareholder proposals
 - Many small- and mid-cap companies also have adopted these structural measures at this point, often as part of a broader response to shareholder pressure relating to say-on-pay or stock-price performance
- This year, although declassify the board proposals increased, proposals on elimination of supermajority voting thresholds, proxy access and majority voting in uncontested director elections continued a steep downward trend

Major Proponents of ESP Proposals and Withdrawal Rates

	Filer(s)	Total	% of Proposals	ESP	Governance	Compensation
1	John Chevedden	132	21%	5	127	0
2	As You Sow Foundation	57	9%	51	4	2
3	NYC Comptroller/NYS Common Retirement Fund	50	8%	23	23	4
4	Kenneth Steiner	45	7%	0	45	0
5	James McRitchie/Myra Young	37	6%	9	28	0
6	Mercy Investment Services	34	5%	25	2	7
7	Trillium Asset Management	33	5%	24	4	5
8	Sisters of St. Francis	13	2%	10	2	1
9	National Center for Public Policy Research	12	2%	8	4	0
10	Arjuna Capital	11	2%	10	1	0
	Harrington Investments	11	2%	11	0	0

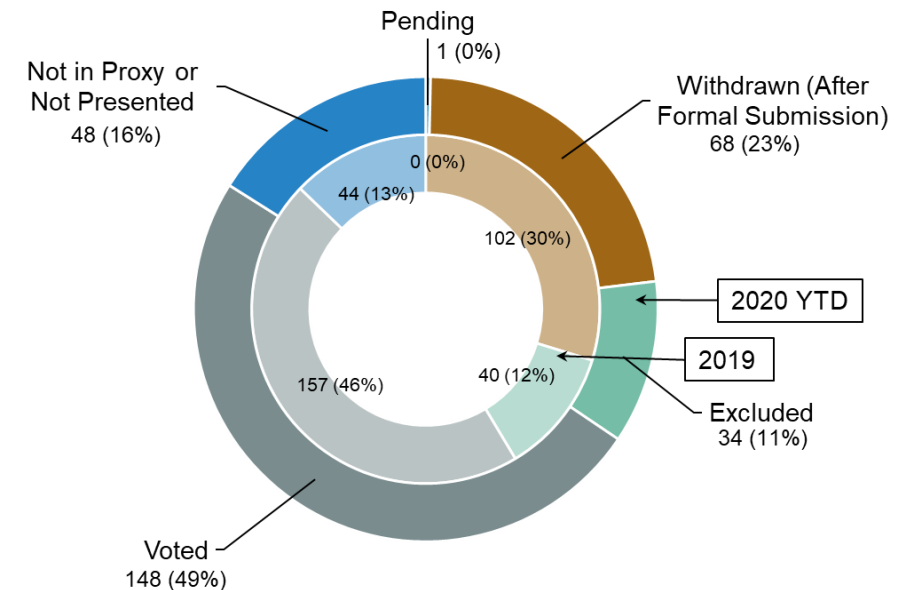
**2020 YTD Withdrawal Rates for ESP Proposals
(By Top ESP Proponents)**



Companies Continue Robust Engagement on ESP

- Continued trend of high withdrawal rates, though percent of proposals voted continued to increase (from 46% to 49%)
 - Notwithstanding the 50% overall voted rate for ESP proposals, almost all the proposals brought by Arjuna (primarily related to gender pay gap reporting), Harrington Investments and the Sisters of St. Francis went to a vote
- Successful results from engagement vary much more widely than with governance proposals
 - Engagement to continue
 - Board to study proposal
 - Board to generate report addressing elements of proposal – may or may not be public
 - Company to increase disclosure on subject addressed by proposal
 - Board to enact proposal or certain elements of proposal

ESP Proposals Submitted
2020 YTD vs. 2019



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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 91% and less than 2% of companies failing
 - Continued turnover in failed votes, with 56% of companies that failed last year achieving over 70% support this year and only five companies failing in both 2019 and 2020
 - ISS negative recommendations highlight the continued 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 severance or change-in-control arrangements deemed not in the shareholders' interests and the use of time-based awards rather than performance-based awards
- Broad shareholder support for equity compensation plans, with only three Russell 3000 companies failing to obtain shareholder approval for an equity compensation plan, and overall support levels continuing to average around 93%

Drivers of 2020 Say-on-Pay Results

	RUSSELL 3000		S&P 500	
	2020 YTD	2019	2020 YTD	2019
Percentage passed (majority support)	98%	97%	98%	99%
Percentage with >70% support	93%	91%	94%	93%
Percentage with ISS “Against” recommendations	11%	13%	11%	11%
Average support with ISS “For” recommendations	94%	95%	92%	93%
Average support with ISS “Against” recommendations	66%	65%	70%	65%

- Overall, U.S. companies had similar say-on-pay results in 2020 to 2019
- Of the 55 Russell 3000 companies that failed their say-on-pay votes in 2019 and have had their 2020 votes, 37 received majority support in 2020, with 31 getting >70% support
- Results reflect companies’ continued efforts to engage with shareholders and proxy advisors, as well as clearer compensation disclosure
- Past success no guarantee of continued success
 - Of the 44 companies in the Russell 3000 that failed say-on-pay votes in H1 2020, five had failed their 2019 vote and 13 had 2019 support levels below 70%
 - None of the eight S&P 500 companies that failed say-on-pay in H1 2020 failed their vote in 2019, although five had support levels below 70%

ISS Say-on-Pay Analysis

- ISS recommendations continue to be driven by pay-for-performance analysis, which is focused on stock price – most important factor is alignment of CEO pay to Total Shareholder Return

S&P 500 Companies with Negative ISS Recommendations	2020	2019
Total with negative recommendations	48	46
Number that had “high concern” on:		
■ Pay-for-Performance	35	41
■ Compensation Committee Communication and Responsiveness	6	8
■ Severance/Change-in-Control Arrangements	11	6
■ Peer Group Benchmarking	1	0
■ Non-Performance-Based Pay Elements	7	3

ISS Pay-for-Performance Analysis

- Relative alignment of CEO pay and total shareholder return over three years
- Relative 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

S&P 500 Companies with Concern Level	2020			2019		
	High	Medium	Low	High	Medium	Low
Overall pay-for-performance concern level (quantitative + qualitative)	17	1	11	26	1	3
Overall concern level on quantitative screen only	18	15	15	27	11	8
<i>Number that had “high concern” on each quantitative test:</i>						
• RDA – Relative Alignment of CEO Pay and TSR (3-year)	17	5	26	20	6	20
• MOM – Relative CEO Pay to Peer Group Median (1-year)	6	9	33	8	5	33
• PTA – Absolute Alignment of CEO Pay and TSR (5-year)	2	7	39	2	5	39

COVID-19

- In light of COVID-19, some companies have announced changes to their compensation programs (*e.g.*, revise performance metrics used in short-term and, potentially, long-term compensation plans and some executive officers and board members voluntarily reducing their compensation)
- ISS has acknowledged that the COVID-19 pandemic has created a fluid situation for all companies:
 - ISS has noted that decisions by directors to make such adjustments to 2020 compensation programs will generally be analyzed and addressed by shareholders at next year's annual general meetings and has encouraged boards to provide contemporaneous disclosure to shareholders of the adjustment rationales
 - In terms of long-term compensation plans, ISS's benchmark voting policies generally do not support changes to performance metrics during ongoing performance periods, and ISS has stated that it will look at any changes on a case-by-case basis to determine if directors exercised appropriate discretion and provided adequate explanation to their shareholders
 - Peer group benchmarking also may provide unique challenges in the coming year due to the effects of the pandemic

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Rule 14a-8 No-Action Requests

No-Action Process

- The most significant developments with respect to the no-action process for the 2020 proxy season related to the SEC staff process
 - On September 6, 2019, the SEC announced that it would change its process for responding to Rule 14a-8 no-action requests to “most efficiently and effectively provide guidance where appropriate”
 - Starting with the 2020 proxy season, instead of responding in writing in all cases to inform the proponent and the company of the staff’s position, the SEC stated that it intended to issue a written response only when doing so would “provide value, such as giving guidance on compliance with Rule 14a-8”

	SUMMARY OF NO-ACTION RELIEF RESPONSES		
	# of Responses	Oral	Written
Total	200	158	42
Granted	142	111	31
Denied	57	47	10
Declined	1	0	1

Average <u>oral</u> response time:	46 days
Average <u>written</u> response time:	46 days
Average <u>deny relief</u> response time:	47 days
Average <u>grant relief</u> response time:	46 days

- The decision to grant or deny relief did not seem to significantly impact the response format
 - The SEC responded orally in 78% of all cases where it granted relief, and in 82% of all cases where it denied relief; the nature of the proposal also did not seem to significantly impact the response format
 - Instead, the SEC may be more likely to provide an oral response where proponents have submitted a meaningful number of identical (or very similar) proposals to multiple issuers; data from the 2020 proxy season suggests that the SEC may be inclined to issue one written response in those cases explaining the rationale for its decision, and then respond to the other requests orally



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The background is a solid red color with a complex, wavy pattern of thin, concentric lines that create a sense of depth and movement, resembling a topographical map or a stylized wood grain.

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