SULLIVAN & CROMWELL LLP

2023 Proxy Season Review: Part 1

Rule 14a-8 Shareholder Proposals

August 11, 2023

As SEC restrictions on shareholder proposals loosen, voted shareholder proposals reach another all-time high and continue sharp shift away from governance and toward social and political issues; average support and pass rates drop to record lows

- 26% more companies had at least one voted environmental, social or political proposal
- 26% fewer SEC no-action requests, reflecting SEC position on these requests
- 65% increase in proposals by "anti-ESG" proponents (256% compared to 2021) despite continued low support

Social/political proposals—the largest category since 2021—increase by 5%, and 9% more go to a vote; average support declines (18% vs. 26% in H1 2022) and only 5 pass (vs. 21 in H1 2022)

- 44% of submissions focus on social capital management issues, including civil rights and racial equity impact, and 25% focus on human capital management
- 500% increase in reproductive right proposals following *Dobbs* decision

Environmental proposals increase by 8%, and 57% more go to a vote; average support declines meaningfully (21% vs. 35% in H1 2022) and only 2 pass (vs. 14 in H1 2022)

- 75% of submissions focus on specific climate-related issues, including setting Scope 3 or science-based greenhouse gas emission reduction targets and adopting climate transition plans (which tripled compared to H1 2022)

Governance proposals decline by 13%; average support drops to 29% (vs. 35% in H1 2022) and pass rate declines by 39%

- 40% decrease in structural governance proposals (which continue to receive high average support); 52% increase in board composition (predominately independent chair) proposals

Compensation proposals increase by 60% driven by surge of severance proposals; average support drops (22% vs. 30% in H1 2022) but 4 pass (vs. 3 in H1 2022)

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INTRODUCTION

Our annual proxy season review memo summarizes significant developments relating to the 2023 U.S. annual meeting proxy season. Our review comprises two parts. This is Part 1, which covers Rule 14a-8 shareholder proposals. We expect to issue Part 2, which will cover compensation-related matters and other proxy season "hot topics" (e.g., officer exculpation and advance notice bylaw updates), in the coming weeks. We will also host our annual webinar in September to discuss 2023 proxy season developments.

The Rule 14a-8 shareholder proposals we discuss are those submitted to and/or voted on at annual meetings of the U.S. members of the S&P Composite 1500, which covers approximately 90% of U.S. market capitalization, at meetings held on or before June 30, 2023. We estimate that around 90% of U.S. public companies held their 2023 annual meetings by that date.

The data on submitted, withdrawn and voted-on shareholder proposals derives, in part, from ISS's voting analytics with respect to 821 known shareholder proposals submitted this year to U.S. members of the S&P Composite 1500. We have supplemented the ISS data with information published by proponents and companies, and based on our independent research, experience and knowledge. The number of proposals submitted includes proposals that were excluded from a company's proxy statement as a result of the SEC no-action process or withdrawn after being included in a company's proxy statement (usually following engagement with the company). The data on submitted proposals understates the number of proposals actually submitted, as it does not include proposals that were submitted and then withdrawn unless either the proponent or the company disclosed the proposal (e.g., referenced in the company's proxy statement, reported to ISS or posted on website or social media).

For a discussion of U.S. proxy contests and other shareholder activist campaigns, see our publication, dated December 13, 2022, entitled "2022 U.S. Shareholder Activism and Activist Settlement Agreements."

More generally, for a comprehensive discussion of U.S. public company governance, disclosure and compensation, see the *Public Company Deskbook: Complying with Federal Governance and Disclosure Requirements* (Practising Law Institute) by our colleagues Marc Trevino and Benjamin Weiner, available at 1-800-260-4754 (1-212-824-5700 from outside the United States) or http://www.pli.edu.

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PART 1. RULE 14A-8 SHAREHOLDER PROPOSALS

A. OVERVIEW OF SHAREHOLDER PROPOSALS

The number of Rule 14a-8 proposals submitted to S&P Composite 1500 companies reached over 800 for the first time in the core proxy season. Compared, however, to the more substantial year-over-year increases in 2022 (9%) and 2021 (12%), the year-over-year[1] increase in the total number of submissions was more modest in H1 2023 (3%). Voted shareholder proposals increased by 13% (543 vs. 481 H1 2022), reflecting recent changes in the SEC's stance on no-action relief (further discussed in Section H) and a decrease in settlement rate.[2]

Consistent with 2022, proposals on environmental and social/political ("ESP") topics remained the focus of the proxy season, representing 65% of total submissions (vs. 63% in H1 2022). Notably, the number of voted environmental proposals increased by 57% year over year, and 26% more individual companies—including several companies that did not receive any ESP proposals during the past five years—had at least one ESP proposal reach a vote. The polarization in the dialog on these topics, which is intensifying on the broader national stage, also is reflected in Rule 14a-8 proposals this year. In H1 2023, so-called "anti-ESG" proponents submitted 89 proposals, up 65% from H1 2022 and 256% from 2021.[3]

The increase in proposals has been accompanied by record low shareholder support and pass rates.[4] In particular, after enjoying a steady decade-long rise before dropping for the first time last year, average support for ESP proposals further decreased (to 19% vs. 28% in H1 2022 after a record high of 32% in H1 2021). Only 5% of overall and 2% of ESP proposals that went to a vote passed (vs. 12% and 14% in H1 2022). Nonetheless, frequent ESP proponents, such as As You Sow, have indicated that they will not be influenced by the low shareholder support this year and intend to resubmit proposals at companies where votes exceeded the resubmission threshold under Rule 14a-8.[5]

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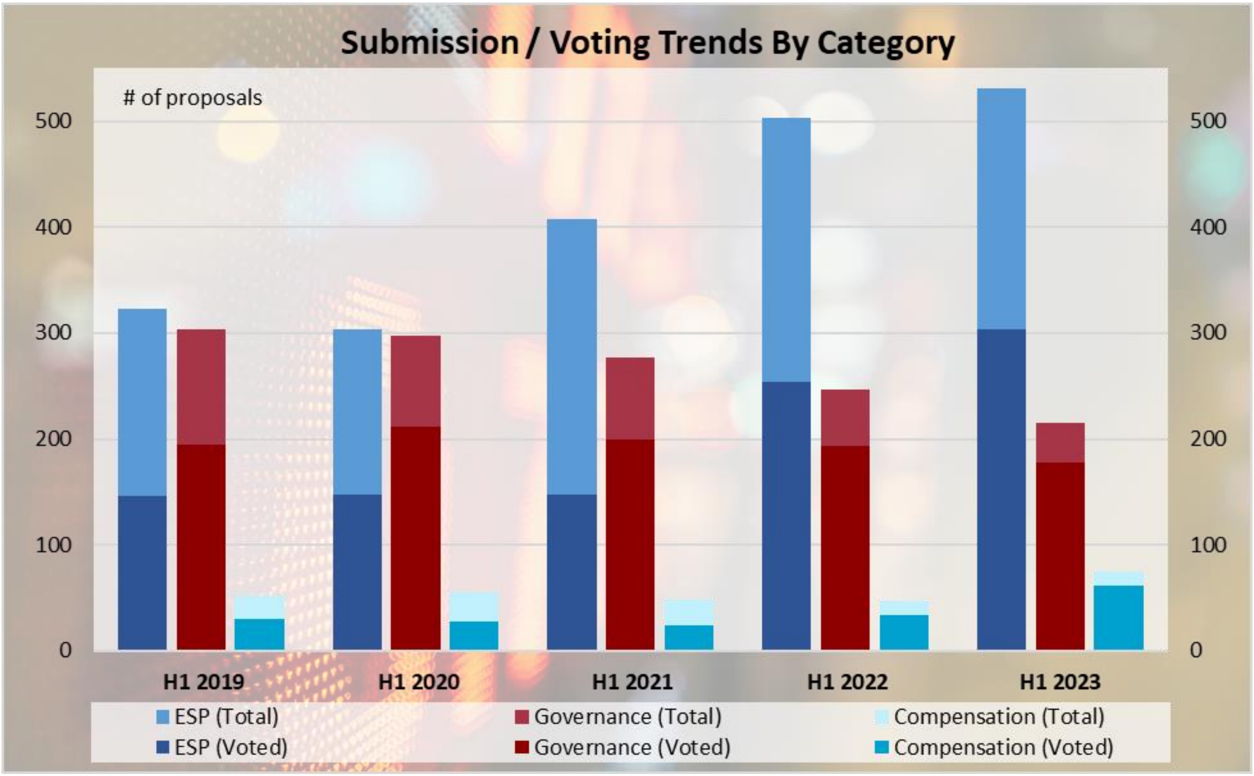
1 Unless otherwise noted, in the tables throughout this publication, we present H1 2023 and full year 2022 data for completeness. However, in the discussion, we generally assess year-over-year changes by comparing H1 2023 and H1 2022 data for consistency.

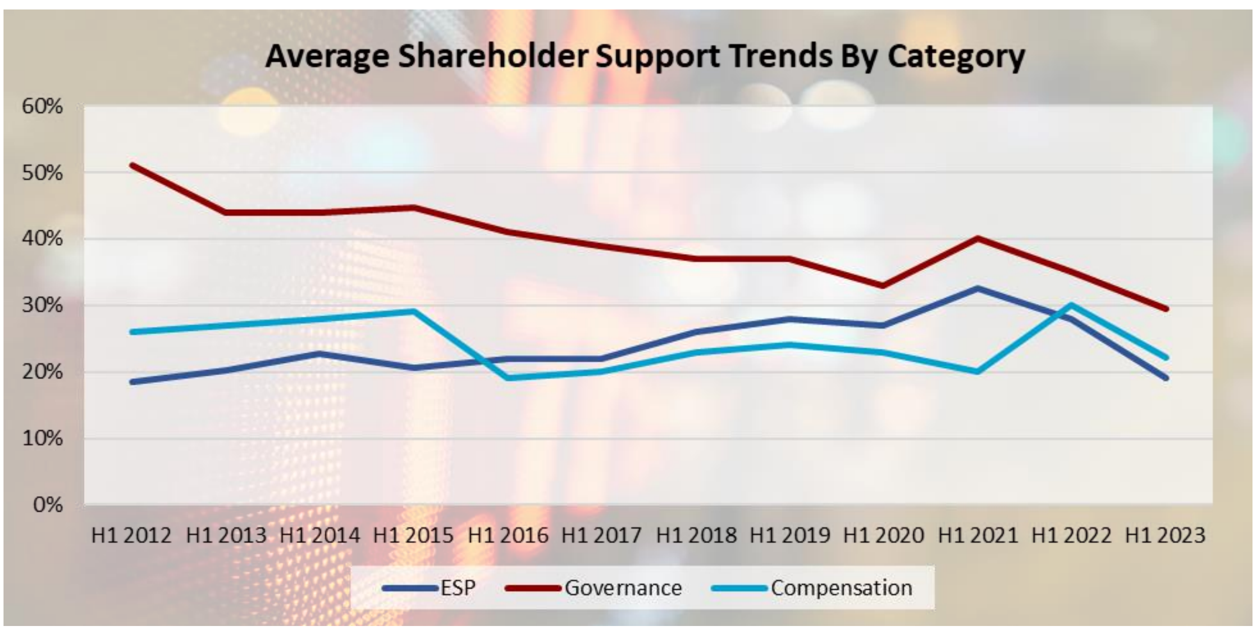
2 In this publication, we generally refer to proposals withdrawn by the proponent (typically after settlement) and proposals which are not presented by the proponent at the shareholder meeting as "withdrawn" proposals.

3 In this publication, we refer to an entity or individual as an "anti-ESG" proponent if the official website of the proponent states that the entity or individual is boycotting, criticizing or otherwise asking companies to reconsider what the proponent describes as an "ESG" or "woke/liberal" agenda.

4 In this publication, we refer to a proposal as "passing" if it received a majority of votes cast, regardless of whether this is the threshold for shareholder action under state law or the company's organizational documents.

5 Rule 14a-8(i)(12) currently allows a company to exclude a proposal that addresses "substantially the same subject matter" as a proposal voted on in the previous three years if the most recent vote was less than 5% of votes cast (or 15% if previously voted twice, or 25% if previously voted three or more times). *See* Section H for more information on proposed amendments to Rule 14a-8(i)(12).


Submission / Voting Trends By Category
# of proposals
500
400
300
200
100
0
H1 2019
H1 2020
H1 2021
H1 2022
H1 2023
ESP (Total)
ESP (Voted)
Governance (Total)
Governance (Voted)
Compensation (Total)
Compensation (Voted)


Average Shareholder Support Trends By Category
60%
50%
40%
30%
20%
10%
0%
H1 2012 H1 2013 H1 2014 H1 2015 H1 2016 H1 2017 H1 2018 H1 2019 H1 2020 H1 2021 H1 2022 H1 2023
ESP
Governance
Compensation

The following table summarizes the Rule 14a-8 shareholder proposals submitted in H1 2023 and full-year 2022, the number voted on, average support rate and the rate at which proposals passed:

	Submitted		Voted On		Average Support		Passed	
Type of Proposal	***H1 2023***	***2022***	***H1 2023***	***2022***	***H1 2023***	***2022***	***H1 2023***	***2022***
Social/Political[6]	***360***	374	***213***	215	***18%***[7]	25%	***5***	21
Social Capital Management	***158***	158	***108***	117	***13%***	20%	***0***	10
Human Capital Management	***89***	109	***41***	41	***28%***	32%	***5***	7
Political Spending/Lobbying	***89***	103	***52***	54	***24%***	31%	***0***	4
Reproductive Rights	***24***	4	***12***	3	***11%***	25%	***0***	0
Governance[8]	***215***	263	***178***	207	***29%***[9]	35%	***14***	25
Structural Governance	***97***	170	***76***	145	***32%***	38%	***13***	24
Board Composition	***91***	66	***84***	52	***30%***	26%	***0***	0
Misc. Governance	***27***	27	***18***	10	***15%***	29%	***1***	1
Environmental[10]	***171***	173	***91***	64	***21%***[11]	37%	***2***	15
Climate-Specific	***128***	109	***71***	42	***23%***	37%	***2***	10
Sustainability-Specific	***26***	34	***10***	15	***20%***	45%	***0***	4
Other	***17***	30	***10***	7	***7%***	22%	***0***	1
Compensation	***75***	52	***61***	39	***22%***	30%	***4***	3
Total	***821***	862	***543***	525	***23%***	31%	***25***	64

6 Social capital management ("SCM") proposals relate to corporate impact on stakeholders other than employees and shareholders, and in H1 2023 included 75 proposals on civil rights, human rights and racial justice as well as proposals relating to animal welfare and access to medical products. Human capital management ("HCM") proposals relate to workforce issues, and in H1 2023 included 54 proposals on workforce diversity, equity and inclusion ("DEI") and 35 proposals on non-DEI topics such as collective bargaining and freedom of association, paid sick leave policy, and workplace health and safety audits. Even though almost all the reproductive rights proposals could have been included as SCM and/or HCM proposals, we tracked them as a separate category in H1 2023.

7 Social/political proposals submitted by so-called "anti-ESG" proponents received an average of 3% of votes cast (vs. 8% in H1 2022). Not counting these proposals, shareholder support for social/political proposals averaged 22% of votes cast (vs. 29% in H1 2022).

8 Structural governance proposals relate to companies' defensive profile as outlined in corporate governance documents, and in H1 2023 included 40 special meeting proposals (down from 108 in 2022) and 21 "fair election" proposals that demanded shareholder approval of advance notice bylaw amendments. Board composition proposals in H1 2023 included 84 independent chair proposals. Miscellaneous governance proposals in H1 2023 included proposals requesting a tax transparency report, independent review of the audit committee and company-specific proposals.

9 Governance proposals submitted by "anti-ESG" proponents received an average of 15% of votes cast (vs. 18% in H1 2022). Not counting these proposals, shareholder support for governance proposals averaged 30% of votes cast (vs. 36% in H1 2022).

10 Climate-specific proposals in H1 2023 included 42 related to emissions targets/goals, 31 related to climate transition plans, 17 related to financing activities and 16 related to climate-related political congruency. Sustainability-specific proposals in H1 2023 covered a range of topics from plastic use to deforestation. Other environmental proposals in H1 2023 included seven board oversight proposals, two environmental justice proposals, two general reporting proposals and company-specific proposals (see Section F).

11 Environmental proposals submitted by "anti-ESG" proponents received an average 2% of votes cast (same as H1 2022). Not counting these proposals, shareholder support for environmental proposals averaged 23% of votes cast (vs. 35% in H1 2022).

B. WHO MAKES SHAREHOLDER PROPOSALS

Proposals from a handful of proponents once again accounted for the majority of H1 2023 submissions (see table below). Historically, proposals by frequent proponents have been weighted toward governance. Consistent with the increased representation of social/political proposals over the past three years, this year for the first time social/political proposals submitted by the top 10 proponents outnumbered governance proposals. Some companies received criticism for not including the names of proponents in proxy statements and making it more difficult for other investors to engage with the proponent or understand the proponent's main policy objectives. The Council of Institutional Investors, for example, approved a policy this proxy season urging companies to include this disclosure and has discussed the potential for a rulemaking change with the SEC (current SEC rules only require companies to provide the proponent's name to shareholders upon request).

	Primary or Secondary Filers	*Total*	*Social/Political*	*Governance*	*Environmental*	*Compensation*
1	**John Chevedden**	***146***	13	94	7	32
2	**As You Sow**	***89***	41	0	44	4
3	**Kenneth Steiner**	***54***	0	39	0	15
4	**James McRitchie/ Myra Young**	***49***	21	27	0	1
5	**National Center for Public Policy Research**	***44***	34	5	5	0
6	**Mercy Investment Services**	***34***	16	0	16	2
7	**NYC/NYS Retirement Fund**	***31***	20	4	3	4
8	**Green Century Capital**	***27***	3	0	24	0
9	**National Legal and Policy Center**	***26***	18	8	0	0
10	**CommonSpirit Health**	***19***	16	0	3	0
	Missionary Oblates of Mary Immaculate	***19***	14	1	4	0

"Anti-ESG" Proponents. The main change in proponent profiles this year was an increase in proposals from "anti-ESG" proponents. For the first time, an "anti-ESG" proponent is represented in the top five proponents and proposals from these proponents accounted for over 10% of overall submissions.

The National Center for Public Policy Research ("NCPPR"), which has been a frequent proponent for many years, and the National Legal and Policy Center ("NLPC"), which became a frequent proponent in 2022, continued to lead in submissions among this group. A significant number of new proponents also were represented in the broader proponent population, including groups like Consumer's Research and investment entities such as the American Conservative Values ETF. Consistent with 2022, "anti-ESG" proponents remained focused on social/political proposals (73% of their submissions). Most of the remaining proposals were independent chair governance proposals submitted in order to check the decision-making of a purported "rogue CEO" who is motivated by "flawed, personal human opinions."[12]

Proposals from "anti-ESG" proponents in H1 2023 also diverged in terms of approach. In some cases, these proponents followed the approach we observed in 2022, submitting proposals—such as civil rights audit proposals—that were facially similar to "pro-ESG" proposals. In other cases, however, the proponents highlighted their viewpoints in their resolutions and supporting statements, demanding disclosure on the costs and risks of ESG initiatives (such as support for reproductive health access, decarbonization goals or participation in "globalist organizations" such as the World Economic Forum or Business Roundtable), as well as the rescission of recently adopted ESG measures (such as racial equity audits or Scope 3 reduction targets). Many of these proposals use similar language and focus on similar themes (i.e., materiality, antitrust and the threat to national security posed by limiting the energy industry's access to capital) as the House Financial Services Committee's Republican ESG Working Group, which was formed in February 2023 "to combat the threat posed to our free markets by far-left environmental, social, and governance proposals."[13]

Settlements between companies and "anti-ESG" proponents rarely occurred this year, with 71% of proposals from "anti-ESG" proponents going to a vote and 21% being excluded through the SEC's no-action process. Shareholder support averaged 5% overall and 2% for ESP proposals. No proposals passed. Despite these low results, several "anti-ESG" proponents have signaled that they will continue to submit proposals in the coming years.

Social investment entities. Social investors, including ESG funds and other asset management or advisory institutions with a mandate to make "socially responsible" investments, continued to be the main proponents of ESP proposals. Submissions from As You Sow and Green Century Capital accounted for 40% of all environmental proposals and 12% of all social proposals. Although there was a decline in the number of proposals submitted by the frequent social investor proponents compared to 2022, a larger group of such entities, including new proponents, submitted proposals in H1 2023.

With these proponents in particular, the submission data in this publication does not capture the high level of private engagement between these entities and companies, especially in the 2023 proxy season. For example, As You Sow self-reported that it engaged with 209 companies this proxy season and resolved half of these engagements without needing to formally submit a shareholder proposal. As You Sow also self-reported that it withdrew half of submitted proposals after further engagement with companies. In some cases, especially on climate-related issues, the proponent withdrew (either before or after

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12 *See*, *e.g.*, the exempt solicitation notice filed by NLPC at Bank of America, *available at* https://www.sec.gov/Archives/edgar/data/70858/000109690623000637/nlpc_px14a6g.htm.

13 House Financial Services Committee, *McHenry Announces Financial Services Committee Republican ESG Working Group* (Feb. 3, 2023), *available at* https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408533.

submitting a shareholder proposal) after learning that the company had a plan deemed sufficiently concrete for accomplishing the measures proposed by the proponent, but warned the company that it would (re)submit a proposal in the future if the planned actions did not occur. In other cases, the proponent decided to withdraw (either before or after submitting a shareholder proposal) because there were company-specific reasons for why a proposed course of action was likely to be inappropriate for the company or unpopular with the broader shareholder base (e.g., strategic or financial issues that were more demanding on management's time and the company's resources).

Individuals. John Chevedden, Kenneth Steiner, James McRitchie and Myra Young, individually and as co-filers with other organizations and individuals, submitted 249 proposals, or 30% of all submissions this year. These individuals remained focused on governance issues, with governance proposals comprising 64% of their total submissions. Around 14% of their proposals focused on social issues, largely political spending and lobbying. For the first time, this group also submitted a meaningful number of compensation proposals, almost all of which demanded the submission of certain severance arrangements to a shareholder vote. Several of these severance proposals received relatively high support in 2023, and we expect that this group will submit an increased volume in the 2024 season.

Public Pension Funds. Public pension funds and related entities continued to be among the most prolific proponents on social issues, but the number of proposals they submitted continued to decline year over year. We expect this trend to continue as state and local government scrutiny continues to increase with respect to public pension fiduciaries' use of ESG-related factors in investment and voting decisions, with at least 20 states having already adopted laws, regulations or policies prohibiting or restricting the use of such factors by pension funds as of July 2023. Consistent with 2022, the New York City and State retirement funds once again submitted the largest number of proposals among public pension funds. In addition to a continued focus on racial equity audits and political spending disclosures, these proponents also sought reports on the prevention of harassment and discrimination in the workplace.

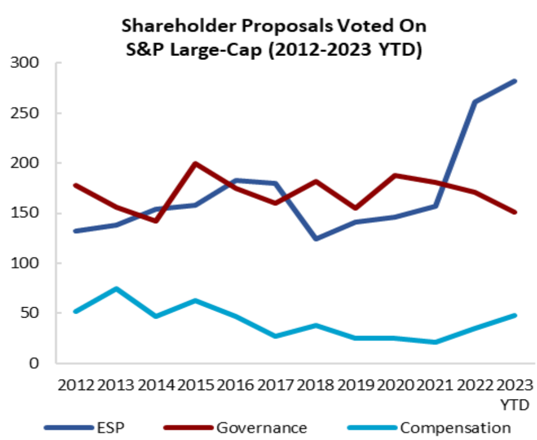
Religious Organizations. Religious organizations submitted at least 80 proposals this year, an increase from the 73 proposals submitted in H1 2022. Many of these organizations were affiliated with the faith-based investor coalition, the Interfaith Center on Corporate Responsibility (ICCR), and they often co-filed proposals. These proponents focused on social topics such as access to food, drugs and healthcare, human rights issues (e.g., use of child labor), political spending and political congruency. These organizations continued to be somewhat willing to negotiate; a third of H1 2023 proposals from these organizations were withdrawn.

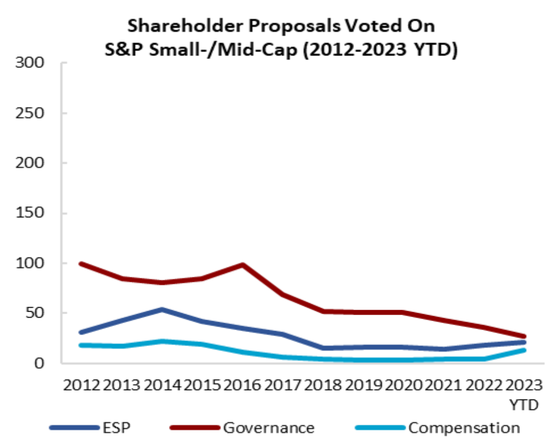
Unions. Even though no individual union ranked in the top 10 proponents this year, these organizations (particularly the Service Employees International Union) continued to submit and/or support a meaningful number of proposals this year, primarily proposals on racial equity audits and political spending disclosure. In terms of environmental proposals, the International Brotherhood of Teamsters submitted a handful of "just transition" proposals, which focus on the impact on workers and other stakeholders in different regions and industries who are likely to be left behind in the transition to a low-carbon economy. Consistent with prior years, these organizations rarely settled with companies unless a company agreed to meet their full set of demands.

C. TARGETS OF SHAREHOLDER PROPOSALS

This year, shareholders were asked to vote on Rule 14-8 proposals at 263 individual companies (vs. 233 companies in H1 2022). Once again, many companies also received multiple Rule 14a-8 submissions, with 44 companies receiving five or more proposals (vs. 46 companies in H1 2022) and 10 companies receiving 10 or more proposals (vs. nine companies in H1 2022). ESP shareholder proposals went to a vote at 145 companies (26% more than the number of companies in H1 2022).

Traditionally, large-cap companies have received the vast majority of shareholder proposals and account for almost all Rule 14a-8 proposals that shareholders vote on.[14] This remained the case in H1 2023, with almost 90% of the proposals that reached a vote being at S&P 500 companies. The following graphs show the number of proposals voted on at large-cap companies compared to small- and mid-cap companies. Large-cap companies received a significantly higher number of proposals even though there are twice as many mid- and small-cap companies. A lower percentage (62%) of shareholder proposals went to a vote at small- and mid-cap companies than at large-cap companies (67%), but the voted proposals at small- and mid-cap companies received higher support on average (27% of votes cast) than at large-cap companies (22% of votes cast). "Anti-ESG" proponents submitted all their H1 2023 proposals to companies in the S&P 500. Not counting proposals from "anti-ESG" proponents, shareholder support for proposals at large-cap companies averaged 25% of votes cast.





14 In this publication, we refer to S&P 500 companies as "large-cap", the next largest S&P 400 companies as "mid-cap", and the next largest S&P 600 companies as "small-cap".

Consistent with last year, consumer goods/retail companies received by far the largest number of proposals overall (25% vs. 28% in 2022), and far outstripped all other industries in terms of social/political proposals. Consumer goods/retail also received the highest number of governance proposals. Technology companies received the second-largest number of proposals overall (16% vs. 19% in 2022), including the largest number of compensation proposals and the second-largest number of governance proposals. Financial services companies received the third-largest number of proposals overall (15% vs 14% in 2022), split relatively proportionately across all categories. Although only receiving 11% of proposals overall (vs. 10% in 2022), the energy/utilities sector received the plurality of environmental proposals, representing a third of all environmental submissions in H1 2023. "Anti-ESG" proponents focused their attention on consumer goods/retail companies (which received 28% of these proponents' overall submissions vs. 22% in 2022), financial services companies (25% vs. 24% in 2022) and technology companies (19% vs. 32% in 2022).

The following table breaks down the Rule 14a-8 proposals submitted in H1 2023 by industry, showing both the absolute number and the percentage of proposals targeting each industry:

Industry (% of S&P Composite 1500)[15]	*Total*	*Social/Political*	*Governance*	*Environmental*	*Compensation*
Consumer/Retail ***(19%)***	***206 (25%)***	113 (31%)	46 (21%)	35 (20%)	12 (16%)
Industrials ***(16%)***	***111 (14%)***	36 (10%)	34 (16%)	26 (15%)	15 (20%)
Financials ***(16%)***	***126 (15%)***	59 (16%)	30 (14%)	30 (18%)	7 (9%)
Technology ***(15%)***	***129 (16%)***	66 (18%)	37 (17%)	10 (6%)	16 (21%)
Healthcare ***(12%)***	***118 (14%)***	68 (19%)	34 (16%)	2 (1%)	14 (19%)
Energy/Utilities ***(8%)***	***94 (11%)***	12 (3%)	20 (9%)	55 (32%)	7 (9%)
Real Estate ***(7%)***	***10 (1%)***	5 (1%)	1 (0%)	2 (1%)	2 (3%)
Materials ***(6%)***	***27 (3%)***	1 (0%)	13 (6%)	11 (6%)	2 (3%)

D. SHAREHOLDER PROPOSALS ON SOCIAL/POLITICAL MATTERS

Social/political proposals once again represented the largest category of submissions in H1 2023. After more than doubling from 2012 to 2022, the number of H1 2023 social/political proposals increased by 5% year over year to 360 (vs. 344 in H1 2022). The proposals in this category remain wide-ranging and tend to change year over year to reflect current "hot topics". This year's social/political proposals not only covered topics that were prevalent in prior years (such as political spending transparency and racial equity and civil rights audits), but also focused on issues that have more recently seized the public spotlight (such as labor rights and reproductive rights).

Prior to 2022, most social/political proposals had either been settled or omitted before going to a shareholder vote. This year, consistent with 2022, proponents were less willing to settle social/political proposals, and the majority of social/political submissions reached a vote (9% more proposals reached a

[15] Based on classification under the Global Industry Classification Standard.

vote than in H1 2022). Average shareholder support decreased by 31% year over year to 18%, a record low. Proposals from "anti-ESG" proponents reached 18% of total submissions in this category and averaged support of only 3% of votes cast. Not counting proposals from "anti-ESG" proponents, shareholder support for social/political proposals averaged 22% of votes cast, still representing a significant drop from 29% in H1 2022. Only five social/political proposals passed (vs. 21 in H1 2022), representing a 76% decrease year over year.

	Submitted		Voted On		Average Support		Passed	
Type of Proposal	***H1 2023***	***2022***	***H1 2023***	***2022***	***H1 2023***	***2022***	***H1 2023***	***2022***
Social Capital Management	***158***	158	***108***	117	***13%***	20%	***0***	10
Civil Rights, Human Rights, Racial Justice	***75***	83	***48***	59	***14%***	28%	***0***	10
Animal Products / Welfare	***18***	7	***11***	6	***15%***	24%	***0***	0
Access to Medical Products	***13***	8	***11***	5	***20%***	23%	***0***	0
Charitable Contributions	***3***	14	***2***	13	***7%***	4%	***0***	0
Other Social Capital Management[16]	***49***	46	***36***	34	***8%***	11%	***0***	0
Human Capital Management	***89***	109	***41***	41	***28%***	32%	***5***	7
Workforce DEI	***54***	53	***22***	15	***25%***	28%	***2***	2
Non-DEI	***35***	56	***19***	26	***33%***	35%	***3***	5
Collective Bargaining	***12***	2	***8***	1	***36%***	33%	***1***	0
Employee Health/Safety	***11***	11	***7***	4	***30%***	29%	***1***	0
Harassment	***9***	17	***3***	13	***33%***	45%	***1***	5
Other HCM[17]	***3***	26	***1***	8	***32%***	21%	***0***	0
Reproductive Rights	***24***	4	***12***	3	***11%***	25%	***0***	0
Political Spending/ Lobbying[18]	***89***	103	***52***	54	***24%***	31%	***0***	4

One important theme that intensified in 2023 was the receipt of proposals with opposing goals by the same company or companies in the same industry. For example, financial institutions (e.g., Mastercard and American Express) received proposals from New York City public pensions requesting disclosure of any efforts to use a new industry merchant code for firearm and ammunition sales, with the goal of better controlling the sales of firearms. In contrast, financial institutions (including Mastercard and American Express, as well as JPMorgan and Wells Fargo) received proposals from "anti-ESG" proponents on the risks associated with placing restrictions on the firearms industry, including seeking reports of requests to

[16] Other social capital management proposals in H1 2023 generally addressed company-specific issues, including government requests to close accounts (submitted to JPMorgan Chase, Mastercard and Wells Fargo) or remove content (submitted to Amazon, Meta and Verizon) by NLPC, as well as proposals relating to risks associated with firearms.

[17] Other HCM proposals in H1 2023 included two proposals regarding "work-from-home" and hybrid work arrangements and one proposal regarding risks associated with supplier misclassification of employees.

[18] The proposals in this category do not include environmental lobbying proposals, which we have categorized as environmental proposals. *See* Section F.

close accounts relating to efforts to "exclude the fossil energy and firearms industries" from accessing banking services.

1. Social Capital Management

Consistent with 2022, social capital management ("SCM") proposals constituted the largest subcategory of social/political proposals, representing 44% of submissions in this category. Nearly half these proposals were demands for independent audits or additional disclosure on a company's social impact—in particular, with respect to racial equity, gender equality, pay equity and human rights.

***Racial equity/civil rights audits*.** Since racial equity audit proposals were first submitted in meaningful numbers in the 2021 proxy season, proponents have continued to submit them—as well as the broader scope civil rights audit proposals—in meaningful numbers each year.

In H1 2023, companies received at least 37 racial equity/civil rights audit proposals, including 11 targeting consumer goods/retail companies and eight targeting financial services companies. Both the total submissions and shareholder support for these proposals decreased compared to last year, as many companies have either already adopted audits or increased their DEI disclosures in line with investor and proxy advisor expectations. The overall year-over-year decrease in submissions is even more notable when taking into account the fact that "anti-ESG" proponents submitted more proposals on this topic in 2023 (12 vs. nine in H1 2022), including a proposal at Home Depot demanding that the company rescind the racial audit proposal adopted by the company in 2022.[19] Not counting the proposals from "anti-ESG" proponents (which achieved only 2% in average support), shareholder support for these proposals dropped to an average of 19% and ranged from 10% to 40% of votes cast (vs. 17% to 64% in H1 2022). Of the 47 proposals submitted in H1 2022, seven passed; no proposals passed this year.

At least 10 of the H1 2023 racial equity/civil rights proposals were submitted by unions (mainly the Service Employees International Union) or SOC Investment Group, the most prolific proponents of racial equity proposals in prior years. Once again, these groups generally focused on third-party racial equity audits (instead of civil rights audits that cover a broader range of non-discrimination and DEI topics), although their demands have become more prescriptive compared to prior years (e.g., specific requirements on the type of independent auditor, as well as the proponent's right to engage with the auditor during the audit process). This proxy season, in addition to submitting proposals, the unions and SOC Investment Group also continued to engage with companies that have already committed to published audits, including criticizing the methodology and/or auditors used by these companies, as well as the scope and rigor of the resulting reports.

[19] The rest of the proposals from "anti-ESG" proponents (including at Apple, BlackRock, Bristol Myers Squibb, Kellogg and McDonald's) largely mimicked the language of racial equity audits from unions and social investment groups, but differ in requiring that the audits be performed by other stakeholders "of a wide spectrum of viewpoints and perspectives" or focus on "a return to merit."

Companies settled 11 audit proposal with proponents in H1 2023. However, other than two proposals submitted by NCPPR (at Progressive and Yum! Brands, respectively), proponents[20] were only willing to withdraw their proposals at companies that announced their commitment to undertake an audit (Assured Guaranty, Elevance, KeyCorp, United Natural Foods and Wells Fargo), or where an audit (or similar response to prior years' high-vote audit proposals) was already underway (Alphabet and Johnson & Johnson). Last year, the SEC granted no exclusionary relief with respect to proposals on this topic; this year, the SEC permitted the exclusion of two proposals submitted by "anti-ESG" proponents (at Deere & Company and Coca-Cola, both on procedural grounds) but rejected all other no-action requests.

Despite the low shareholder support for these proposals, we expect that proponents across the political spectrum will continue to focus on companies' racial equity and civil rights impact in future proxy seasons, especially in light of the Supreme Court's 2023 ruling against affirmative action in higher education admissions in *Students for Fair Admissions, Inc*. v. *President and Fellows of Harvard College* and its potential broader implications for employers.

In its 2022 annual voting guidelines, ISS began to include recommendations on racial and civil equity audit proposals, taking a case-by-case approach on proposals asking a company to conduct an independent racial equity and/or civil rights audit, considering a range of factors related to the company's commitment to racial equity. In its 2023 guidelines, ISS further clarified that the factors it will consider in making voting recommendations on this topic include whether a company adequately discloses workforce diversity and inclusion metrics and goals.[21] Glass Lewis included a formal policy on racial equity audits for the first time in its 2023 voting guidelines, providing that it will generally recommend in favor of "well-crafted proposals" on this topic when doing so "could help the target company identify and mitigate potentially significant risks."[22] State Street, which completed its prior civil rights audit this year after announcing its commitment to do so in 2021, announced in 2022 that it will generally vote against racial equity/civil rights audit proposals if a company has articulated board oversight of racial equity/civil rights risks, including the specific risks overseen and plans for mitigating them; if a company specifically

[20] Proponents other than the unions and SOC Investment Group seemed to be more willing to engage. Proposals submitted by individuals and social investment entities (such as Nia Impact Capital and Tulipshare) were withdrawn at Abbott Laboratories and Salesforce after the companies made enhancements to their DEI disclosures (these companies did not announce any commitment to conduct an audit). Trillium also agreed to withdraw its proposal at Elevance after the company agreed to conduct a health equity assessment using a "civil rights lens" rather than the requested full-scope civil rights audit.

[21] *See* ISS's 2023 United States Proxy Voting Guidelines, *available at* https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf?v=1, pp. 69–70.

[22] *See* Glass Lewis's 2023 Policy Guidelines – Environmental, Social & Governance Initiatives, *available at* https://www.glasslewis.com/wp-content/uploads/2022/11/ESG-Initiatives-Voting-Guidelines-2023-GL.pdf?hsCtaTracking=e61a3dd4-34c6-4db9-b01f-aa747107df46%7C61a49f41-b5fc-49f5-902e-dd2516ccf120, p. 7. In making this determination, Glass Lewis will assess the nature of the company's operations, the level of disclosure of risk mitigation to external stakeholders, external stakeholder impacts and the steps it is taking to mitigate any attendant risks, as well as any relevant controversies, fines or lawsuits.

commits to improving board oversight and identify and manage such risks, State Street will generally abstain.[23]

***Human Rights*.** The number of proposals related to report on human rights due diligence processes has continued to decline, from 17 in H1 2021 to eight in H1 2022 to only two this year.[24] Instead, proponents focused on human rights topics seem to have shifted their attention to more prescriptive demands this year. There were six proposals demanding the publication of reports on human rights risk assessments. These proposals generally seek reports examining human rights impacts of certain services and products from the company, and received low support across the board (ranging from 14% at Lockheed Martin Corporation to 25% at General Dynamics Corporation).

Recent regulatory developments in the U.S. and Europe[25] may change certain investors' expectations on companies' human rights initiatives, including heightening expectations with respect to both due diligence and disclosure related to human rights. Other investors, especially "anti-ESG" proponents, are also likely to remain focused on the human rights implications of operations in certain countries, particularly China. For example, NCPPR submitted at least 12 proposals this year requesting companies (mostly in the technology and consumer goods/retail sectors) report on the risks of operating in China (including the congruence between these operations and the company's ESG commitments); all 12 proposals went to a vote, but received between 1% to 7% of votes cast. In July 2023, the SEC's Division of Corporation Finance published a sample letter, which emphasizes that companies have potential disclosure obligations under the 2021 Uyghur Forced Labor Prevention Act. In the letter, the SEC reiterated its belief that companies should "provide more prominent, specific, and tailored disclosures about China-specific matters so that investors have the material information they need to make informed investment and voting decisions," including "material compliance risks or material supply chain disruptions that companies may face if conducting operations in, or relying on counterparties conducting operations in, the Xinjiang Uyghur Autonomous Region."[26]

***Charitable Donations*.** The number of proposals seeking a report on companies' charitable contributions also significantly decreased year over year (dropping to three from 14 in H1 2022). The main proponents of these proposals continued to be "anti-ESG" proponents. One such proposal was excluded (at Merck &

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23 *See* State Street Global Advisors' Guidance on Diversity Disclosures and Practices, *available at* https://www.ssga.com/library-content/pdfs/asset-stewardship/racial-diversity-guidance-article.pdf, p. 4.

24 Walmart and TJX Companies were the only companies to receive a proposal to report on human rights due diligence processes.

25 In June 2023, the European Parliament adopted the Corporate Sustainability Due Diligence Directive, which requires large EU companies and non-European companies with significant business in Europe to assess human rights impacts throughout their own operations and across their supply chains.

26 Securities and Exchange Commission, *Sample Letter to Companies Regarding China-Specific Disclosures*, *available at* https://www.sec.gov/corpfin/sample-letter-companies-regarding-china-specific-disclosures.

Co.) and the two other proposals (at Kroger and Walt Disney) both failed to receive more than 10% support. These results are consistent with ISS voting guidelines, which recommend that shareholders vote against proposals that restrict companies from making charitable contributions.[27]

2. Human Capital Management

Human Capital Management ("HCM") remained a key topic for proposals in 2023. Although average shareholder support for DEI proposals declined (to 25% from 31% in H1 2022), average support for non-DEI labor and employment proposals (33%) did not change year over year. Three non-DEI proposals and two workforce DEI proposals passed.

***Greater disclosure of workforce DEI initiatives*.** According to its Spring 2023 agenda, the SEC plans to release its proposed new HCM disclosure requirements in October 2023, but the timing and scope of these requirements are unclear as of the date of this memorandum. Based on prior statements by SEC commissioners, it is likely that the new rules will require companies to disclose metrics on workforce demographics, including in connection with hiring, retention and training.[28]

This year, a campaign by As You Sow to demand more disclosure on topics that could be covered under the SEC's HCM proposal accounted for more than half the workforce DEI proposals. As You Sow submitted at least 25 proposals to require disclosure of additional DEI information "using quantitative metrics for hiring, retention, and promotion of employees, including data by gender, race, and ethnicity."[29] As You Sow generally withdrew its proposals after engaging with the company. It remains to be seen whether As You Sow will change its approach with respect to these proposals if the SEC releases its rulemaking proposal.

***Support for unions*.** Union activity was the most prevalent non-DEI HCM topic in H1 2023. Shareholders submitted a new type of proposal in 2023 asking companies to commit to international standards of protection for labor unions. At least six companies received proposals to adopt a policy or commitment to uphold the right to "freedom of association and collective bargaining."[30] At least five additional companies received proposals to conduct an independent third-party worker rights

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27 *See* ISS's 2023 United States Proxy Voting Guidelines, *available at* https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf?v=1, p. 72.

28 Chair Gary Gensler, Prepared remarks at London City Week (June 23, 2021), *available at* https://www.sec.gov/news/speech/gensler-speech-london-city-week-062321.

29 *See* https://www.asyousow.org/resolutions-tracker.

30 The proposals were submitted at Activision Blizzard, Chipotle, Delta Airlines, Netflix, Tesla and Wells Fargo.

assessment.[31] Most of this year's collective bargaining proposals went to a vote and obtained fairly high support (average support of 36%), but only one passed (at Starbucks).

3. Reproductive Rights

The Supreme Court's 2022 decision in *Dobbs* v. *Jackson Women's Health Organization*, which overturned *Roe* v. *Wade*, left the field of abortion regulation to the states. In the wake of *Dobbs*, 14 states to date have enacted new laws—and several other states have sought to enforce preexisting laws—designed to restrict abortion access. In response to the *Dobbs* decision and recent state legislative efforts, companies received six times the number of shareholder proposals they did last year on reproductive health related issues. This included 13 "report impact" proposals, which requested corporate reporting on the impact of state laws criminalizing abortion. As You Sow submitted four such proposals (at Coca Cola, McDonald's, Pepsi and Verisk). These proposals rarely settled—of the 13 proposals, only one was withdrawn. When voted, however, these proposals received low support (ranging from 5% to 16%).

In addition to the more general "report impact" proposals, proponents also sought to address post-*Dobbs* developments in different, more granular ways. For example, Rhia Ventures, a venture capital firm based in San Francisco, sought to promote "reproductive and maternal health" by requesting transparency on "corporate support for politicians and political committees seeking to deny access to reproductive healthcare in contradiction to their stated values."[32] Other proposals have focused on consumer data privacy implications of a company's compliance with potential information demands under new laws criminalizing abortion.[33] Only one reproductive rights proposal was from an "anti-ESG" proponent.[34]

The SEC denied all no-action requests on reproductive rights proposals. Half the reproductive rights proposals went to a vote. Voted proposals received between 2% and 16% of votes cast.

4. Political Spending/Lobbying

Since the Supreme Court's 2010 *Citizens United* decision, proposals demanding greater transparency on political spending and lobbying became a staple of the 14a-8 landscape. In 2022, a new political

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[31] Includes proposals at Amazon, Apple, CVS, Starbucks and Walmart. In particular, CVS and Walmart received proposals from the New York State Comptroller demanding an "independent, third-party assessment of [each] company's adherence to its stated commitment to workers' freedom of association and collective bargaining rights." The Shareholder Association for Research & Education submitted a similar "congruency" proposal to Amazon.

[32] *See* https://rhiaventures.org/media/press-shareholder-proposals-2023/. *See also* Pfizer's 2023 proxy statement, which includes an example of such a proposal.

[33] Change Finance submitted such proposals to American Express, MasterCard and The Bank of New York Mellon this year.

[34] This proposal was at Eli Lilly and received 2% of votes cast. NCPPR demanded that the company disclose the risks of supporting abortion, in particular how support for reproductive rights undercuts the company's diversity policy and respect for those who oppose abortion.

"congruency" proposal was submitted in relatively large numbers and gained fairly high support. This year, there was a decline in the number of both types of proposals, although they continued to be submitted in meaningful numbers. Instead, proponents brought proposals on new and more granular topics. Shareholder support of these proposals dropped by 25% year over year (to 24% from 32% in H1 2022), and none passed (vs. four in H1 2022).

A key contributor to the year-over-year decline in shareholder support seems to have been a concern with the prescriptiveness and specificity of the proponents' demands, which resulted in some companies putting multiple political spending/lobbying proposals on the same ballot. For example, FedEx included three political "congruency" proposals (taking up nine pages of text) in the proxy for its September 2022 annual meeting. These proposals included a fairly standard "congruency" proposal from Clean Yield Asset Management,[35] a more granular "congruency" proposal from the International Brotherhood of Teamsters General Fund,[36] and a climate "congruency" proposal from United Church Funds.[37] Coca-Cola and McDonald's also had multiple political spending/lobbying proposals go to a vote this year, including, in each case, a proposal from Harrington Investments specifically requesting a "transparency report" on political spending/lobbying activities outside the U.S.[38]

***Political congruency*.** Following the 2022 proxy season, ISS issued guidelines generally recommending that shareholders vote in favor of proposals requesting greater disclosure of a company's alignment of political spending/lobbying with its publicly stated values and policies. Important considerations stated by ISS include a company's policies, management/board oversight, governance processes and the level of its current disclosure on political spending/lobbying activities. ISS recommends shareholders vote against proposals "barring a company from making political contributions" and proposals requiring a company to "publish in newspapers and other media a company's political contributions."[39]

This year, there were at least 15 proposals (vs. 20 in H1 2022) requesting disclosure on the congruency between publicly disclosed ESG values, priorities and goals, on the one hand, and their political

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35 This proposal requested annual disclosure of whether "incongruencies" between political and electioneering expenditures and company values were identified during the preceding year, as well as any actions taken regarding pausing or terminating support for organizations or politicians.

36 This proposal requested an annual report disclosing (1) FedEx's policy and procedures regarding government and grassroots lobbying, (2) payments made by FedEx relating to lobbying and grassroots lobbying communications, (3) FedEx's membership in or payments to any tax-exempt organization that "writes and endorses model legislation," and (4) a description of the FedEx board's process and oversight relating to such payments and membership.

37 This proposal requested disclosure on whether FedEx's lobbying activities align with the climate-related goals of the Paris Agreement. As shown in Section F, we categorize these proposals as environmental proposals in this publication to avoid double counting.

38 Pepsi also received this proposal from Harrington. Of the three H1 2023 Harrington proposals on this topic, the Pepsi proposal received the highest shareholder support at 19% of votes cast.

39 *See* ISS's 2023 United States Proxy Voting Guidelines, *available at* https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf?v=1, p. 75.

spending/lobbying activities, on the other hand. In the supporting statements for these proposals, the proponent will typically cite a company's public statements on specific issues (e.g., reproductive rights, LGBTQIA+ rights and/or voter access), contrasting these statements with statements on these issues made by political candidates to whom the company donated or organizations to which the company belonged. Companies settled three of these proposals in H1 2023. The voted proposals received between 11% and 41% of votes cast (vs. between 30% and 50% of votes cast in H1 2022), with an average of 20%.

Political proposals from "anti-ESG" proponents. In H1 2023, 16% of proposals from "anti-ESG" proponents focused on corporate political speech. A variety of different proponents (including Consumer's Research and the American Conservative Values ETF) submitted 14 proposals in this category. Nine of these demanded disclosure on companies' involvement with "globalist organizations" (e.g., World Economic Forum, Council on Foreign Relations and Business Roundtable), and whether such involvement was consistent with fiduciary duties.[40] Three other proposals encouraged the board or senior management to avoid speaking publicly on political issues.[41]

Six of these proposals were excluded through the SEC no-action process, almost all on the basis of "ordinary business". Six reached a vote, receiving between 0.4% and 10% of votes cast.

E. SHAREHOLDER PROPOSALS ON GOVERNANCE MATTERS

The year-over-year decline in governance proposals—once the most prominent topic in Rule 14a-8 proposals—intensified in H1 2023. The 215 governance proposals submitted in H1 2023 represented a 13% drop compared to the 247 proposals submitted in H1 2022 (which had already dropped 11% from H1 2021 numbers). Notably, submissions on structural governance topics dropped by 40% year over year, in large part due to a dramatic decline in special meeting proposals, which was by far the most prevalent governance proposal in H1 2022. Partially offsetting the significant decrease in structural governance proposals was a 52% increase in board composition proposals, with a focus on board leadership (from both traditional governance proponents and "anti-ESG" proponents) that resulted in a 91% year-over-year increase in independent chair proposals. Following Nasdaq's adoption of a requirement to disclose a board diversity matrix, submissions on board diversity—once the largest subcategory of board composition proposals—continued to decrease.

Average support for governance proposals dropped to 29% (vs. 35% in H1 2022). Only 14 proposals passed (vs. 23 in H1 2022), 13 of which were structural governance proposals.

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40 Five of these proposals made it to a vote, receiving an average of 1% of votes cast.

41 These proposals were submitted at Berkshire Hathaway, Exxon and Home Depot. Two went to a vote, receiving an average of 1% of votes cast.

Type of Proposal	Submitted		Voted On		Average Support		Passed	
	H1 2023	2022	H1 2023	2022	H1 2023	2022	H1 2023	2022
Structural Governance	***97***	170	***76***	145	***32%***	38%	***13***	24
Special Meetings	***40***	108	***36***	105	***32%***	36%	***5***	9
Fair Elections	***21***	0	***11***	-	***14%***	-	***0***	-
Supermajority	***14***	11	***12***	9	***54%***	72%	***7***	9
Written Consent	***7***	7	***6***	5	***31%***	36%	***0***	1
Dual Class	***7***	8	***6***	7	***34%***	31%	***0***	0
Majority Voting	***4***	7	***2***	5	***38%***	28%	***1***	1
Proxy Access	***2***	20	***2***	10	***16%***	32%	***0***	2
Declassify Board	***1***	6	***0***	2	***-***	92%	***-***	2
Other Structural	***1***	3	***1***	2	***1%***	6%	***0***	0
Board Composition	***91***	66	***84***	52	***30%***	26%	***0***	0
Independent Chair	***84***	48	***79***	39	***30%***	31%	***0***	0
Board Diversity/Skills	***6***	12	***4***	8	***33%***	15%	***0***	0
Employee Director	***1***	6	***1***	5	***19%***	8%	***0***	0
Misc. Governance	***27***	27	***18***	10	***15%***	29%	***1***	1

1. Independent Chair

Independent chair was the most prevalent governance topic this year, accounting for almost 40% of all governance submissions. Almost all these proposals were submitted by John Chevedden, Kenneth Steiner or Myra Young, although "anti-ESG" proponent NLPC submitted eight of these proposals. All the NLPC proposals went to a vote, receiving lower votes on average (21%) despite including similar language and content as other independent chair proposals.[42] The other 71 proposals that went to a vote received 31% average support.[43] ISS recommended in favor of approximately one-third of these proposals, but once again, none of these proposals passed.

2. Special Meetings

Last year, roughly two thirds of structural governance proposals related to shareholders' right to call special meetings. Submissions on this topic dropped by 63% this year, likely due to (1) declining support for special meeting proposals in recent years and (2) John Chevedden and other traditional governance proponents shifting their attention to other topics. The continued decreases in submissions, shareholder support and pass rate this year may signal that special meeting proposals have reached the same point in their arc as the "classic" governance proposals. Declassified boards and majority voting in uncontested elections were the focus of governance proposals in the 2000s and proxy access proposals dominated this category in the 2010s, but are rarely submitted these days after each provision reached over 80% adoption among the S&P 500. Similarly, over 70% of the S&P 500 have adopted special meeting rights

[42] Even though the proposals and supporting statement were facially neutral, NLPC filed exempt solicitation notices that emphasized the "woke" ideology of these companies' CEOs.

[43] The remaining proposals were excluded through the SEC no-action process, generally because the proposal was substantially similar to another proposal received this year or because the proponent resubmitted the proposal after falling below the relevant resubmission threshold.

for shareholders, and the market has coalesced around fairly standardized terms, including an ownership threshold between 15% and 25%.

3. Fair Elections

This year, over 200 companies in the S&P 500 have amended their advance notice bylaws to incorporate the requirements under the SEC's new universal proxy rule and in anticipation of a potential increase in activism as a result of the new rule. In response to the widespread (and generally unilateral) adoption of enhanced advance notice bylaws by boards, James McRitchie submitted 21 "fair elections" proposals requiring shareholder approval before adopting certain bylaw amendments that affect shareholders' rights to nominate directors.[44] Ten of these proposals were withdrawn following engagement, in several cases after companies agreed to revise their corporate governance guidelines to commit to the general principle of a "fair and equitable" director nomination process and/or seeking shareholder approval on a more limited set of advance notice bylaw amendments.[45] The proposals that went to a vote failed to gain the support of shareholders (whose support averaged 14% of votes cast) or ISS (which recommended against all these proposals). None of these proposals passed.

F. SHAREHOLDER PROPOSALS ON ENVIRONMENTAL MATTERS

In contrast to the more dramatic year-over-year growth in prior years, the number of environmental submissions increased by only 8% compared to H1 2022. Environmental proponents seemed undeterred by the criticism they received in 2022 (including from large institutional investors) for submitting granular and prescriptive proposals.[46] In H1 2023, the granularity and prescriptiveness of environmental proposals increased, especially on climate-relate topics. In contrast, broader sustainability reporting proposals—once the largest and most highly supported subcategory of environmental proposals—accounted for only two submissions in H1 2023, likely because the vast majority of large-cap companies now release sustainability disclosure.

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[44] As proposed, amendments that would trigger a shareholder approval requirement include (1) having an advance notice deadline that is more than 90 days before the annual meeting, (2) imposing new disclosure requirements for director nominees and (3) requiring nominating shareholders to disclose limited partners or business associates, except to the extent such investors own more than 5% of the company's shares.

[45] *See*, *e.g.*, disclosures included in the 2023 proxy statements filed by NVIDIA, Repligen, Salesforce and Tractor Supply.

[46] *See*, *e.g.*, BlackRock Investment Stewardship, 2022 climate-related shareholder proposals more prescriptive than 2021, *available at* https://www.blackrock.com/corporate/literature/publication/commentary-bis-approach-shareholder-proposals.pdf. BlackRock attributed its support of 24% of ESP proposals in the 2022 proxy season (vs. 43% in 2021) to the more prescriptive nature of the 2022 proposals and because "many climate-related shareholder proposals sought to dictate the pace of companies' energy transition plans despite continued consumer demand, with little regard to company financial performance" and "[o]ther proposals failed to recognize that companies had largely already met their ask." *See* BlackRock, 2022 voting spotlight summary (July 26, 2022), *available at* https://www.blackrock.com/corporate/literature/publication/2022-investment-stewardship-voting-spotlight-summary.pdf, pp. 5-6.

The likelihood of settlement decreased significantly, as did shareholder support. Although environmental submissions remained the least likely to be voted, a majority reached a vote for the first time in H1 2023 as companies and proponents became less able to reach a compromise.[47] As a result, voted proposals increased by 57% year over year. ISS and institutional investors largely continued to reject proposals that they considered excessively prescriptive.[48] Average shareholder support dropped to 21% (vs. 37% in H1 2022), continuing to decline from the high support these proposals received in H1 2021 (averaging 41% of votes cast). The number of proposals that passed decreased by 86%, dropping to just two (both on climate topics) compared to 14 in both H1 2022 and 2021.[49]

	Submitted		Voted On		Average Support		Passed	
Type of Proposal	***H1 2023***	***2022***	***H1 2023***	***2022***	***H1 2023***	***2022***	***H1 2023***	***2022***
Specific Climate Issues	***128***	109	***71***	42	***23%***	37%	**2**	10
Target/Goal	***42***	54	***28***	20	***23%***	45%	***0***	6
Transition Plan	***31***	14	***8***	4	***24%***	34%	***0***	1
Financing Activity	***17***	15	***16***	10	***15%***	19%	***0***	1
Lobbying	***16***	18	***10***	5	***35%***	32%	***1***	0
Methane	***9***	2	***3***	1	***51%***	98%	***1***	1
Scenario Analysis	***6***	3	***3***	2	***16%***	45%	***0***	1
Offsets	***3***	1	***0***	0	***-***	-	***-***	-
Misc. Climate	***4***	2	***3***	0	***5%***	-	***0***	-
Specific Sustainability Issues	***26***	34	***10***	15	***20%***	45%	***0***	4
Plastics/Packaging	***11***	17	***7***	10	***25%***	52%	***0***	3
Deforestation	***8***	7	***1***	1	***5%***	65%	***0***	1
Water	***3***	5	***1***	3	***8%***	22%	***0***	0
Pesticide	***1***	5	***0***	1	***-***	34%	***-***	0
Misc. Sustainability	***3***	0	***1***	0	***14%***	***-***	***0***	-
Board Oversight	***7***	4	***7***	1	***5%***	5%	***0***	0
General Reporting	***2***	14	***0***	2	***-***	22%	***-***	0
Environmental Justice	***2***	5	***1***	1	***13%***	14%	***0***	0
Misc. Environmental[50]	***6***	7	**2**	3	***11%***	31%	***0***	1

In a year where "anti-ESG" stakeholders focused on environmental topics (e.g., companies' net zero goals and related impact on the fossil fuel industry),[51] it is not surprising that "anti-ESG" proponents

[47] As further discussed in Section H, the SEC's no-action posture, including the proposed amendments to the "substantial implementation" exclusionary basis, likely also impacted settlement and voting trends, especially where more granular proposals were concerned.

[48] As reflected in the changes to their 2023 voting guidelines, institutional investors such as BlackRock and State Street have indicated that they are focusing on ESG risks that are material and company-specific rather than broadly supporting a standardized set of ESG demands.

[49] One of these proposals related to the reliability of methane emission disclosures at Coterra Energy, which received 74% of votes cast. The other proposal related to reporting on climate lobbying activities at New York Community Bancorp, which received 95% of votes cast after management recommended voting in favor of the proposal.

[50] Miscellaneous environmental proposals in H1 2023 included two proposals on chemical reduction efforts, one proposal requesting reporting on environmental health impacts and management, one proposal requesting reporting on potential costs of environmental litigation and proposals on company-specific issues.

brought a meaningful number of proposals in this category. All 11 environmental proposals from "anti-ESG" proponents focused on climate-related issues (including five demanding board oversight of risks associated with climate efforts). Eight of these targeted energy companies, focusing on risks and costs associated with the companies' net zero and other climate-related initiatives (in one case, proposing rescission of a Scope 3 greenhouse gas ("GHG") emission reduction target). Nine environmental proposals from "anti-ESG" proponents reached a vote, averaging 2% of votes cast. (Not counting these proposals, shareholder support for environmental proposals averaged 23% of votes cast, and shareholder support for climate-related proposals averaged 24% of votes cast.)

1. Climate

Consistent with 2022, the vast majority (75%) of environmental proposals focused on specific climate-related issues. In H1 2023, proponents submitted 24% more proposals on climate-related issues than in H1 2022, and focused on a broader range of detailed topics at the companies they targeted, sometimes echoing regulatory focus areas. For example, after the U.S. and EU announced support for the Global Methane Pledge, which launched at the UN Climate Change Conference in Glasgow (COP26) and commits participants to work towards an at-least-30% reduction in global methane emissions from 2020 levels by 2030, proponents submitted two proposals in 2022 for more reliable methane emissions disclosures from energy companies.[52] The number of methane-related proposals increased to nine in H1 2023. Most of these settled, but voted proposals obtained high shareholder support.[53] Companies' willingness to engage on this topic and the high level of shareholder support may be due to the fact that recent climate disclosure frameworks, including the SEC's proposed climate disclosure rules, would require companies to report GHG emissions disaggregated by individual gas, including methane.

Other regulatory focus areas, such as emission reduction targets, transition plans, use of carbon offsets and scenario analysis,[54] also saw notable year-over-year increases in submissions. Under the SEC's

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51 For example, in the past year, a coalition of Republican state attorneys general wrote letters to asset managers, proxy advisors and insurance companies, voicing concerns regarding these entities' climate-related initiatives, policies, commitments (including emissions reduction goals) and/or antitrust implications of participation in net zero alliances. State attorneys general, regulators and legislatures have also been focused on the ESG policies of financial institutions, issuing civil investigative demands to banks and advancing laws and regulations related to these topics (*see, e.g.*, West Virginia S.B. 262 (relating to financial institutions engaged in "boycotts" of energy companies)).

52 One of these proposals settled while the other passed at Chevron with management support and 98% of votes cast.

53 The three voted proposals in H1 2023 were at Coterra Energy (74% of votes cast), Targa Resources (41%) and Exxon (36%).

54 In addition to the proposed SEC disclosure requirements, financial regulators have recommended that financial institutions conduct climate scenario analysis to manage climate-related financial risks. Last fall, the Federal Reserve announced that six of the nation's largest banks will participate in a pilot climate scenario analysis exercise designed to enhance the ability of supervisors and companies to measure and manage climate-related financial risks (Sept. 29, 2022), *available at* https://www.federalreserve.gov/newsevents/pressreleases/other20220929a.htm.

proposed climate disclosure rules, the adoption or use of such targets, transition plans, offsets and scenario analysis is optional but, once adopted or used, would trigger disclosure and update requirements. In contrast to methane reporting, support for these proposals was low across the board, but climate-focused proponents such as As You Sow have indicated that they intend to resubmit proposals where they exceeded the resubmission threshold and intend to increase their engagement with smaller companies on climate topics (including transition plans) in future proxy seasons.

Emission reduction targets. More proposals focused on GHG emission reduction targets than any other environmental topic, and the majority of these proposals included more detailed requirements than last season, including with respect to:

- **Horizon**: at least eight proposals focused on short-, medium- and/or long-term targets;
- **Categories of emissions**: at least eight proposals focused on Scope 3, "full value chain" and/or financed emissions targets;[55]
- **Methodology**: at least six proposals focused on science based and/or independently verified targets; and
- **Baseline**: two proposals requested companies to recalculate the GHG emissions for the baseline year used in their reduction targets to exclude material divestitures (so emissions avoided due to a divestiture that occurs after the baseline year do not count towards the company's progress towards its emissions target).

Notwithstanding the significant year-over-year decline in shareholder support (23% vs. 46% in H1 2022) and the fact that no proposal passed (vs. six in H1 2022), we expect that proponents will continue to submit granular proposals on climate-related targets, especially if the SEC adopts its proposed amendments to Rule 14a-8. These proposed amendments would narrow the standards for excluding Rule 14a-8 proposals based on "substantial implementation" (if the proposal is substantially similar to actions adopted by the company),[56] "duplication" (if the proposal is substantially similar to a concurrent proposal from another shareholder) or "resubmission" (if the proposal is substantially similar to a recent low-vote proposal). As proposed, even if a proposal had the same objective as another proposal or an existing company initiative (e.g., commitment to reduce GHG emissions), the SEC would consider

55 There were three proposals related to setting absolute targets specifically for financing activities associated with the fossil fuel industry (see discussion on "financing activities" below). For this publication, we have included them in the "financing activities" subcategory but not in "targets/goals" to avoid double counting.

56 Three target proposals in H1 2023 were excluded through the SEC no-action process, two on the basis of "substantial implementation" (at Alliant Energy and American Tower).

whether the proposed means for accomplishing the objective also was the same.[57] Where a proposal focuses on one specific action, that specific action would likely need to be implemented in order for the proposal to be excluded under the proposed amendments.[58] The decreased likelihood of no-action relief will encourage at least some proponents to bring proposals even if they are unlikely to pass—proponents may see getting a proposal to a vote (regardless of outcome) as an effective way to amplify their focus issues among investors and gain additional leverage for obtaining a settlement from the company.

Transition plans. In H1 2023, proponents submitted 31 proposals with respect to the adoption and/or disclosure of a climate transition plan, almost tripling the number in H1 2022.[59] The CDP, a global ESG disclosure system used by many companies and investors, defines a climate transition plan as a "time-bound action plan that clearly outlines how an organization will achieve its strategy to pivot its existing assets, operations and entire business model towards a trajectory that aligns with the latest and most ambitious climate science recommendations." Many of these proposals requested that companies issue reports detailing their plans to reach GHG emission reduction targets by specific deadlines, including milestones for 2030 and 2050. Whereas emission reduction targets are more widely adopted, CDP estimated that only 0.4% of the CDP-reporting companies disclosed a sufficiently detailed transition plan. CDP considers important elements of a transition plan to include details on board and management oversight (including frequency of discussion and the alignment between climate goals and executive compensation), use of climate-rated scenario analysis, and information on financial planning to remain profitable while meeting climate goals (including spending/revenue aligned with a transition to a low-carbon economy), as well as revenues and other details relating to products or services that a company classifies as low-carbon.[60]

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57 Securities and Exchange Commission, *Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8*, SEC Release No. 34-95267 (July 13, 2022) ("Rule 14a-8 Amendments Proposing Release"), *available at* https://www.sec.gov/files/rules/proposed/2022/34-95267.pdf, pp. 18, 27 (discussing the proposed amendments to the "duplication" and "resubmission" exclusionary bases). For a more detailed discussion of these proposed amendments, see our publication, dated July 21, 2022, entitled "SEC Proposes to Significantly Narrow Bases for Excluding Shareholder Proposals Under Rule 14a-8."

58 Rule 14a-8 Amendments Proposing Release at pp. 15–16 (discussing the proposed amendments to the "substantial implementation" exclusionary basis). The SEC's proposing release noted as an example that, if a proponent requests disclosure on a particular topic, a company's existing disclosures about that topic may not constitute substantial implementation under the proposed new standard, especially if the plain language of the proposal explains how the company's existing reports or disclosures are insufficient (for example, if the proponent is demanding an absolute Scope 3 target and the company only discloses an intensity-based Scope 3 target).

59 There were also four proposals demanding banks to disclose transition plans more specifically focused on financing activities (see discussion below). For this publication, we have included them in the "financing activities" subcategory but not in "transition plans" to avoid double counting.

60 CDP, *Are Companies Developing Credible Climate Transition Plans?* (Feb. 2023), *available at* https://cdn.cdp.net/cdp-production/cms/reports/documents/000/006/785/original/Climate_transition_plan_report_2022_%2810%29.pdf?1676456406, pp. 5, 7, 21.

Proponents withdrew three quarters of the transition plan proposals in H1 2023, including almost all proposals for the adoption of a transition plan that generally aligns with the CDP definition. Often, proponents withdrew because the company was in the process of considering or developing a transition plan, or was making necessary analytical and data enhancements for moving towards a credible transition plan. Seven of the eight proposals that went to a vote focused on the social impact of climate-related transition plans, including the social impact of closing operations and the incorporation of "just transition" principles into transition plans (i.e., transitioning to a low-carbon economy in a way that ensures "no people, workers, places, sectors, countries, or regions are left behind"). Although State Street Global has indicated that it will prioritize its engagements on "just transition",[61] the transition plan proposals related to social impact generally received low votes, averaging around 20% of votes cast.[62]

Financing Activities. A combination of social investment entities, religious organizations and public pension funds continued to submit proposals relating to financing activities at banks and insurance companies, particular relating to financing fossil fuel companies. Nine of these proposals were the fossil fuel phase-out proposals many financial institutions received in 2022 (i.e., adopt a time-bound policy to phase out underwriting and lending for new fossil fuel projects). All but one of these proposals went to a vote. When voted, the support for these proposals was consistently low (ranging from 4% to 10% of votes cast).

These phase-out proposals were submitted at a time of increasing state-level efforts to deter such commitments. These include legislation proposed or enacted in many states, under which state regulators could blacklist companies that "boycott" the fossil fuel industry. In addition, state attorneys general engaged actively with both investors and companies on this topic during the 2023 proxy season, writing letters to many of the largest institutional investors during this season's engagement and voting windows, and initiating civil investigative demands against six banks on their financing activities, policies and commitments relating to the fossil fuel industry.

The other eight proposals in this subcategory requested that financial institutions disclose their targets for reducing financed emissions in high-emitting sectors (which received between 12% and 13% of votes cast), or asked for a report on companies' efforts or transition plans to reduce financed emissions (which received higher support, ranging from 14% to 35% of votes cast).

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61 State Street Global Advisors, Guidance on Disclosure Expectations for Effective Climate Transition Plans (April 2023), *available at* https://www.ssga.com/library-content/pdfs/asset-stewardship/disclosure-expectations-for-effective-climate-transition-plans.pdf.

62 In addition, two companies received requests to report on environmental justice impacts. Sierra Club ultimately withdrew its proposal at Ameren, but the Investor Advocates for Social Justice proposal at Honeywell went to a vote, receiving low support (13% of votes cast).

2. Sustainability

This year was an exploratory year for proponents on sustainability-related issues. Even though the number of these proposals stayed consistent with H1 2022, the topics covered diversified, ranging from plastic pollution to deforestation, setting sustainable sourcing targets and a new proposal (at Costco) for a biodiversity impact assessment. The majority of these proposals (including almost all the deforestation proposals) were withdrawn following engagement. Ten proposals (most of which related to reducing plastic use) went to a vote, with support averaging 20%.

The engagement with companies and investors on this topic is likely to inform proponents' strategy with respect to sustainability issues in upcoming proxy seasons. In addition, the International Sustainability Standards Board ("ISSB") released its final Sustainability Disclosure Standards (IFRS S1) in June 2023, which may also shape engagement and proposals on this topic in the 2024 proxy season.

G. COMPENSATION-RELATED SHAREHOLDER PROPOSALS

Compensation-related proposals have consistently represented the smallest category of Rule 14a-8 proposals, with minor year-over-year fluctuations. This year, however, the number of compensation proposals submitted increase by 60%, resulting from 40 Chevedden-sponsored proposals on severance. Average support dropped to 22% after reaching a record high of 30% in H1 2022. Four proposals—all on severance—passed (vs. three in H1 2022).

	Submitted		*Voted On*		*Average Support*		*Passed*	
Type of Proposal	*H1 2023*	*2022*	*H1 2023*	*2022*	*H1 2023*	*2022*	*H1 2023*	*2022*
Severance	***44***	15	***38***	15	***25%***	44%	***4***	3
Stock Retention	***9***	2	***8***	2	***19%***	26%	***0***	0
Compensation – Social	***7***	12	***5***	4	***8%***	10%	***0***	0
Compensation – Environmental	***5***	6	***5***	5	***11%***	10%	***0***	0
Clawbacks	***3***	5	***2***	5	***42%***	28%	***0***	0
Compensation – Other[63]	***7***	12	***3***	8	***19%***	30%	***0***	0

1. 2.99x Severance

Between 2021 and 2022, John Chevedden submitted 11 proposals for shareholder approval for certain executive severance arrangements. Specifically, these proposals would require companies to obtain shareholder approval for any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base

[63] The "Compensation-Other" proposals in 2023 included proposals to adopt policies accounting for legal or compliance costs in incentive compensation, one proposal regarding shareholder approval of senior executive death benefits and two proposals to limit accelerated vesting of equity awards upon a change in control.

salary plus target short-term bonus.[64] All 2021 and 2022 proposals received over 30% of votes cast, passing at FedEx (58% of votes cast) in H2 2021 and at Alaska Air (54%), Fiserv (51%) and AbbVie (50%) in H1 2022.[65] Citing the success of these proposals, John Chevedden submitted 44 proposals on this topic in H1 2023. Although these proposals were virtually identical to each other and the ones voted in prior years, shareholder support varied drastically across companies. Shareholder support ranged from 4% (at Southwestern Energy) to 67% (at Expeditors International), with four passing (in addition to Expeditors International, at Becton with 62% of votes cast, Delta with 60% and Resideo Technologies with just over 50%).

2. ESG-Linked Compensation

Since 2017, some proponents have asked companies to adopt ESG performance measures (e.g., diversity, social, sustainability and environmental impact) in their executive compensation. Today, the vast majority of S&P 500 companies link executive compensation to some form of ESG performance metric, with 73% of S&P 500 companies using such measures in 2021.[66] The design and success of these arrangements vary widely across companies, even companies in the same industry.

Until this year, ESG-linked compensation proposals were the most common type of compensation-related proposals, even though they consistently receive low average shareholder support. This year, however, the number of submissions on this issue fell. In many cases, the social investment entities that were the most prolific proponents on this topic preferred to engage privately with companies. Anecdotally, a large number of these engagements did not lead to a formal proposal because these proponents were developing their own strategy, including deciding which ESG factors should be linked to compensation at each company and what percentage of performance-based compensation should be linked to such factors. It is possible that the feedback received this year, as well as the more detailed compensation disclosures required under the SEC's new pay versus performance rules, will allow proponents to submit new and more specific ESG-linked compensation proposals in future proxy seasons.

Once a proponent formally submitted a proposal on this topic, withdrawal was unlikely. Of the 12 submitted proposals, 10 went to a vote. Even though ISS recommended in favor of two proposals that focused on linking executive compensation to the achievement of GHG emissions targets, all ESP-linked compensation proposals failed to pass, with shareholder support ranging from 4% to 18% of votes cast.

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[64] As drafted, these proposals include the value of both cash and equity awards, meaning that many companies' existing severance arrangements—especially in connection with an acceleration upon a change-in-control termination—will exceed the 2.99x threshold.

[65] In H1 2022, the proposal also passed at Spirit AeroSystems, which is not in the S&P Composite 1500, with 68% of votes cast.

[66] *See* The Conference Board, *Linking Executive Compensation to ESG Performance* (Nov. 27, 2022), *available at* https://corpgov.law.harvard.edu/2022/11/27/linking-executive-compensation-to-esg-performance.

H. NO-ACTION RELIEF

1. Decreased Submission of No-Action Requests

After the SEC released Staff Legal Bulletin No. 14L in advance of the 2022 season, there was a sharp decline in the likelihood of no-action relief. Staff Legal Bulletin No. 14L, which raised the standard for excluding proposals on the basis of "ordinary business", together with the SEC's 2022 proposal to narrow the "substantial implementation", "duplication" and "resubmission" exclusionary bases, deterred many companies from submitting substantive no-action requests this season.

For H1 2023 proposals, companies in the S&P Composite 1500 submitted 162 no-action requests, representing a 26% decrease relative to the 220 requests submitted for H1 2022 proposals. There was a more pronounced decrease in requests that cited at least one substantive basis, which declined by 40% year over year. Requests based on "ordinary business", "substantial implementation" and "duplication", which were all frequently cited exclusionary bases during the 2022 proxy season, dropped by 32%, 56% and 70%, respectively. In contrast, companies were more likely to request no-action relief based on a procedural defect, especially a proponent's failure to demonstrate eligibility (requests on this procedural basis increased by 42% year over year).

This proxy season, companies were much more likely to seek no-action relief (on both procedural and substantive grounds) in connection with proposals from "anti-ESG" proponents, perhaps because companies had greater success last proxy season in obtaining no-action relief on these proposals. Companies submitted no-action requests in connection with 36% of proposals from "anti-ESG" proponents, compared to 18% in connection with other proposals. More than half the requests sought to exclude these proposals on the basis of "ordinary business".

Notwithstanding lower volume of no-action requests, the SEC's response time did not meaningfully change. The average response time was 68 days (a median of 72 days), similar to the 2022 average and median of 71 days.

2. Increased Success of No-Action Requests

The SEC granted more no-action requests for H1 2023 proposals (71 vs. 65 for H1 2022 proposals), likely because companies were less likely to submit a no-action request unless they had a clear basis for exclusion. Overall, the SEC staff granted relief on 54% of the requests that they considered, up from 38% last year but still significantly lower than the 70% success rate in the 2020 and 2021 proxy seasons.

The SEC was less likely to grant relief in connection with environmental and social/political proposals than governance and compensation proposals. The SEC granted relief in response to 61% of requests related to governance proposals (vs. 55% for H1 2022 proposals) and 60% of requests related to compensation proposals (vs. 33%), compared to 52% of social/political proposals (vs. 31%) and 44% of environmental proposals (vs. 24%).

No-action requests relating to proposals from "anti-ESG" proponents, which constituted 27% of the proposals the SEC staff considered this proxy season, contributed to the higher overall success rate. For these proposals, the SEC staff granted relief on 19 out of the 25 no-action requests it considered, representing a success rate of 76%. This is meaningfully higher than the 49% success rate for other proposals and the 50% success rate for H1 2022 proposals submitted by "anti-ESG" proponents.

3. Successful Requests Cited Procedural or "Ordinary Business" Bases

In 56% of instances where the SEC granted no-action relief, the staff concurred with a procedural basis for exclusion (either failure to demonstrate eligibility or submission after deadline). In 26 instances, the SEC granted no-action relief on the basis of "ordinary business". Twelve of these successful no-action requests were for proposals from "anti-ESG" proponents, reflecting a 75% success rate for requests to exclude these proposals on the basis of "ordinary business" (vs. 37% for other proposals).[67] In contrast, the SEC granted no-action relief on the basis of "substantial implementation" in just four instances (vs. nine in 2022 and 38 in 2021), suggesting that the staff may already be applying a heightened standard for this exclusionary basis.

I. EXEMPT SOLICITATIONS

Since 2018, proponents have used exempt solicitations notices—voluntary filings with the SEC under Rule 14a-6(g)—to encourage votes and engage with shareholders. There have been significant increases in the number of exempt solicitation notices filed with the SEC each proxy season. Through June 30, 2023, there were 355 such filings, up 22% from H1 2022. Filings from "anti-ESG" proponents such as NLPC contributed to the year over year increase. In many cases, these filings provided additional context on the proponent's policy objectives in connection with a facially neutral proposal.

J. MEETING PROCEDURE

In H1 2023, proponents criticized companies for leaving too little time between the presentation of the last shareholder proposal and the closing of the polls. An ICCR survey of 31 companies showed that the time companies reserved at their 2022 annual meetings for shareholders to cast or change their votes varied significantly, ranging from zero seconds to 20 minutes (median of one minute). In light of these criticisms and the increased shareholder scrutiny on meeting procedures following the broad adoption of hybrid

[67] This proxy season, NCPPR sued the SEC after the staff granted Kroger's request to exclude NCPPR's proposal, which requested disclosure of the risks associated with omitting "viewpoint" and "ideology" from the company's Equal Employment Opportunity policy. The NCPPR obtained an emergency stay from the Fifth Circuit and its proposal was included in Kroger's proxy statement (the proposal ultimately went to a vote and received 1.9% of votes cast). According to NCPPR's July 2023 opening brief, the proponent is still petitioning the court to vacate the SEC's no-action letter, arguing that the SEC (1) acted contrary to law and arbitrarily and capriciously by concurring with companies' exclusion of shareholder proposals about viewpoint and ideological discrimination and (2) engaged in viewpoint discrimination and the chilling of speech in violation of the First Amendment.

annual meetings, for next year's meeting agenda, companies may want to consider specifying a brief pause after the last shareholder proposal is presented.

In addition, companies should assess meeting protocols to ensure safety and orderly conduct at annual meetings, especially when there is a highly publicized or divisive shareholder proposal on the ballot. This year, a number of companies faced lengthy and disruptive protests at their annual meetings, with protestors breaking into the room or attempting on get onstage at the Walgreens and Shell shareholder meetings.

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