

## 2016 PROXY SEASON REVIEW

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### Overview

For a second year, proxy access was the preeminent theme during proxy season, with over 200 resolutions filed—reportedly the most ever seen in any shareholder proposal category in a given year. As a result of negotiated withdrawals and voluntary adoptions, over 250 companies had established access rights by the end of June—seven times as many as a year ago—setting the stage for a continuation of private ordering in the years to come.

After proxy access, environmental issues and campaign finance were the second and third most frequent ballot items raised by shareholder proponents (see Table 1). Chief among the targets was Exxon Mobil, which has faced a 25-year campaign to address the threat of climate change. Although all of the climate-related resolutions at Exxon were defeated, a watershed majority vote on proxy access could give activists more leverage in advancing their agenda.

Another season highlight was the number of environmental and social (E&S) proposals that received majority support—eight in all, the most seen since 2014.<sup>1</sup> Although most were in categories that have occasionally garnered majority votes in the past—board diversity, political spending disclosure, sustainability reporting, and anti-discrimination policies—a resolution on methane emissions received over 50% support for the first time.

Many traditional governance resolutions dipped in volume due to a combination of increased engagement, corporate adoptions, and the migration of retail proponents to proxy access. However, shareholders stepped up their game regarding board composition, particularly on matters of diversity, excessive tenure, and specific expertise, such as climate change. In

addition to their proxy access drive, a number of public pension funds strengthened their voting policies to oppose individual directors or hold nominating committees accountable for their choice of nominees. Board diversity and tenure also factored into a number of this year's "vote no" campaigns and proxy fights.

Issuers continued to reap the benefits of increased engagement on executive compensation, receiving not only high approval of say-on-pay (SOP) proposals, but the lowest failure rate in five years. Shareholder proposals on specific aspects of pay were generally on the decline, but new areas of interest emerged, including gender pay equity, government golden parachutes, and the impact of stock repurchases on executive compensation metrics.

Activists also began challenging mutual funds over their voting practices, not only on executive compensation but also on climate change and political spending resolutions. In addition to proxy proposals, proponents and advocacy groups launched public and client-driven online petitions, a trend that is likely to pick up in the future.

Several ambitious first-time campaigns fell flat. Jonathan Kalodimos asked 16 companies to adopt a payout policy that favored share repurchases over dividends, but the resolutions generated a paltry 1.7% in average support. Similarly, Qube Investment Management's 15 resolutions advocating auditor rotation every eight years were uniformly excluded on ordinary business or procedural grounds. In a second attempt, the proponent submitted a revised proposal for General Mills' fall meeting to report on options for a regular competitive review of the audit engagement. This, too, was no-actioned.

Finally, hedge fund activism remained strong during the first half of the year, and more often than not was at least partially successful, typically through negotiated

<sup>1</sup> Throughout this report, voting results are based on "for" and "against" votes and exclude abstentions.

settlements. While board seats were the most frequent activist demand, this season's headline campaigns often involved merger activism and hostile takeovers.

This article reviews some of the key developments and trends from this year's proxy season and looks at what lies ahead for 2017.

## Governance Proposals

### *Proxy Access*

Building off a successful 2015 proxy season, proponents of proxy access ramped up their filings this year to over 200. The New York City Pension Funds resumed their Boardroom Accountability Project, targeting 74 large-cap companies that have little board diversity, excessive CEO pay, or operate in the fossil fuels industry.<sup>2</sup> These included 37 new targets and 38 firms from their 2015 focus list that had yet to enact a viable proxy access bylaw. Virtually all of the NYC Pension Funds' resolutions, along with those of other institutional filers—the UAW Retiree Medical Benefits Trust, Marco Consulting Group, California Public Employees' Retirement System (CalPERS), and Connecticut Retirement Plans and Trust Funds—mirrored the vacated SEC rule, whereby holders of 3% of the shares for three years could nominate up to 25% of the board.

The NYC Pension Funds additionally submitted binding proposals at Cabot Oil & Gas, Noble Energy, and NVR (withdrawn) to reduce the ownership thresholds in their current bylaws from 5% to 3% and to ease other provisions dealing with nominating group size, board seat caps, post-meeting holding periods, the recall period for loaned shares, renomination requirements, and the treatment of individual funds within a mutual fund family for aggregation purposes.

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<sup>2</sup> For the list of targets, see <http://comptroller.nyc.gov/boardroom-accountability/>. The New York City Comptroller additionally targeted Electronic Arts (withdrawn), NVR (withdrawn), International Business Machines (omitted), and Precision Castparts (acquired by Berkshire Hathaway).

Corporate gadflies John Chevedden, James McRitchie, Myra Young, and Kenneth and William Steiner weighed in with over 100 proposals but with a more prescriptive formulation designed to address “lite” versions of proxy access and put access rights within reach of small investors. In addition to the standard 3/3/25 parameters, they prescribed unlimited group aggregations, a minimum of two access candidates, counting recallable loaned shares towards the ownership threshold, and no restrictions on nomination or renomination beyond those applicable to board nominees.

The sweeping campaign sparked a flurry of corporation adoptions through the first quarter of the year, resulting in over half of the resolutions being withdrawn or omitted as substantially implemented. The NYC Pension Funds withdrew 70% of their resolutions after the targeted companies agreed to adopt 3%/3-year access bylaws, even though virtually all limited nominating groups to 20 shareholders and capped shareholder nominees at 20% of the board. The 3/3/20/20 structure has become the de facto market standard, adopted by 70% of the companies that have proxy access in place.

Retail proponents, on the other hand, were reluctant to negotiate withdrawals, and did so in only a few instances, such as iRobot, whose bylaw conformed to their proposal, and NETGEAR, which permitted nominating groups of up to 50 shareholders.<sup>3</sup> However, the SEC allowed the omission of over 40% of their resolutions on substantial implementation grounds because the targeted companies had adopted or were proposing at their annual meetings a proxy access bylaw meeting the essential provisions of the shareholder proposal (a 3%/3-year eligibility requirement), even if it contained other restrictive features.

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<sup>3</sup> In past years, gadfly proponents sought access rights for groups as large as 50 or more shareholders, each owning \$2,000 of stock for one year. Because of low voting support, they switched to the 3/3/25 formulation in 2015.

### *Proxy Access Votes*

Through July 1, investors voted on 79 shareholder-sponsored proxy access proposals, which received 51.1% average support and 41 majority votes (52% of the total) (see Table 2). This compares to 91 resolutions in 2015, which received 54.8% average support and 55 majority votes (60% of the total).

The lower level of support is attributable to proposals failing at companies that had an existing proxy access bylaw, but the proponents wanted more lenient terms. These included not only companies that had adopted 3/3/20/20 bylaws, but also companies with 5% bylaws that were either targeted with a binding resolution or had reasonable limits on nominating groups (20 holders) and shareholder nominees (20% of the board). The results highlight that many investors are uncomfortable with proposals that contain overly prescriptive features, such as unrestricted share aggregations. T. Rowe Price, for example, amended its voting policy in 2016 to clarify that it would not support a shareholder proxy access proposal if the company already had a substantially similar bylaw. Likewise, American Funds/Capital Group will not back a shareholder proposal if the company has an existing bylaw that conforms to the investment manager's parameters on proxy access.

There were five instances of competing management and shareholder resolutions on ballots. Where both proposals called for 3%/3-year access rights—at Cummins, Kate Spade, and Knight Transportation—shareholders favored the more restrictive management resolutions, which limited nominating groups to 20 holders and, in one case, capped access nominees at 20% of the board. In keeping with its past practice, Institutional Shareholder Services (ISS) backed both resolutions at all three companies as a way of ensuring that the measure was adopted, while expressing a

preference for the shareholder proposal's more lenient terms.<sup>4</sup>

At Chipotle Mexican Grill and SBA Communications, investors and ISS supported the shareholder resolution and rejected the management resolution, which had a 5% ownership threshold. Both companies presented the same management proposals in 2015 alongside shareholder proposals sponsored by the NYC Pension Funds. Neither resolution passed last year at Chipotle Mexican Grill. SBA Communications' 2015 resolution, which was non-binding, prevailed over the shareholder resolution, and the company subsequently adopted a comparable bylaw (5/3/10/20). However, in view of the resubmission, the company decided to let investors vote on alternative proposals again this year.

The votes were mixed at companies that had not adopted or proposed a proxy access bylaw. Four companies—Marlin Business Services, Nasdaq, NRG Energy, and Royal Caribbean Cruises—endorsed or made no recommendation on the shareholder proposal, and received votes as high as 98.1%. Forty-nine companies opposed the shareholder resolution, either in principle or to have more time to engage with shareholders on the matter.<sup>5</sup> Average support at these companies was 55.9%, with 33 proposals (69%) passing and 15 proposals (31%) failing (one was not presented). In comparison, last year's average support at companies that opposed proxy access resolutions was somewhat lower (53.4%) because a greater proportion

<sup>4</sup> Although the management proposal at Cummins was non-binding, the company committed to adopting a bylaw at the 2017 annual meeting if the resolution passed. Typically where there are competing non-binding management and shareholder proposals on a ballot, ISS will reject the more restrictive company proposal in favor of the shareholder proposal.

<sup>5</sup> There are still wide divisions among major institutional investors regarding proxy access. See the Nathan Cummings Foundation's 2015 Proxy Access Scorecard at [http://www.nathancummings.org/sites/default/files/pa\\_scorecard\\_2015.pdf](http://www.nathancummings.org/sites/default/files/pa_scorecard_2015.pdf). Academic research is also mixed as to whether or not proxy access conveys shareholder value. See studies by the R Street Institute at <http://www.rstreet.org/wp-content/uploads/2016/03/RSTREETSHORT21.pdf> and [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2798879](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2798879).

was defeated (39%). The year-to-year differences reflect a shift in investor sentiment, such as Vanguard Group's 2016 policy revision that now favors a 3% rather than a 5% ownership threshold for proxy access. This was also evident in the votes on resubmissions, half of which flipped from failing in 2015 to passing in 2016.<sup>6</sup>

The lowest votes occurred at controlled companies (Bio-Rad Laboratories and Universal Health Services) and at companies where ISS recommended against the shareholder resolutions (CSP and Peoples Financial Services). CSP, which has a five-member, annually-elected board, persuasively argued that proxy access could result in a shareholder gaining control of 40% of the board in one election. The proposal at Peoples Financial Services, sponsored by Daniel Wukich, had extremely low eligibility requirements—1.5% of the shares for two years.

Fifteen companies presented standalone management proposals to adopt 3%/3-year proxy access bylaws. All of the resolutions passed, except at Abercrombie & Fitch and FirstEnergy where they did not receive the requisite supermajority approval. Only one was opposed by ISS—at Westmoreland Coal, which capped group aggregations at 10 shareholders, but was increasable to 25 if the company's market capitalization exceeded \$1 billion.

### *Proxy Access Adoptions*

As it stands, approximately 259 companies have proxy access rights—including 185 S&P 500 firms (37% of the index)—of which 94% were instituted since the beginning of 2015. Another eight firms have indicated that they plan to adopt proxy access before or at their 2017 annual meetings.

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<sup>6</sup> These included votes at Chipotle Mexican Grill, Community Health Systems, CONSOL Energy, Exxon Mobil, FleetCor Technologies, New York Community Bancorp, and SBA Communications.

Among the adopters were 47 of the 55 companies where shareholder proposals received majority support in 2015. Of the remaining companies, three have merged or filed for bankruptcy, two have fall annual meetings, and one responded with a management proposal that was voted down (FirstEnergy). Only two firms—Netflix and Nabors Industries—refused to implement the resolution, but both have a history of unresponsiveness to majority-supported shareholder proposals in general. Following the 2016 proxy access vote, Nabors disclosed that it plans to meet with the proponent.

As seen this season, many issuers and institutional investors have concurred that the core structure of proxy access should be no more restrictive than 3/3/20/20, which is the case with 91% of the bylaws implemented to date. The debate has now shifted from these topline parameters to secondary provisions. Recently adopted bylaws are showing increasing conformity to the Council of Investors' (CII) best practice guidelines, such as a two-director minimum for access nominees, no post-meeting shareholding requirement, disclosure of third-party compensation for candidacy and board service, and a low (10%-15%) or no minimum voting requirement for the renomination of access candidates.<sup>7</sup>

Companies responding to majority votes should also be mindful of secondary bylaw provisions that ISS considers to be sufficiently problematic, either alone or in combination, to render the access right meaningless, warranting a "withhold" recommendation on directors.<sup>8</sup> These include:

- Counting individual funds within a mutual fund family as separate shareholders for aggregation purposes,

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<sup>7</sup> See CII's guidelines at [http://www.cii.org/files/publications/misc/08\\_05\\_15\\_Best%20Practices%20-%20Proxy%20Access.pdf](http://www.cii.org/files/publications/misc/08_05_15_Best%20Practices%20-%20Proxy%20Access.pdf).

<sup>8</sup> See ISS's policy at <https://www.issgovernance.com/file/policy/us-policies-and-procedures-faq-14-march-2016.pdf>.

- Post-meeting shareholding requirements for nominating shareholders,
- Prohibitions on resubmission of failed access nominees,
- Restrictions on third-party compensation of access nominees,
- Restrictions on the use of proxy access and proxy contest procedures for the same meeting,
- How long and under what terms an elected access nominee will count towards the permitted number of access candidates, and
- When the access right will be fully implemented and accessible to qualifying shareholders.

Although most proxy access bylaws contain one or more of these features, several companies that responded to last year's majority votes—Monsanto, Cloud Peak Energy, and HCP—cleaned up their provisions ahead of their 2016 annual meetings. To date, none of the directors of any responding companies have received high opposition votes based on ISS's policy, but issuers should discuss these provisions in their shareholder outreach on proxy access.

### *Board Declassification and Majority Voting*

Shareholder proposals to declassify boards and adopt majority voting in director elections continued to decline in number from prior years as a result of increased engagement and more corporate adoptions. According to the EY Center for Board Matters, 91% of S&P 500 companies now have annually elected boards and 88% require a majority vote in director elections. Small and mid-cap companies, which have been the focal point for some shareholder advocates, are catching up. Across the Russell 3000 Index, 60% of firms have annual director elections and 44% have majority voting.<sup>9</sup>

Management resolutions to declassify boards—totaling 46 through June—far outpaced the number of shareholder resolutions on ballots, which fell by 70% from 2015. Among the management proposals were two from long-time holdouts Texas Roadhouse and Vornado Realty Trust, which had been stonewalling multiple years of majority votes on shareholder declassification resolutions. Other companies struggled to secure the requisite supermajority approval to amend their charters. Nineteen management proposals failed (41%), including at five companies that have tried repeatedly to destagger their boards.

As a result of a recent Delaware court ruling, over 50 companies that had declassified their boards in past years cleaned up associated charter provisions which still restricted shareholders from removing directors other than for cause.<sup>10</sup> Nearly a dozen firms also took

<sup>9</sup> Since 2010, the California State Teachers' Retirement System (CalSTRS) has engaged 386 small-cap companies on adopting majority voting, and achieved a 97% success rate. See CalSTRS' 2015 Corporate Governance Annual Report at [http://www.calstrs.com/sites/main/files/file-attachments/corporate\\_governance\\_annual\\_report\\_2015.pdf](http://www.calstrs.com/sites/main/files/file-attachments/corporate_governance_annual_report_2015.pdf).

<sup>10</sup> See *In Re: VAALCO Energy, Inc. Consolidated Stockholder Litigation* at [http://www.cadwalader.com/uploads/media/Vaalco\\_Energy\\_Ruling\\_NE122115bRulings.pdf](http://www.cadwalader.com/uploads/media/Vaalco_Energy_Ruling_NE122115bRulings.pdf). Under the Delaware General Corporation Law, shareholders are entitled to remove directors with or without cause unless the company has a classified board or cumulative voting.

the opportunity to eliminate supermajority vote requirements for director removal. Two of the proposals failed—at GameStop and Zynerva Pharmaceuticals—due to high approval requirements. To be compliant with Delaware law, GameStop stated that it would not enforce the only for-cause removal provision.

Shareholder resolutions to adopt majority voting, while on par with last year’s numbers, faced less corporate resistance. Of the 19 proposals on ballots through June, 10 were unopposed by the boards, resulting in a far higher level of average support (76%) than in 2015 (65.8%).

Meanwhile, this year’s company proposals included some partial measures—STAAR Surgical and Tailored Brands adopted plurality “plus”—and some scrubbing of existing majority voting bylaws. Five firms (mostly Ireland-based) added a plurality carve-out for contested elections, while Eastern added both a plurality carve-out and a director resignation policy to its proposed bylaw to meet with ISS’s approval.

The absence of majority voting has enabled some companies to sidestep the will of shareholders since their directors are assured reelection. A half dozen companies took no meaningful action on shareholder proposals that won majority support in 2015, prompting some investors to step up the pressure with proxy access proposals (Old Republic International) or “vote no” campaigns (Netflix). Other firms took partial strides which failed to appease shareholders. The Sonoco Products board recommended against its own declassification resolution, while FirstEnergy’s proposal to eliminate supermajority voting gave the board discretion to reinstate it under certain circumstances. Both measures failed.

Even with majority voting, director fallout may be limited. Through June, 68 directors at 36 companies received a majority of opposition votes, but only eight of the firms had majority voting and/or a director resignation policy. The boards of four companies—Ashford Hospitality Prime, Hospitality Properties Trust,

Nabors Industries, and Senior Housing Properties Trust—rejected their directors’ resignations, in some cases for a second year in a row.

To address the issue of “zombie” directors, John Chevedden and Kenneth Steiner raised proposals at HCA Holdings and Pfizer to adopt a policy requiring any failed director to be immediately removed from the board, and held over only temporarily until a replacement can be qualified on an expedited basis. The concept, at least at these two targets, was apparently too draconian for investors, who gave only 10.7% and 7.3% backing to the resolutions, respectively.

### *Independent Board Chair*

Many traditional governance initiatives were down in count this year, reflecting the shift by corporate gadflies to proxy access. Proposals calling for an independent board chair were the second most frequently introduced governance topic, with 49 on ballots through June. The one majority vote occurred at Cogentix Medical as part of a proxy battle with director Lewis Pell. However, Pell’s proposal, which received 96.3% support, was bolstered by a similar company resolution on the ballot. Excluding this vote, average support for independent chair resolutions was 29.3%—essentially flat from 2015 and down from 31.1% in 2014.

Investor votes appear to have been little affected by ISS’s policy change last year, whereby it now examines independent chair resolutions in a holistic fashion, taking into account not only the board leadership structure, but also the scope of the proposal, company performance, and governance. Although this has resulted in ISS supporting an increasing number of independent chair proposals—over three quarters this year and two-thirds in 2015—the static vote results indicate that most shareholders are flexible about board leadership structures.

### *Written Consent and Special Meetings*

Proposals requesting written consent and special meeting rights similarly dropped in volume. Half as many written consent resolutions were filed as in 2015 and, ironically, the sole majority vote was at L-3 Communications Holdings where the board made no recommendation because the proposal was muddled. Although the proponent's title and resolved clause referenced "simple majority voting," the text of the resolution dealt with written consent, which is how the company ultimately titled it. Factoring out the confusion around that particular proposal, average support for the remaining resolutions was 39.7%, on par with last year's 39.4%. In all cases, the targeted companies permitted shareholders to call special meetings, which many investors consider a more suitable mechanism for taking action between annual meetings.

Average support on special meeting proposals, at 41.9%, was also consistent with 2015. Those that requested a 15%, rather than a 10% ownership threshold to call special meetings fared better with over 38% support and two majority votes (Celgene and Staples). The one exception was at Guidance Software where the proposal was framed as a bylaw amendment as part of a proxy fight.

Huntsman and CBRE Group offered competing special meeting proposals, but with differing eligibility and procedural requirements—10% ownership in the shareholder resolutions and 20% and 30% ownership, respectively, in the management resolutions. Investors backed both proposals at CBRE Group, while at Huntsman, only the management resolution technically passed even though the shareholder proposal also received majority support.<sup>11</sup> Both companies stated in their proxies that they would implement the

<sup>11</sup> At Huntsman, the non-binding management proposal required the approval of a majority of shares outstanding, while the shareholder proposal required the approval of a majority of votes cast, including abstentions. Excluding abstentions, the shareholder resolution received 53.1% support.

management resolution if approved, irrespective of the vote on the shareholder measure.

### *Supermajority Voting*

Shareholder proposals to eliminate supermajority vote requirements were comparable to 2015 both in number and average support (59.5%). This year, the challenge for issuers was how best to deal with shareholder submissions following SEC guidance last fall that narrowed the use of the conflicting proposal exclusion. Illumina took the unusual approach of holding a non-binding vote on retaining its 67% requirement to amend the charter and bylaws. This allowed the company to omit a same-subject shareholder resolution under Rule 14a-8(i)(9) because investors could not logically approve both proposals—one to retain supermajority voting and one to eliminate it. Although Illumina's proposal failed, it had no practical effect because it was merely advisory.

Other companies facing supermajority resolutions either relied on the substantial implementation exclusion or presented management and shareholder counter-proposals at their annual meetings. The downside to the latter approach is that in cases where the shareholder proposal passed and the management resolution failed (Avista and FirstEnergy), the firms will be obliged to revisit the issue next year to avoid any backlash against their directors.

### *Board Diversity and Tenure*

Boards continue to make incremental progress in expanding their gender and racial mix. ISS's 2016 Board Practices Study reported that 98% of S&P 500 companies have at least one female director and 79% have at least one minority member, up from 89% and 63%, respectively, in 2010. In addition, over 88% of S&P 1500 companies have at least one female or one minority director.

Many investors, however, remain frustrated with the slow pace of change. According to Catalyst, women held 19.9% of the board seats at S&P 500 companies

last year—only a slight increase from 19.2% in 2014—and filled only 26.9% of the open director slots.<sup>12</sup> Women are even less represented in management, holding 4.2% of CEO jobs and just over a quarter of executive and senior management positions.

As a result, diversity advocates have been stepping up their efforts. As in the past, most of this year's shareholder proposals on board diversity were withdrawn after companies agreed to expand their director search criteria and issue progress reports. But the handful that proceeded to ballots produced two majority votes—at Joy Global, which has no female directors, and at FleetCor Technologies, where the board took no position on the proposal. Overall proposal support was nearly double that of 2015, with low votes (less than 20%) occurring at companies that have high insider or private equity ownership.

A number of public pension plans have additionally strengthened their voting policies on board diversity. Beginning this year, the Rhode Island State Investment Commission will vote against directors at companies that nominate board slates that result in fewer than 30% of directors being women or racial minorities. Massachusetts' pension board adopted a similar policy in 2015, but with a 25% threshold for female and minority directors. This resulted in the pension fund casting votes against two-thirds of directors between May and December last year.

The New York City and California Comptrollers went a step further in their policy updates by expanding the definition of board diversity to include sexual orientation and gender identity. Joined by a coalition of 10 state and local officials, they are urging the fiduciaries of 19 other public pension funds to follow suit. According to a Credit Suisse study, there are fewer than 10 openly lesbian, gay, bisexual and transgender (LGBT) directors on the boards of Fortune 500 companies, and only two Fortune 500 boards

include sexual orientation and gender identity in their definition of board diversity.

Investors are also giving closer scrutiny to lengthy director tenures, which not only impede progress on diversity, but can potentially compromise independence. The 2015 Spencer Stuart Board Index found that over the past five years the average age of directors has risen to 63 years, and an increasing number of companies (34%) have set their director retirement age at 75 or higher. And even though the average tenure of boards has remained stable at 8.5 years, a growing percentage of boards (21%) have an average tenure of 11 years or more.

In view of these trends, some major asset managers have taken a harder line towards director tenure in their voting policies.<sup>13</sup> CalPERS and Legal & General Investment Management established explicit thresholds for excessive tenure—12 years and 15 years, respectively—though CalPERS wants companies to simply “comply or explain” why long-tenured directors should continue to be classified as independent. State Street Global Advisors bases excessive tenure on the market average, and accordingly opposed 355 directors in 2014 and 339 in 2015. BlackRock, on the other hand, will vote against directors with extended tenures only if there are perceived governance failings at the company.

Director tenure and diversity are also increasingly factoring into proxy fights and “vote no” campaigns. Over-tenured directors were the focal point of insurgent efforts this year at iRobot, Viacom, and Chipotle Mexican Grill, while Change-to-Win Investment Management targeted nominating/governance committee members at AvalonBay Communities and Discovery Communications for the lack of boardroom diversity. But one group of activists is well behind the curve when it comes to advancing board diversity:

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<sup>12</sup> See [http://www.catalyst.org/system/files/2015\\_catalyst\\_census\\_women\\_and\\_men\\_board\\_directors.pdf](http://www.catalyst.org/system/files/2015_catalyst_census_women_and_men_board_directors.pdf).

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<sup>13</sup> Dorsey & Whitney has compiled a list of investor policies on director tenure at <https://www.dorsey.com/newsresources/publications/client-alerts/2016/04/investors-mandatory-retirement-age-and-tenure>.

hedge funds. According to Bloomberg, since 2011 the five biggest U.S. activist hedge funds have sought at least 174 board positions and won 108. Yet they nominated female candidates only seven times, with five succeeding—representing 5% of the total.

Going forward, diversity quotas and arbitrary term limits are unlikely to gain widespread acceptance among investors, but restricting directors' overall board service may be an alternative catalyst for board turnover and refreshment. Some investors could follow the lead of the proxy advisory firms, which will apply stricter policies on overboarding next year: three public company boards for CEOs of public companies (ISS), two public company boards for executive officers of public companies (Glass Lewis), and five public company boards for all other directors (ISS and Glass Lewis).

### *Proxy Voting Tabulation*

The Equality Network Foundation, in conjunction with Investor Voice and Newground Social Investment, reprised its five-year campaign urging companies to adopt consistent vote-counting practices whereby all shareholder matters be decided by a simple majority of “for” and “against” votes and exclude abstentions. As in prior years, the eight resolutions that came to a vote averaged only single-digit (7.9%) support. In view of this, the proponent is trying out a revised proposal at Oracle's fall annual meeting which asks the company to report preliminary and final vote results using the proponent's simple majority method in addition to the company's standard tabulation.

A proposal at Baker Hughes also set two key precedents on registered investment advisers' (RIAs) standing to submit a proposal on behalf of a client. In its no-action response, the SEC concurred with Newground Social Investment that as an RIA, it did not need to provide proof of its authority to act for its client, the Equality Network Foundation. Moreover, an RIA may convey the client's plans to hold the requisite shares through the annual meeting date in lieu of the client providing its own statement of intent.

### *Litigation Bylaws*

In an effort to stem duplicative and frivolous lawsuits, an increasing number of companies have adopted forum selection provisions which require shareholders to bring M&A litigation, derivative lawsuits and breach of fiduciary claims in a specific jurisdiction. According to law professors at Yale University and the University of California, Berkley, as of January 2016, some 746 U.S. public companies had adopted exclusive forum bylaws or charter provisions, including nearly all newly public Delaware firms.

Although most of these measures were adopted unilaterally, 24 companies put their forum selection provisions to a shareholder vote this year to avoid proxy advisor backlash. Both ISS and Glass Lewis dislike exclusive forum provisions, but Glass Lewis will go so far as to recommend against the chair of the governance committee if such a provision is implemented without shareholder approval outside of an initial public offering (IPO), merger, or spin-off. All of the proposals passed, except at Progressive and Dean Foods, where they required 67% approval. As in the past, ISS opposed every resolution except at Brocade Communications Systems, which disclosed that a 2012 shareholder litigation that was heard in California, rather than Delaware, had resulted in significant costs to the company, including a delay of the annual meeting.

Fee-shifting provisions, which force an unsuccessful shareholder litigant to reimburse the company's legal costs, also cropped up on several proxy ballots. In view of Delaware's ban on such measures last August, Evolent Health put forward a charter amendment to eliminate its litigation costs provision, which was adopted at the time of its June 2015 IPO. Utah-based Nature's Sunshine Products, on the other hand, sought shareholder approval of its fee-shifting bylaw, which had been in place since 2014. Because of the company's significant hedge fund ownership, the measure passed handily, notwithstanding proxy advisor opposition.

Some companies have been testing the limits of the Delaware law with fee-shifting variations, which are already facing legal challenges by shareholders. Paylocity Holding's bylaw, which was adopted six months after the law was enacted, shifts the company's legal fees to shareholder plaintiffs if they bring a suit outside of Delaware. StemCells tacked on a "no-pay" clause which precludes shareholder plaintiffs from recovering their legal costs even if they win. The provision was added in the event the company's fee-shifting bylaw, which was adopted before the ban took effect, was deemed unenforceable. More recently, Echo Therapeutics was threatened with a class-action suit for failing to repeal a provision that shifts all litigation fees to a shareholder even if he is partially successful in his claim. Both StemCells and Echo Therapeutics have since rescinded these bylaws.

### Hedge Fund Activism and Proxy Fights

Hedge fund activism remained robust in the first half of 2016 with 473 activist campaigns initiated worldwide, including 306 in the U.S. alone—up from 278 a year ago—according to Activist Insight. However, the growth mainly arose from occasional and newcomer activists, while funds dedicated to activist investing saw their first slowdown in activity since 2013. Overall, activists were at least partially successful in their demands at over half their targets, with the most frequent demand being board seats.

Contentious situations involving first-time activists and small- and mid-cap companies were the most likely to go to a vote, while top-tier players often accomplished their objectives through negotiated settlements. Early in the season, a number of large-cap firms—American International Group, Avon Products, Xerox, United Continental Holdings, and Yahoo!—conceded to activist demands (at least partly) in order to avoid costly and protracted proxy battles.

Many of this year's high-profile campaigns centered around hostile takeovers and merger activism, though with mixed success. Canadian Pacific Railway, backed by Pershing Square Capital Management, was forced to

abandon its \$28 billion unsolicited bid for Norfolk Southern on antitrust grounds. Pershing Square has since shifted its match-making to Mondelez International where, along with board member and activist Nelson Peltz, it has pushed for a strategic merger. Mondelez's recent \$23 billion takeover bid for Hershey may be thwarted by the Hershey Trust Foundation, which has voting control of the company and is under local pressure to keep it independent. However, some market watchers speculate that the real intent of the offer is to attract a buyout bid for Mondelez itself.

Other deal-making this season turned more rancorous. After missing the deadline for submitting a competing board slate, Gannett resorted to a "vote no" campaign against the directors of tronc, Inc. (formerly Tribune Publishing) to gauge investor interest in a merger and force the board into negotiations. The high level of director opposition votes, which reached nearly 48%, has heartened Gannett to keep its offer open until tronc's quarterly results are released in August.

Boardroom infighting plagued the rocky \$20 billion merger between Williams Companies and Energy Transfer Equity, which collapsed amid falling oil prices. After failing to oust the CEO, who had opposed the deal, half of the Williams board resigned. Among the departing directors were activists Keith Meister of Corvex Management and Eric Mandleblatt of Soroban Capital Partners, who may be positioning for a future proxy fight.

Targets of activists also dug in by employing some controversial defenses. DepoMed attempted to stave off a board contest from Starboard Value by proposing—and later withdrawing—a reincorporation from California to Delaware, which would have restricted shareholders' ability to call a special meeting to remove and replace directors.<sup>14</sup> Ashford Hospitality

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<sup>14</sup> PICO Holdings, which has also been under activist threats, was forced to pull a similar California-to-Delaware reincorporation proposal last year. It resubmitted a more shareholder-friendly version this year, which still failed to gain approval.

Prime went further by disqualifying a dissident slate over advance notice technicalities, and implementing a coercive “proxy penalty” that would trigger an outsized termination fee of its advisory agreement if a majority of the board were unseated. In response, shareholders overwhelmingly rejected the Ashford board’s reelection, but the directors declined to accept their own resignations.

Longer term, activist activity could be dampened by funding constraints and political pressures. According to Hedge Fund Research, investors pulled a net \$15 billion out of hedge funds in the first quarter of 2016—the highest outflow since the 2009 financial crisis—which is expected to climb even higher by year’s end. Among the defections are several large public pension funds—CalPERS, the New York City Employees’ Retirement System (NYCERS), and the Illinois State Board of Investment—which are divesting their hedge fund holdings due to lagging returns and high fees. More could follow as a result of pressure from labor unions, community activists, and other progressive groups, such as Hedge Clippers, that take issue with hedge funds’ short-term profiteering and their role in the Puerto Rican debt crisis.

Lawmakers have also made overtures to clamp down on activist abuses. This spring Senate Democrats introduced the Brokaw Act which would extend the reach of Section 13(d) disclosures by shortening the window for reporting 5% corporate stakes, requiring disclosure of net short positions, and expanding the definition of a beneficial owner to identify hedge funds working together as a wolf pack. Although the bill has little chance of passing, one law firm has suggested that public companies adopt quasi 13(d) bylaws to alert them to a looming activist campaign.<sup>15</sup> To counter anti-

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<sup>15</sup> “Sunlight” bylaws would require hedge funds and other investors to disclose any strategic proposals and their financial interests in companies earlier and at thresholds lower than under current securities laws. Those who fail to comply would be barred from nominating a board candidate or proposing any issue at the next shareholders’ meeting. See “Two New Tools for Addressing Activist Hedge Funds—Sunlight Bylaws and Reciprocal

activist sentiment, several prominent hedge fund managers recently formed their own lobbying group—the Council for Investor Rights and Corporate Accountability (CIRCA)—to advance the case that activism benefits public companies, shareholders, and the economy at large.

### Executive Compensation

#### *Say-on-Pay*

Investors gave high marks to executive compensation programs this year, notwithstanding a backdrop of market volatility. Across all companies, average support for say-on-pay (SOP)—at 91.2%—was on par with the first half of 2015, while the rate of failure declined to 1.6% from 2% a year earlier.

Most companies that failed their pay votes in 2015 turned around their fortunes this year, demonstrating that direct engagement between issuers and investors is paying off. However, there continued to be a few instances of multi-year failed votes, including five companies where shareholders have rejected pay plans in at least three of the past six years (see Table 3). There was also a slight increase in failures among S&P 500 firms (five) over the first half of 2015 (three), and among real estate firms (four). The lowest votes this year occurred at two controlled companies—Bermuda-based C&J Energy Services (10.2%) and NovaBay Pharmaceuticals (16.6%).

Pay votes also showed less congruency with ISS recommendations—another byproduct of increased engagement. ISS opposed a higher proportion of SOP proposals (11.6%) than in the first half of 2015 (10.8%), primarily for pay-for-performance disconnects. However, average SOP support at companies that received a negative ISS recommendation was 70.3%, up from 65% to 67% in each of the last four years.

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Disclosures” at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2580101](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580101).

Support for new or amended equity incentive plans also remained on par with 2015, averaging close to 90%, with only 1% of plans failing. One significant change to equity plans this year was the inclusion of award limits for directors, brought about by recent shareholder litigation claiming that directors had paid themselves excessive amounts. According to Towers Watson, 28% of Fortune 500 firms now include a director-specific annual award limit in their equity plans, either a fixed dollar or a fixed share amount. A similar percentage of companies with director-only stock plans include an annual award limit per director.

### *Mutual Fund Voting Practices*

Notwithstanding the solid SOP results, recent polls show that public sentiment towards CEO pay remains highly negative. A survey by Stanford University's Rock Center for Corporate Governance found that nearly three-quarters of Americans believe CEOs are not paid the correct amount relative to the average worker, even though most respondents grossly underestimated how much CEOs actually make.<sup>16</sup> A separate Reuters/Ipsos poll of over 1,000 individual investors showed that 59% believe CEOs at S&P 500 companies are overpaid, and 56% feel that mutual funds are enabling this trend.

To this end, California philanthropist Stephen Silberstein filed resolutions at State Street (withdrawn) and BlackRock to report on how they could bring their voting practices in line with their stated principle of linking executive compensation with performance. According to Proxy Insight, these two fund families, along with Vanguard, Fidelity Investments, and T. Rowe Price, voted in favor of senior executive pay at S&P 500 firms 96% of the time or more in 2015. To bolster support for the proposal, consumer advocacy group SumOfUs organized an online petition—signed by over 75,000 people including 4,000 BlackRock

clients—urging the fund manager to take a more aggressive stance on executive pay.<sup>17</sup>

Asset managers point out that they are able to catalyze change more effectively through direct dialogue with issuers rather than through binary proxy votes.<sup>18</sup> BlackRock reported that last year it engaged with about 700 U.S. companies, and executive compensation was a focus of 45% of those meetings. Where engagement failed, BlackRock voted against 16% of SOP and equity plan proposals and against 162 compensation committee members globally.

Ultimately, the proposal at BlackRock garnered a meager 4.4% support, but fund managers can expect to see more challenges to their pay votes in the future.<sup>19</sup> For his part, Silberstein promises to continue his campaign at BlackRock, while James McRitchie is considering filing similar resolutions.

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<sup>16</sup> See the Stanford University study at <https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/cgri-survey-2016-americans-ceo-pay.pdf>.

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<sup>17</sup> See the SumOfUs petition at <https://actions.sumofus.org/a/call-on-blackrock-to-stop-runaway-ceo-pay>. Common Cause launched a similar online petition, which generated 65,000 signatories, to persuade Vanguard to support shareholder proposals calling for disclosure of corporate political contributions. See <http://www.commoncause.org/take-action/act/tell-vanguard-vote-shareholder-resolution-disclosure.html>.

<sup>18</sup> See BlackRock's recent paper "Engagement: The Missing Middle Approach in the Bebchuk-Shrine Debate" at <https://www.blackrock.com/corporate/en-us/literature/publication/mallow-sethi-engagement-missing-middle-approach-may-2016.pdf>.

<sup>19</sup> Each year, the AFL-CIO has expanded its coverage and scoring of mutual fund pay votes on its Executive Paywatch site to aid investors and the public in identifying funds which enable or constrain executive compensation. See <http://www.aflcio.org/Corporate-Watch/Paywatch-2016/Mutual-Fund-Votes>.

### *Pay Disparity*

Equal pay for women was the thrust of many of this year's shareholder resolutions on pay disparity, and accounted for one of two majority votes in the compensation lineup. The sponsor—Arjuna Capital/Baldwin Brothers—asked nine technology firms to commit to closing the gender pay gap, and withdrew at five of them that reported having reached or were near reaching gender pay equity. At eBay, the proposal received a whopping 51.2% support—a huge jump from last year's 8.5%—and was backed by the proxy advisors because the company lags its peers in addressing pay disparities. eBay has already undertaken a global analysis of gender pay equity, which it expects to complete in October. Votes at Alphabet and Facebook were far lower—12.4% and 6.6%, respectively—due to their dual-class stock structures.

Aside from proxy proposals, 28 companies across a variety of industries recently signed the White House Equal Pay Pledge to take action within their organizations to close the gender pay gap.<sup>20</sup> The firms agreed to conduct an annual company-wide gender pay analysis across occupations, review hiring and promotion processes, and embed equal pay efforts into broader workplace initiatives.

### *Stock Retention, Severance, and Clawbacks*

Shareholders are showing waning interest in some perennial compensation topics—executive stock retention, severance pay, and clawback policies—evidenced by the slide in proposal volume and, in some cases, lower support levels this year. With retail proponents turning their attention to proxy access, union pension funds sponsored the bulk of these resolutions.

<sup>20</sup> See <https://www.whitehouse.gov/the-press-office/2016/06/13/fact-sheet-government-businesses-and-organizations-announce-50-million>.

Proposals advocating rigorous stock retention and clawback policies drew less backing from both investors and ISS than in 2015, due to the prevalence of robust guidelines at many companies. Average support plunged on both types of resolutions, with half receiving only single-digit support. According to Equilar, 88% of Fortune 100 firms disclose stock ownership guidelines or holding requirements, while Meridian Compensation Partners reported that 40% of 143 major companies already have clawback provisions in place that are compliant with the SEC's proposed rule.

Ballot measures dealing with executive severance and change-in-control (CIC) payments were also less visible this season, but held up better in year-to-year support. Requests for shareholder ratification of golden parachutes averaged 40.6% support, compared to 37.2% last year, and produced a majority vote at Bed Bath & Beyond, which failed its SOP vote in each of the last two years. Resolutions calling for the pro rata vesting of equity awards following a CIC averaged 31.5% support, slightly below last year's 33.2%. While this was the most prevalent compensation topic in 2015—and one of the few that has generated majority votes in past years—only about a third as many were filed in 2016.

### *Government Golden Parachutes*

The AFL-CIO reprised its resolutions on revolving door payments at six major financial institutions, but this year strengthened its request to prohibit, rather than just disclose, accelerated or continued stock awards for executives who resign to enter government service. Overall support increased somewhat over last year, averaging 23.7%, except at Goldman Sachs where support dropped from 19.1% to 6.9%. Notably, this was the only company where ISS reversed its stance from backing the resolution in 2015 to opposing it this year, even though Goldman Sachs pointed out in both years that its executives do not have employment agreements or equity awards that provide for guaranteed payouts or are triggered by voluntary resignation to accept a government position.

### *Performance Metrics*

The rapid expansion of stock buybacks in recent years engendered a new proposal from the AFL-CIO and Domini Social Investments which asked several companies to exclude the impact of share repurchases in setting executive pay. Because buybacks artificially inflate certain performance metrics, such as earnings per share (EPS), executives can be rewarded for mere financial engineering. The proposal won an impressive 45.6% support and ISS's endorsement at Xerox, but mustered only 5.8% and 5.3%, respectively, at 3M and Illinois Tool Works. Unlike Xerox, where EPS accounts for half of the calculation of short- and long-term incentives, per-share metrics have less weighting in performance targets at 3M and Illinois Tool Works.

### Environmental & Social Proposals

This year's E&S activity centered around environmental issues and campaign finance. According to Ceres, a record-breaking 172 climate-related resolutions were filed in 2016, including proposals on climate lobbying and public policy advocacy and on proxy access at fossil fuel companies. Proponents doubled up on their requests for climate change reports, reducing methane gas leakage, and increasing renewable energy sourcing, while scaling back on other topics, such as sustainability reporting and establishing greenhouse gas (GHG) emissions goals. Relative to last year, average support edged up across most categories of environmental proposals.

Aside from climate change, the main E&S story this year was the number of resolutions that received majority support—eight to date, which is the most in any of the past five years other than 2014. Most were on topics that have periodically won shareholder approval in the past: board diversity (FleetCor Technologies and Joy Global), sustainability reporting (CLARCOR), political spending disclosure (Flour and NiSource), and prohibiting workplace discrimination based on sexual orientation and gender identity (J.B. Hunt Transport Services). For the first time, a proposal on methane emissions management garnered over 50%

support at WPX Energy, though the company didn't consider it approved when factoring in abstention votes. The eighth was a laudatory animal rights proposal, commending Kellogg on its decision to switch to cage-free eggs in its supply system.

### *Climate Change*

The Paris Climate Summit, which set out a global action plan to limit global warming below two degrees Celsius, brought a new impetus to shareholder campaigns on climate change. Social, religious, and public pension funds rolled out over a dozen carbon asset risk resolutions urging energy companies to “stress test” their business plans against the Paris accord's carbon reduction goal or to disclose the risk of stranded assets resulting from lower demand for fossil fuels. Other proposal variations asked fossil fuel firms to decouple the replacement of oil reserves from executive compensation or to return to shareholders capital that is earmarked for the development of reserves that may go unexploited.

Activists added muscle to their campaigns this year with exempt solicitations and even an online platform—“Vote Your Pension”—that called on individuals to petition their pension funds to vote for the climate resolutions at Exxon Mobil and Chevron.<sup>21</sup> Ceres also maintained a website tally of institutions that publicly declared their support for the climate resolutions at Exxon Mobil, Chevron, Devon Energy, and Southern.<sup>22</sup>

Mutual funds faced heightened scrutiny of their voting as well.<sup>23</sup> For a third year, Zevin Asset Management and co-filers floated proposals at Franklin Resources

<sup>21</sup> See the “Vote Your Pension” platform at <https://www.voteyourpension.org/press-release/worlds-largest-shareholder-action-platform-launches-campaign-to-put-exxon-and-chevron-on-low-carbon-pathway/>.

<sup>22</sup> See <http://www.ceres.org/issues/carbon-asset-risk/investor-support-of-portfolio-resilience-resolutions>.

<sup>23</sup> See <http://www.ceres.org/press/blog-posts/is-your-mutual-fund-a-climate-change-denier-or-climate-champion>.

and T. Rowe Price to review discrepancies between their proxy voting practices and their public stance to combat climate change. The resolutions fared poorly in each case—4.5% at Franklin Resources and 8.5% at T. Rowe Price—because proxy voting is handled by their investment subsidiaries and not at the corporate level. Nevertheless, asset managers will face more pressure next year from the Principles for Responsible Investment (PRI). The United Nations-supported organization plans to adopt a policy to delist members that fail to put its principles into practice. PRI signatories pledge to incorporate environmental, social and governance (ESG) factors into their decision-making and seek ESG disclosures from the companies in which they invest.

This season's biggest showdowns occurred at the two largest U.S. oil producers—Exxon and Chevron—which each logged six climate-related proposals. Although all were defeated—with some registering only single-digit support—the resolutions calling for climate change impact assessments made a weighty showing of 38.1% at Exxon and 40.8% at Chevron.

For activists, the bigger prize was the passage of a proxy access proposal at Exxon, regarded as the most important vote of the season. If adopted, proxy access would put “significant leverage on the table” for investors to force the company to get serious about climate risk by nominating climate experts to the board. Exxon said it will weigh the matter in July.

Bringing climate “competency” to the board level may extend to other large oil and gas producers as well, many of which have already implemented proxy access. This year, CalPERS and the NYC Pension Funds added board climate change expertise to their voting guidelines for portfolio companies. They are among a coalition of 50 investors—the “50/50 Climate Project”—that is actively building a bench of climate-friendly director candidates.

### *Political Spending and Lobbying*

For a sixth year, Walden Asset Management and the American Federation of State, County and Municipal Employees (AFSCME) spearheaded a coalition of 66 investors that asked 50 companies to issue reports on their federal and state lobbying payments, payments to trade associations used for lobbying, and payments to tax-exempt organizations, such as the American Legislative Exchange Council (ALEC), that write and endorse model legislation. Of particular interest was corporate funding of initiatives and organizations that influence climate change laws and regulations. A proposal variation that called on energy companies to review their public policy advocacy on energy and climate policy was largely withdrawn.

The campaign lost ground this year with average support dropping to 23.9%—the lowest level since 2012. ISS also backed fewer lobbying resolutions—80% versus 95% last year—and in several cases—American Express, Chesapeake Energy, and Wells Fargo—flipped from supporting the proposal in 2015 to opposing it in 2016 due to improvements in their disclosures.

Filings of political spending resolutions were down by nearly two-thirds from 2015, most likely attributable to increased corporate reporting. According to the Center for Political Accountability (CPA), 301 firms disclose some or all of their political contributions, including 140 large companies that had reached agreements over the years with the CPA and/or its investor partners. This year's initiative yielded 31.6% average support—down slightly from 34.4% in 2015—but produced two majority votes at Fluor and NiSource. Advocacy group Public Citizen considers the vote significant because both firms are recipients of major government contracts. Last year, a coalition of investors, advocacy groups, labor unions, and environmental organizations urged President Obama to issue an executive order requiring federal contractors to disclose their political spending, which would essentially cover 70% of all Fortune 100 companies. Meanwhile, a rulemaking petition that has been before the SEC since 2011

remains stalled. As in 2016, the FY2017 spending bills approved by the House and Senate appropriations committees include a rider barring the SEC from using funds to propose or implement political spending disclosure rules.

### A Look Ahead

The rapid spread of proxy access this season, spurred by shareholder proposals, will invariably bring about another tidal wave of filings next year. Building off the two-year success of their Boardroom Accountability Project, the NYC Pension Funds will likely continue working their way through the S&P 500 Index of companies. Meanwhile, retail investors, dismayed by the extent of substantial implementation no-actions, are threatening to switch to binding resolutions in 2017, though it remains to be seen what their next-generation proposals will look like.

Uncertainty still surrounds when and how proxy access rights will be invoked. Advocates such as the NYC Comptroller have alluded that proxy access will give investors greater leverage on issues such as climate change and board composition and diversity. However, mainstream investors, such as Vanguard, have stated that they view proxy access as a tool of last resort, and are unlikely to participate in a nominating group unless there are significant governance concerns at a company and engagement has failed.

Mutual funds are likely to face continued activist and public pressure regarding their voting practices on executive compensation, climate change, political spending, and other matters. James McRitchie, for one, expects to start targeting asset managers that have a poor record of supporting shareholder proposals calling for greater E&S-related disclosures.

McRitchie also plans to file resolutions next year requesting in-person annual meetings at companies that have switched to an online-only format. Broadridge Financial Solutions reported hosting 90 virtual-only meetings and 44 hybrid (physical and remote) meetings in 2015, and predicted an uptick in 2016 surpassing the

44% year-on-year increase in 2015. While investors are in favor of using technology to supplement in-person meetings, some contend that cyber-only meetings insulate boards and managements from direct interaction with shareholders.

Also on the horizon is the roll-out of final rules on compensation clawbacks, pay-for-performance, and hedging disclosure, mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. According to the Regulatory Flexibility Agenda, the SEC is targeting April 2017 for completing its rulemaking on these matters.<sup>24</sup> However, the stalled confirmation of two SEC Commissioner nominees could mean further delays.

A proposed rule on universal proxy ballots, which was expected in the coming weeks, has also been derailed. In early July, the House of Representatives approved amendments to the FY2017 financial services spending bill that would temporarily bar SEC rulemaking on this issue, as well as defund enforcement of the conflict minerals and CEO pay ratio rules.<sup>25</sup> The latter is largely symbolic since pay ratio disclosures do not take effect for most companies until 2018. Many issuers are well underway in preparing for the rule. According to a recent survey of 143 major companies by Meridian Compensation Partners, 40% have already calculated or begun the process of calculating the pay ratio, and 1% have publicly disclosed it.

Nasdaq-listed companies will also be subject to a new exchange rule on golden leash arrangements, which takes effect on July 30, 2016.<sup>26</sup> For any shareholder

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<sup>24</sup> See the SEC's Reg Flex Agenda at [http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&Image58.x=28&Image58.y=17&Image58=Submit](http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&Image58.x=28&Image58.y=17&Image58=Submit).

<sup>25</sup> See the Financial Services and General Government Appropriations Act, 2017 at <https://www.congress.gov/congressional-record/2016/07/07/house-section/article/H4497-1>.

<sup>26</sup> See Nasdaq's golden leash rule at <https://www.sec.gov/rules/sro/nasdaq/2016/34-78223.pdf>.

meeting with director elections, the rule will require corporate website or proxy disclosure of third-party compensation agreements with any sitting director or director nominee in conjunction with his board candidacy or service. The rule's intent is to aid shareholders in determining whether these compensation arrangements, which are typically associated with proxy fights, pose a conflict of interest.

Finally, the upcoming presidential election could usher in more regulatory shifts, with opponents Hillary Clinton and Donald Trump facing off over extending the reach of Dodd-Frank or dismantling it altogether. For their part, House Republicans recently put forward their own plan—the Financial CHOICE Act—to undo the most onerous provisions of Dodd-Frank.<sup>27</sup> In addition to revoking the conflict minerals rule, the proposed legislation would repeal pay ratio disclosures, employee and director hedging disclosures, and the authorization of the SEC to adopt a proxy access rule. The bill would also ease the rules on no-fault clawbacks and the frequency of SOP votes, as well as require proxy advisory firms to register with the SEC.

With these and other challenges ahead, 2017 promises to be another dynamic proxy season. Alliance Advisors will keep companies apprised of key developments as they prepare for next year's annual meetings.

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<sup>27</sup> See the discussion draft of the Financial CHOICE Act at [http://financialservices.house.gov/uploadedfiles/choice\\_act-discussion\\_draft.pdf](http://financialservices.house.gov/uploadedfiles/choice_act-discussion_draft.pdf).

*Table 1: 2015 & 2016 Shareholder Proposals*

Governance Proposals	2015 Submitted	2015 Voted On <sup>1</sup>	2015 Majority Votes <sup>2</sup>	2015 Average Support <sup>2</sup>	2016 Submitted	2016 Voted On <sup>1</sup>	2016 Majority Votes <sup>2</sup>	2016 Average Support <sup>2</sup>
Declassify board	32	17	15	69.2%	15	7	6	81.2%
Director removal	2	1	0	23.5%	2	2	0	9.0%
Majority voting	25	11	8	65.8%	23	19	16	76.0%
Proxy access	121	91	55	54.8%	208	79	41	51.1%
Poison pill	9	5	3	45.7%	2	1	1	69.7%
Cumulative voting	2	2	0	23.8%	1	1	0	10.9%
Enhanced confidential voting	2	0	0	N/A	0	0	0	N/A
Supermajority voting	25	13	8	58.0%	29	15	9	59.5%
Voting requirements	9	8	0	6.7%	10	7	0	7.9%
Dual-class stock	13	12	1	34.9%	13	11	0	27.1%
Special meetings	31	21	4	42.4%	21	18	4	41.9%
Written consent	44	36	2	39.4%	20	17	1	41.3%
Amend bylaws	7	6	3	49.2%	2	2	1	49.2%
Other anti-takeover	6	5	3	54.2%	2	2	2	70.6%
Independent chairman	84	62	2	29.5%	61	49	1	30.7%
Board independence, tenure and size	5	1	0	7.1%	2	1	0	35.6%
Outside board seats	2	2	0	1.9%	0	0	0	N/A
Auditor tenure	0	0	0	N/A	15	0	0	N/A
Reincorporate to Delaware	2	1	0	13.8%	0	0	0	N/A
Maximize value	16	6	0	21.6%	12	7	1	31.4%
Stock repurchases, dividends	9	3	1	28.4%	19	17	0	3.7%
Miscellaneous	17	3	1	38.9%	17	3	1	33.9%
<b>Total Governance</b>	<b>463</b>	<b>306</b>	<b>106</b>		<b>474</b>	<b>258</b>	<b>84</b>	

Compensation Proposals	2015 Submitted	2015 Voted On <sup>1</sup>	2015 Majority Votes <sup>2</sup>	2015 Average Support <sup>2</sup>	2016 Submitted	2016 Voted On <sup>1</sup>	2016 Majority Votes <sup>2</sup>	2016 Average Support <sup>2</sup>
Severance pay	8	8	3	37.2%	4	3	1	40.6%
Accelerated vesting of equity awards	41	32	2	33.2%	16	13	0	31.5%
Revolving door payments	4	4	0	21.5%	6	5	0	23.7%
Tax gross-ups	6	1	0	32.1%	0	0	0	N/A
SERPS	1	1	0	36.5%	0	0	0	N/A
Clawbacks	23	16	0	28.6%	6	6	0	14.3%
Retention of equity awards	16	12	0	23.4%	13	12	0	17.6%
Performance-based awards	3	2	0	28.3%	1	1	0	6.7%
Performance metrics	4	2	0	2.4%	6	4	0	16.6%
Pay disparity and ratios	19	2	0	7.2%	26	7	1	12.8%
Pay caps	2	1	0	3.8%	3	1	0	2.8%
Link pay to social issues	11	5	0	6.2%	14	9	0	8.4%
Proxy policy congruency (compensation)	0	0	0	N/A	2	1	0	4.4%
Miscellaneous compensation	5	1		8.8%	7	1	0	0.6%
<b>Total Compensation</b>	<b>143</b>	<b>87</b>	<b>5</b>		<b>104</b>	<b>63</b>	<b>2</b>	

E&S Proposals	2015 Submitted	2015 Voted On <sup>1</sup>	2015 Majority Votes <sup>2</sup>	2015 Average Support <sup>2</sup>	2016 Submitted	2016 Voted On <sup>1</sup>	2016 Majority Votes <sup>2</sup>	2016 Average Support <sup>2</sup>
<b>Animal welfare</b>	17	10	0	6.5%	8	4	1	27.9%
<b>Board diversity</b>	32	5	0	13.3%	31	9	2	24.8%
<b>Charitable contributions</b>	4	1	0	N/A	1	0	0	N/A
<b>Environmental</b>	164	87	1		151	81	2	
Climate change - conservative	2	2	0	0.8%	0	0	0	N/A
Coal	1	0	0	N/A	0	0	0	N/A
Hydraulic fracturing	6	4	0	29.1%	6	4	0	20.7%
Fugitive methane	9	6	0	29.0%	13	5	1	32.0%
Environmental impact - water	3	1	0	11.1%	7	2	0	19.8%
Climate change report	11	10	0	22.9%	25	19	0	28.2%
GHG emissions reduction	36	17	0	20.5%	19	10	0	22.0%
Finance and climate change	2	1	0	8.8%	0	0	0	N/A
Energy efficiency and renewable energy	13	5	0	15.1%	26	9	0	24.3%
Oil and Gas transport risks	4	0	0	N/A	0	0	0	N/A
Nuclear	2	1	0	2.1%	1	1	0	4.3%
Palm oil and deforestation	13	5	0	21.1%	6	2	0	24.6%
GMOs	3	2	0	4.8%	3	0	0	N/A
Nanomaterials	1	0	0	N/A	3	1	0	3.8%
Recycling	7	4	0	30.0%	11	7	0	19.9%
Toxic substances	9	2	0	5.2%	5	2	0	7.1%
Board environmental risk committee	5	5	0	3.7%	2	1	0	6.5%
Director with environmental expertise	4	2	0	20.5%	3	3	0	19.6%
Environmental - conservative	1	1	0	4.7%		0	0	N/A
Other - environmental	2	0	0	N/A	3	0	0	28.1%
Sustainability report	29	19	1	30.9%	18	15	1	31.8%
Supplier sustainability report	1	0	0	N/A	0	0	0	N/A
<b>Employment/discrimination</b>	44	8	0		18	6	1	
EEO report	3	3	0	24.4%	7	4	0	27.0%
Miscellaneous employment/discrimination	3	3	0	2.2%	2	1	0	2.8%
Civic and political non-discrimination	16	1	0	6.0%	0	0	0	N/A

E&S Proposals	2015 Submitted	2015 Voted On <sup>1</sup>	2015 Majority Votes <sup>2</sup>	2015 Average Support <sup>2</sup>	2016 Submitted	2016 Voted On <sup>1</sup>	2016 Majority Votes <sup>2</sup>	2016 Average Support <sup>2</sup>
EEO - conservative	3	0	0	N/A	1	0	0	N/A
EEO - sexual orientation	19	1	0	33.7%	8	1	1	54.7%
<b>Finance</b>	<b>6</b>	<b>0</b>	<b>0</b>		<b>4</b>	<b>1</b>	<b>0</b>	
Tax risk and policy	4	0	0	N/A	2	1	0	4.2%
Student loans	1	0	0	N/A	0	0	0	N/A
Board's moral and legal obligation	1	0	0	N/A	0	0	0	N/A
Indemnification	0	0	0	N/A	1	0	0	N/A
Miscellaneous finance	0	0	0	N/A	1	0	0	N/A
<b>Health</b>	<b>9</b>	<b>4</b>	<b>0</b>		<b>10</b>	<b>1</b>	<b>0</b>	
Health - conservative	1	0	0	N/A	1	0	0	N/A
Drug pricing	5	3	0	11.0%	1	0	0	N/A
Childhood obesity	1	0	0	N/A	3	0	0	N/A
Antibiotics and factory farms	2	1	0	7.5%	4	1	0	26.3%
Miscellaneous health	0	0	0	N/A	1	0	0	N/A
<b>Human rights</b>	<b>58</b>	<b>25</b>	<b>0</b>		<b>60</b>	<b>30</b>	<b>0</b>	
Country selection/divestiture	6	3	0	11.6%	12	8	0	2.9%
Holy Land principles	4	4	0	3.0%	9	7	0	4.1%
Human trafficking	0	0	0	N/A	5	0	0	N/A
Human Rights Mediation/Tobacco workers	8	5	0	3.5%	8	4	0	5.2%
Code of conduct	3	1	0	20.8%	1	1	0	4.0%
Vendor code of conduct and human rights in supply chain	13	6	0	12.6%	8	2	0	25.1%
Worker safety	0	0	0	N/A	6	4	0	17.3%
Human right to water	1	1	0	7.5%	0	0	0	N/A
Internet and phone privacy and net neutrality	11	2	0	22.5%	4	1	0	11.0%
Board committee on human rights	6	3	0	7.2%	3	2	0	2.1%
Prison communications/inmate rights	4	0	0	N/A	2	1	0	21.5%
Miscellaneous human rights	2	0	0	N/A	2		0	N/A
<b>Military sales</b>	<b>2</b>	<b>0</b>	<b>0</b>		<b>1</b>	<b>1</b>	<b>0</b>	<b>6.0%</b>
Political	128	72	0	N/A	111	69	2	
Political - conservative view	0	0	0	N/A	2	0	0	N/A

E&S Proposals	2015 Submitted	2015 Voted On <sup>1</sup>	2015 Majority Votes <sup>2</sup>	2015 Average Support <sup>2</sup>	2016 Submitted	2016 Voted On <sup>1</sup>	2016 Majority Votes <sup>2</sup>	2016 Average Support <sup>2</sup>
Grassroots lobbying	62	36	0	25.8%	50	39	0	23.9%
Indirect Lobbying	4	2	0	17.5%	4	1	0	27.9%
Public policy advocacy	6	1	0	19.3%	5	1	0	21.2%
Incorporate values	4	4	0	6.0%	2	2	0	6.5%
Incorporate values - conservative view	0	0	0	N/A	5	3	0	4.1%
Contributions - CPA	50	28	0	34.4%	37	19	2	31.6%
Non-deductible political expenditures	0	0	0	N/A	6	4	0	36.3%
Board oversight	1	0	0	N/A	0	0	0	N/A
Prohibit political spending	1	1	0	3.6%	0	0	0	N/A
<b>Tobacco</b>	<b>7</b>	<b>2</b>	<b>0</b>		<b>3</b>	<b>2</b>	<b>0</b>	
Tobacco advertising and education	6	2	0	3.8%	0	0	0	N/A
E-cigarettes	0	0	0	N/A	2	1	0	6.6%
Ethics committee	1	0	0	N/A	0	0	0	N/A
Miscellaneous tobacco	0	0	0	N/A	1	1	0	18.2%
<b>Firearms</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>N/A</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>N/A</b>
<b>Proxy policy congruency</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>N/A</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>6.5%</b>
<b>Total Environmental &amp; Social</b>	<b>475</b>	<b>214</b>	<b>1</b>		<b>404</b>	<b>206</b>	<b>8</b>	
<b>Total Proposals (All)</b>	<b>1,081</b>	<b>607</b>	<b>112</b>		<b>982</b>	<b>527</b>	<b>94</b>	

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

1. Includes floor proposals; excludes proposals on ballots that were not presented or were withdrawn before the annual meeting. 2015 figures are for the full year and 2016 figures are for the first half of the year.
2. Based on votes FOR as a percentage of votes FOR and AGAINST.

*Table 2: 2016 Proxy Access Votes (through July 1)*

Shareholder Proposals	Proponent	2015 Vote <sup>1</sup>	Date Bylaw Adopted	Owner-ship %	# Holders	Owner-ship Years	# of Nominees	2016 Meeting Date	2016 Vote <sup>1</sup>
AmerisourceBergen Corp.	Kenneth Steiner		18-Nov-15	3%	20	3	2 dirs or 20%	3-Mar	31.6%
Apple Inc.	James McRitchie	39.2%	21-Dec-15	3%	20	3	20%	26-Feb	32.7%
Applied Materials, Inc.	Kenneth Steiner		8-Dec-15	3%	20	3	2 dirs or 20%	10-Mar	30.4%
Barnwell Industries, Inc.	Ned L. Sherwood							7-Mar	34.5%
Bed Bath & Beyond Inc.	NYC pension funds							1-Jul	61.6%
Bio-Rad Laboratories, Inc.	James McRitchie							26-Apr	19.9%
BorgWarner Inc.	John Chevedden		10-Feb-16	5%	10	3	20% but no more than 2 dirs	27-Apr	63.0%
Boyd Gaming Corp.								14-Apr	39.0%
Brink's Co.	William Steiner		19-Mar-16	3%	20	3	2 dirs or 20%	6-May	31.2%
Cabot Oil & Gas Corporation <sup>2</sup>	NYC pension funds	45.3%	11-Mar-15	5%	10	3	20%	4-May	45.5%
Celgene Corporation	UAW							15-Jun	68.6%
Community Health Systems, Inc.	Connecticut	49.8%						17-May	83.2%
CONSOL Energy Inc.	NYC pension funds	47.0%						11-May	52.4%
Costco Wholesale Corp.	James McRitchie, Myra Young							29-Jan	66.5%
CSP, Inc.	James McRitchie, Myra Young	49.0%						9-Feb	7.5%
Dana Holding Corp.	John Chevedden		26-Jan-16	3%	20	3	25%	28-Apr	34.5%
Deere & Co.	John Chevedden							24-Feb	60.0%
Dover Corporation	John Chevedden		11-Feb-16	3%	20	3	2 dirs or 20%	5-May	29.7%

Shareholder Proposals	Proponent	2015 Vote <sup>1</sup>	Date Bylaw Adopted	Owner-ship %	# Holders	Owner-ship Years	# of Nominees	2016 Meeting Date	2016 Vote <sup>1</sup>
Dow Chemical Co.	UAW							12-May	72.2%
Ecolab Inc.	John Chevedden		3-Dec-15	3%	20	3	2 dirs or 20%	5-May	28.3%
Edison International	John Chevedden		10-Dec-15	3%	20	3	2 dirs or 20%	28-Apr	36.4%
Ellie Mae Inc.	John Chevedden for Myra Young							25-May	55.8%
EMCOR Group, Inc.	William Steiner							2-Jun	78.5%
Exxon Mobil Corp.	NYC pension funds	49.4%						25-May	61.9%
Ferro Corp.	Kenneth Steiner							28-Apr	57.1%
Fiserv, Inc.	John Chevedden		19-Feb-16	3%	20	3	2 dirs or 20%	18-May	25.6%
FleetCor Technologies, Inc.	NYC pension funds	46.9%						8-Jun	62.3%
FLIR Systems, Inc.	UAW							22-Apr	85.6%
Flowserve Corporation	John Chevedden		15-Dec-15	5%	20	3	2 dirs or 20%	19-May	45.4%
Genomic Health, Inc.	James McRitchie, Myra Young							9-Jun	35.5%
GEO Group, Inc. <sup>3</sup>	Alex Friedmann							27-Apr	35.9%
Goodyear Tire & Rubber Co.	John Chevedden							11-Apr	65.3%
Guess?, Inc.	Marco Consulting Group							30-Jun	45.1%
Interpublic Group of Companies, Inc.	Kenneth Steiner							19-May	66.0%
Johnson Controls, Inc.	Unidentified							27-Jan	70.7%
Kansas City Southern	James McRitchie		29-Feb-16	3%	20	3	2 dirs or 20%	5-May	26.8%
L Brands, Inc.	John Chevedden							19-May	52.5%

Shareholder Proposals	Proponent	2015 Vote <sup>1</sup>	Date Bylaw Adopted	Owner-ship %	# Holders	Owner-ship Years	# of Nominees	2016 Meeting Date	2016 Vote <sup>1</sup>
Lowe's Companies, Inc.	John Chevedden		18-Mar-16	3%	20	3	2 dirs or 20%	27-May	30.5%
Marathon Petroleum Corp.	John Chevedden		24-Feb-16	3%	20	3	2 dirs or 20%	27-Apr	32.7%
Marlin Business Services Corp. <sup>4</sup>	George D. Pelose							8-Jun	98.1%
Medivation, Inc.	James McRitchie, Myra Young							22-Jun	63.5%
Monster Beverage Corp.	NYC pension funds	41.9%						14-Jun	43.4%
Nabors Industries Ltd. <sup>5</sup>	NYC pension funds	67.0%	3-Jun-14	5%	1	3	1 director	7-Jun	60.4%
Nasdaq, Inc. <sup>6</sup>	Kenneth Steiner							5-May	75.2%
NCR Corp.	Myra Young							28-Apr	52.7%
Netflix, Inc.	NYC pension funds	71.0%						9-Jun	71.8%
NeuStar, Inc.	John Chevedden							15-Jun	Not presented
New York Community Bancorp, Inc.	NYC pension funds	44.4%	17-Mar-15	5%	10	3	20%	7-Jun	67.1%
NextEra Energy, Inc.	Myra Young							19-May	73.3%
Noble Energy, Inc. <sup>2</sup>	NYC pension funds	42.5%	22-Oct-15	5%	20	3	20%	26-Apr	38.4%
NRG Energy, Inc. <sup>6</sup>	NYC pension funds							28-Apr	94.8%
Old Republic International Corp.	CalPERS							27-May	74.4%
O'Reilly Automotive, Inc.	NYC pension funds							3-May	66.2%
Oshkosh Corp.	Unidentified		13-Nov-15	5%	20	3	20%	2-Feb	39.7%
PACCAR Inc	NYC pension funds	42.0%						26-Apr	45.2%
Peoples Financial Services Corp. <sup>7</sup>	Daniel J. Wukich							14-May	18.0%
PharMerica Corporation	UAW							17-Jun	79.2%
Proto Labs, Inc.	James McRitchie							19-May	71.0%
PTC Therapeutics, Inc. <sup>4</sup>	UAW							10-Jun	84.8%

Shareholder Proposals	Proponent	2015 Vote <sup>1</sup>	Date Bylaw Adopted	Owner-ship %	# Holders	Owner-ship Years	# of Nominees	2016 Meeting Date	2016 Vote <sup>1</sup>
QUALCOMM Inc.	James McRitchie		7-Dec-15	3%	20	3	20%	8-Mar	46.9%
Raytheon Company	John Chevedden		23-Mar-16	3%	20	3	2 dirs or 20%	26-May	34.8%
Royal Caribbean Cruises Ltd. <sup>6</sup>	Robert L. Kurte, Harold Kurte							20-May	Not presented
SciClone Pharmaceuticals, Inc.	James McRitchie							9-Jun	88.2%
SolarCity Corporation	James McRitchie							7-Jun	11.4%
Sonoco Products Co.	William Steiner		10-Feb-16	3%	20	3	1-2 dirs or 20%	20-Apr	Not presented
Southwest Airlines Co.	Kenneth Steiner							18-May	69.2%
Spectrum Pharmaceuticals, Inc.	UAW							28-Jun	59.4%
Starbucks Corp.	Harrington Investments							23-Mar	57.4%
Stericycle, Inc.	John Chevedden		10-Feb-16	3%	20	3	2 dirs or 20%	25-May	35.4%
T-Mobile US Inc.	Marco Consulting Group	17.6%						16-Jun	23.6%
Universal Health Realty Income Trust	UAW							9-Jun	70.5%
Universal Health Services, Inc.	NYC pension funds							18-May	8.9%
Urban Outfitters, Inc.	NYC pension funds	40.6%						24-May	63.6%
Vector Group Ltd.	Kenneth Steiner							28-Apr	45.5%
VeriSign, Inc.	John Chevedden							9-Jun	29.3%
WEC Energy Group, Inc.	NYC pension funds							5-May	74.7%
Whole Foods Market, Inc.	James McRitchie		26-Jun-15	3%	20	3	20%	9-Mar	39.8%

Duelling Management and Shareholder Proposals	Proponent	2015 Vote <sup>1</sup>	Owner ship %	# Holder s	Owner-ship Years	# of Nominees	2016 Meeting Date	2016 Vote <sup>1</sup>
Chipotle Mexican Grill, Inc. <sup>8</sup>	NYC pension funds	49.9%	5%	20	3	20%	11-May	MGT failed and SH passed (57.4%)
Cummins Inc. <sup>9</sup>	John Chevedden		3%	20	3	2 dirs or 25%	10-May	MGT passed and SH failed (31.6%)
Kate Spade & Company	Kenneth Steiner		3%	20	3	2 dirs or 20%	19-May	MGT passed and SH failed (22.6%)
Knight Transportation, Inc.	William Steiner		3%	20	3	2 dirs or 25%	12-May	MGT passed and SH failed (22.3%)
SBA Communications Corporation <sup>10</sup>	NYC pension funds	46.3%	5%	10	3	20%	13-May	MGT failed and SH passed (67.6%)

Management Proposals	2016 SH Proposal	2015 Vote <sup>1</sup>	Owner ship %	# Holder s	Owner- ship Years	# of Nominees	2016 Meeting Date	2016 Vote <sup>1</sup>
Abercrombie & Fitch Co. <sup>11</sup>			3%	20	3	25%	16-Jun	Failed
Accenture plc	None		3%	20	3	2 dirs or 20%	3-Feb	Passed
BlackRock, Inc.	None		3%	20	3	25%	25-May	Passed
DaVita HealthCare Partners Inc.	None	43.7%	3%	20	3	2 dirs or 20%	20-Jun	Passed
Exelon Corp.	Withdrawn - NYC pension funds	43.6%	3%	20	3	2 dirs or 20%	26-Apr	Passed
Expeditors International of Washington, Inc.	Omitted - John Chevedden	35.0%	3%	20	3	20%	3-May	Passed
FirstEnergy Corp. <sup>11</sup>	Withdrawn - NYC pension funds	71.4%	3%	20	3	20%	17-May	Failed
Freeport-McMoRan Inc.	Withdrawn - NYC pension funds	64.9%	3%	20	3	2 dirs or 20%	8-Jun	Passed
Ingersoll-Rand plc	None		3%	20	3	2 dirs or 20%	2-Jun	Passed
Republic Services, Inc.	None	89.9%	3%	20	3	25%	6-May	Passed
Southern Co.	Withdrawn - NYC pension funds	46.2%	3%	20	3	2 dirs or 20%	25-May	Passed
St. Jude Medical, Inc.	None		3%	20	3	25%	4-May	Annual meeting postponed due to merger with Abbott Laboratories.
Superior Industries International, Inc. <sup>9</sup>	None		3%	None specified	3	None specified	26-Apr	Passed
Timken Company	Omitted - John Chevedden		3%	20	3	2 dirs or 20%	10-May	Passed

<b>Visteon Corporation</b>	Withdrawn - NYC pension funds	75.7%	3%	20	3	20%-25%	9-Jun	Passed
<b>Wendy's Co.</b>	Omitted - Kenneth Steiner		3%	25	3	20%-25%	26-May	Passed
<b>Westmoreland Coal Co.</b>	None		3%	10-25 holders	3	2 dirs or 25%	17-May	Passed

Source: SEC filings

1. Based on FOR votes as a percentage of FOR and AGAINST votes.
2. Binding bylaw proposal.
3. The day before its annual meeting, GEO Group issued a supplemental proxy committing to adopting proxy access before its 2017 annual meeting.
4. The Marlin Business Services and PTC Therapeutics boards supported the shareholder proposal.
5. Prior shareholder proposals at Nabors Industries received 51.8% in 2014, 51% in 2013, and 56.2% in 2012.
6. The Nasdaq, NRG Energy, and Royal Caribbean Cruises boards made no recommendation on the proposal.
7. The shareholder proposal would allow holders of 1.5% of the shares for 2 years to nominate up to 25% of the board.
8. In 2015, both a management proposal and a shareholder proposal failed at Chipotle Mexican Grill.
9. Non-binding management proposal.
10. In 2015, a non-binding management proposal prevailed over a shareholder proposal at SBA Communications.
11. The management proposals at Abercrombie & Fitch and FirstEnergy needed supermajority approval.

*Table 3: Failed SOP Votes (through July 1)*

Company	Meeting Date	2016 Vote*	Previous Failed Votes*
Atlas Air Worldwide Holdings, Inc.	24-May-16	49.6%	2013
Banc of California, Inc.	13-May-16	30.1%	
Bed Bath & Beyond Inc.	1-Jul-16	22.6%	
Bill Barrett Corporation	17-May-16	44.7%	
BorgWarner Inc.	27-Apr-16	39.9%	
C&J Energy Services Ltd.	26-May-16	10.2%	
Canadian Pacific Railway Ltd.	20-Apr-16	49.9%	
Cepheid	26-Apr-16	38.6%	
Cogentix Medical, Inc.	24-May-16	46.7%	
CombiMatrix Corporation	16-Jun-16	44.5%	
Community Health Systems, Inc.	17-May-16	25.2%	2012
Consolidated-Tomoka Land Co.	27-Apr-16	43.8%	
Diodes Incorporated	10-May-16	39.4%	
Exelon Corporation	26-Apr-16	38.4%	
FMC Corp.	26-Apr-16	46.6%	
General Growth Properties, Inc.	17-May-16	48.0%	
Hatteras Financial Corp.	4-May-16	40.8%	
HCI Group, Inc.	19-May-16	45.3%	
iCAD, Inc.	4-May-16	41.3%	
International Shipholding Corp.**	4-May-16	40.9%	
M.D.C. Holdings, Inc.	29-Mar-16	40.9%	2011
Masimo Corp.**	20-Apr-16	42.4%	2015, 2014, 2013, 2012
Motorcar Parts of America, Inc.	24-Mar-16	47.8%	
Nabors Industries Ltd.	7-Jun-16	36.0%	2014, 2013, 2012, 2011
NeuStar, Inc.	15-Jun-16	45.7%	
NovaBay Pharmaceuticals, Inc.	26-May-16	16.6%	
Nuance Communications, Inc.	27-Jan-16	32.8%	2015, 2013
OXIGENE, Inc.	1-Jun-16	46.5%	
PAR Technology Corporation	18-May-16	49.0%	
Patriot Scientific Corporation	28-Apr-16	32.2%	2015, 2014, 2013
Senior Housing Properties Trust	18-May-16	46.7%	
Sonus Networks, Inc.	9-Jun-16	44.0%	2013
Sucampo Pharmaceuticals, Inc.**	2-Jun-16	41.9%	
Tetra Tech, Inc.	3-Mar-16	39.9%	
Tutor Perini Corporation	25-May-16	42.0%	2015, 2014, 2013, 2012, 2011
Ultra Petroleum Corp.	20-May-16	39.4%	
VeriFone Systems, Inc.	24-Mar-16	44.9%	2013
WestMountain Gold, Inc.	13-Jan-16	30.9%	
Wolverine World Wide, Inc.	21-Apr-16	29.5%	

\*Calculated as the number of "for" votes as a percentage of "for" and "against" votes.



\*\*Received less than majority support after counting abstentions.