THE ADVISOR

2021 PROXY SEASON PREVIEW
By Shirley Westcott **April 2021**

Overview

The unprecedented challenges of the 2020 global health pandemic will be one of the dominant themes shaping the narrative at 2021 annual meetings. Investors and proxy advisors will be closely monitoring proxy disclosures to ascertain how well corporate leaders navigated the crisis and protected business operations, liquidity and the health and welfare of employees. Executive compensation will be under particular scrutiny and it will be incumbent upon compensation committees to clearly explain the rationale behind any discretionary adjustments and resulting pay outcomes.

Ongoing government-mandated shutdowns are also bringing about a second wave of remote annual meetings. With a longer preparation window and lessons learned from 2020, investors will expect this year's gatherings to more closely approximate an in-person experience.

Events of the past year have recast shareholder activist priorities as well. Environmental and social (E&S) proposals are likely to see stronger levels of support in view of last year's record 21 majority votes (see Table 1) and more assertive investor policies on diversity, climate change and political spending. Several key themes will stand out:

- **Diversity:** Widespread social unrest following the death of George Floyd last May has raised public awareness of racial disparities and shifted the focus of diversity initiatives from gender to race and ethnicity. Investor expectations for corporate diversity are extending to all levels of the organization and they are increasingly using their proxy votes to promote disclosure and change. Notably, shareholder proposals addressing equality in the workplace have increased four-fold over 2020. Most call for transparency around workforce demographics; reporting on diversity, equity and inclusion (DEI) programs; diverse hiring pools and independent racial equity audits (see Table 2).

- **Climate change:** Climate-focused resolutions may gain momentum this year due to more favorable investor voting policies. In addition to recurring topics such as carbon transition planning and greenhouse gas (GHG) emissions reduction, calls for climate-aligned lobbying have resurfaced after last year's first-time proposals registered strong support and a majority vote at Chevron.

  Sustainability themes are also factoring into some high-profile activist hedge fund campaigns. Newly formed E&S activist fund Engine No. 1 is taking on Exxon Mobil in a short-slate proxy fight while established activist The Children's Investment Fund (TCI) is advocating "say on climate" advisory votes on companies' carbon reduction plans.

- **Stakeholder Governance:** Shareholder requests for sustainability reports have largely been supplanted this year by a new initiative on stakeholder governance coordinated by non-profit The Shareholder Commons (TSC). Building on last year's call to fully implement the Business Roundtable's (BRT) statement of corporate purpose, various proponents are asking at least 18 signatories to convert to public benefit corporations (PBCs).

  Longstanding governance topics round out the 2021 shareholder proposal lineup which are heavily weighted towards calls for independent board chairs, the elimination of supermajority voting requirements, and the adoption or relaxation of proxy access, special meeting and written consent provisions. As in past years, corporate gadflies John Chevedden, Kenneth Steiner, James McRitchie and Myra Young are the most active filers of these issues, accounting for over 80% of the submissions.

Finally, a new Democrat-led SEC is starting to lay out its agenda which could reshape shareholder initiatives going forward. Among the considerations are environmental, social and governance (ESG) disclosure requirements which would diminish the need for private ordering approaches. Still uncertain is any near-term rollback of Clayton-era rules and guidance relating to Rule 14a-8 proposals. With this in mind, shareholder proponents will be particularly vigilant of 2021 vote tallies and exclusionary actions with an eye towards planning their advocacy for the 2022 annual meeting season.

These and other highlights of the upcoming proxy season are discussed in more detail below.

COVID-19 Impact

Investors and proxy advisors will be paying close attention to how companies have weathered the COVID-19 pandemic and 2020 market downturn, particularly the extent that executive pay decisions align with the experience of shareholders and employees. Institutional Shareholder Services (ISS), for example, has signaled that it may be flexible towards adjustments to short-term incentive plans if the business rationale is clearly disclosed and the resulting pay outcomes appear reasonable. However, it will generally not support changes to long-term incentive plans.[1] Vanguard, on the other hand, remains steadfast in its opposition towards retroactive adjustments to performance targets or time horizons despite the challenging environment.[2]

Early votes have already shown some negative investor reaction. Shareholders and proxy advisors gave a thumbs down to executive compensation at TransDigm and Walgreens Boots Alliance—the first time that say-on-pay (SOP) votes have failed at either company. In the case of Walgreens, Vanguard took issue with upward adjustments made to executive payouts during the pandemic, which it felt did not appropriately reflect the company's performance relative to peers. At TransDigm, BlackRock opposed both SOP and the members of the compensation committee because of pay-for-performance misalignment. As a result of the pandemic, the company experienced declines in profitability and negative total shareholder returns, but CEO pay increased 91% over the prior year.[3]

Workforce Well-Being

BlackRock and Vanguard also supported a human rights due diligence proposal at Tyson Foods' annual meeting amid concerns over the protection of employees during the pandemic. According to the Investor Advocates for Social Justice, the company's workforce has incurred 12,500 cases and 39 deaths from the virus. The resolution received 78.7% support from non-insider investors—a 19% increase over last year's vote on a similar proposal. Vanguard additionally voted against the chair of the governance/nominating committee, given the committee's specific role in overseeing worker health and safety. Notably, the vote at Tyson Foods—and a subsequent one at Sanderson Farms—marked the first time that Vanguard has supported a human rights resolution.[4]

COVID-19-related health issues are factoring into other types of shareholder resolutions, though some are

[1] A Semler Brossy review of 234 Russell 300 firms that announced changes to their in-flight and future incentive plans last year found that 50% planned to modify annual incentive plans, 25% planned to alter long-term incentive plans and 25% planned to revise both. See https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/SemlerBrossy_Incentive-Design-Changes-in-Response-to-Covid-19-Report-1.pdf.

[2] See Vanguard's views on executive compensation in times of crisis at https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/INVEVAEC_022021.pdf.

[3] See Vanguard's and BlackRock's vote bulletins on Walgreens and TransDigm at https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/INVWALG_022021.pdf and https://www.blackrock.com/corporate/literature/press-release/blk-vote-bulletin-transdigm-mar-2021.pdf.

[4] See BlackRock's and Vanguard's vote bulletins on Tyson Foods at https://www.blackrock.com/corporate/literature/press-release/blk-vote-bulletin-tyson-foods-feb-2021.pdf and https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/INVTYSON_022021.pdf. See Vanguard's vote bulletin on Sanderson Farms at https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/ISSANDF_022021.pdf.

getting struck down as ordinary business. Retailers are being asked to report on their efforts to protect workers' health and safety during the pandemic or in some cases to offer paid sick leave as a standard employee benefit not limited to COVID-19. Faith-based investors are additionally pressing pharmaceutical companies to explain how government financial support for the development of COVID-19 vaccines and therapeutics is being taken into account in pricing and access decisions.

Virtual Meetings

The continuation of COVID-19 lockdowns is once again compelling many companies to put off in-person annual meetings in favor of online formats. Unlike last year when 80% of virtual-only meetings (VSMs) were being conducted for the first time, shareholders have higher expectations regarding the quality of this year's proceedings. These include using video instead of audio-only feeds, resolving technical problems, and providing more clarity around the procedures for accessing the meeting, casting votes and raising questions.[5] With the refinement of online platforms, virtual broadcasts will undoubtedly become a permanent fixture of shareholder meetings. The extent that they can eventually supplant, as opposed to complement, a physical event will be greatly influenced by how well they are conducted this season.

Governance

Traditional governance topics remain a proxy season mainstay though the most prolific sponsors—Chevedden, Steiner, McRitchie and Young—are increasingly venturing into the realm of "sustainable" governance. Because of the low propensity of omissions and negotiated withdrawals, resolutions dealing with independent board chairs, proxy access, supermajority voting, special meetings and written consent will appear with regularity on 2021 proxy ballots and in some cases earn majority support.

Corporate Purpose and PBCs

In 2020, six companies whose CEOs signed the BRT's revised Statement of Corporate Purpose were urged to report on how they planned to amend their governance and management systems to implement it and deliver value to all stakeholders. This year, TSC has organized over a dozen proposals asking Delaware companies to go a step further towards stakeholder governance by converting to a PBC. PBCs are for-profit corporations authorized by 38 states and the District of Columbia that must specify in their charter one or more public benefits as their statement of purpose. When making business decisions, PBC board members must consider their public benefit mission alongside maximizing shareholder returns.

Companies argue that such a move is unnecessary because conventional Delaware corporations already have the ability to consider broader stakeholder interests. Two firms targeted with the proposal in 2020 (Wells Fargo) and 2021 (JPMorgan Chase) reached a negotiated settlement with Harrington Investments by producing a report discussing the feasibility of converting to a PBC.[6] To date only one publicly traded company—Veeva Systems—has converted to a Delaware PBC after receiving shareholder approval and proxy advisor support earlier this year.

Along with McRitchie, Young and other proponents, TSC is separately advocating for PBCs by asking boards to commission studies on the economic and social costs created by traditional corporate structures that favor shareholder returns over other stakeholder interests. The resolutions address a panoply of issues including income inequality, obesity, antibiotic use in livestock and the underwriting of multi-class equity offerings.[7] Most are being excluded as ordinary business.

[5] For more on VSM practices, see the "Report of the 2020 Multi-Stakeholder Working Group on Practices for Virtual Shareholder Meetings" at https://cclg.rutgers.edu/wp-content/uploads/VSM-Working-Group-Report-12_10_2020.pdf.

[6] See JPMorgan Chase's report at https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/harringtonjpmorgan020121-14a8.pdf and Wells Fargo's report at https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2020/harringtonwellsfargo021220-14a8.pdf.

[7] For more on TSC's campaigns, see https://theshareholdercommons.com/beta-activism/.

Meanwhile, the National Center for Public Policy Research (NCPPR) is reviving the corporate purpose proposals by calling into question the targeted companies' inconsistent actions—environmental greenwashing, labor practices in China and the treatment of employees during the pandemic—which belie the spirit of the BRT statement. So far, they are getting omitted on substantial implementation grounds.

Workers on Boards

For a third year, shareholder proponents are promoting the idea of worker representation on boards as a way of incorporating employee perspectives in corporate decision-making. In particular, McRitchie is fielding five proposals to adopt a "Rooney Rule" so that the initial list of board candidates includes non-management employees. As in 2020, the initial resolutions voted in 2021 are scoring a meager single-digit support. Notably, McRitchie stated on his website that the proposal was "an opening gambit" and he would have withdrawn if the companies had agreed to take any significant step to increase worker voices on the board, such as appointing a formal workforce advisory panel or designating a director to be a liaison with workers.

Meanwhile, Walmart workers have revised their proposal for 2021 by asking Walmart to create a "pandemic workforce advisory council." The council would advise the board on worker issues such as health and safety measures, whistleblower protection and paid sick leave**.**

Board Diversity

After a longstanding push for board gender diversity, racial and ethnic representation on boards is taking center stage, sparked by the rise of social justice movements last year. Although the proportion of black board members at Russell 3000 firms remains low (5.4%), their numbers increased significantly in the second half of 2020, accounting for 18.5% of new board appointments, according to BoardProspects.[8]

External mandates are being primed to accelerate the process. Last September, California became the first state to enact board quotas based on various racial and ethnic categories and sexual orientation. Companies headquartered in the state must have at least one director from an underrepresented group by the end of 2021 and, depending on board size, as many as three diverse directors by the end of 2022. This is in addition to meeting the 2018 mandate on gender quotas.[9]

Nasdaq filed a rule proposal with the SEC in December—which was revised in February—that would require listed companies to annually disclose board diversity statistics in a prescribed matrix format, generally within one year of SEC approval. All Nasdaq-listed companies would be expected to have at least one diverse director—female, underrepresented minority or LGBTQ—within two years of SEC approval of the proposed rule or explain why they are not in compliance. For boards with more than five directors, the quota would increase to one female and one other diverse director within four or five years depending on the company's listing tier.[10] In contrast, New York Stock Exchange (NYSE) President Stacey Cunningham has openly opposed dictating quotas, signaling that the NYSE is unlikely to follow suit with Nasdaq.

With these trends in mind, a number of investors and proxy advisors upgraded their board diversity policies for 2021 (see Table 3). In some cases, they are establishing or strengthening their guidelines on gender diversity. However, most have stopped short of setting specific racial/ethnic targets due to a lack of consistent, transparent information.[11] Among large investors, State

---

[8] See BoardProspect's study at https://portal.boardprospects.com/portal-files/Black%20Board%20Members%20in%20The%20Russell%203000.

[9] See the text of California Assembly Bill 979 at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB979 and Senate Bill 876 at Bill Text - SB-826 Corporations: boards of directors. (ca.gov). According to the Latino Corporate Directors Association, 35% of California's 662 public companies have all-white boards. See https://latinocorporatedirectors.org/ca_public_company_boards.php.

[10] See Nasdaq's proposed listing requirement for board diversity at https://listingcenter.nasdaq.com/assets/Board%20Diversity%20Disclosure%20Five%20Things.pdf.

[11] The Conference Board reported in October 2020 that about 10% of S&P 500 companies explicitly disclose individual directors' race/ethnicity. Of these, 78% are white, 13.5% are black, 5.2% are

Street Global Advisors (SSGA) is taking the most aggressive approach this year by penalizing nominating committee chairs at S&P 500 and FTSE 100 boards that do not disclose their racial/ethnic makeup.

Diverse Candidate Search

For the past five years, various investor groups, such as the Midwest Investors' Diversity Initiative and Northeast Investors' Diversity Initiative, have been pressing companies to increase board diversity by enacting "Rooney Rule" search policies requiring the consideration of women and minorities for every open board seat. According to Spencer Stuart's 2020 Board Index, 24% of S&P 500 firms have committed to recruiting from a diverse slate of candidates when considering new directors.[12]

In 2020, the New York City Retirement Systems (NYCRS) became the first large institutional investor to promote Rooney Rule policies for external CEO appointments as well as directors. In response to its campaign—the Boardroom Accountability Project 3.0—23 companies adopted the requested policy. NYCRS has filed a new set of Rooney Rule proposals for 2021, which calls on four S&P 500 firms to adopt policies requiring recruitment lists for *all* senior executive positions to include qualified female and racially/ethnically diverse candidates.[13]

Workplace Diversity

Workforce diversity has catapulted to one of the top shareholder proposal categories in 2021 with over 60 resolutions of various types filed. Many of these are likely to do well in view of the strong support they generated last year, including two substantial majority votes.

The most prevalent request—with approximately three dozen proposals filed—calls for the disclosure of companies' EEO-1 Surveys, which break down workforce demographics by gender, race and ethnicity across 10 job categories. The proponents contend that the raw EEO-1 data offer standardized, quantitative and comparable employment data across companies and industries and allow investors to assess the representation and progress of specific groups year over year. However, relatively few large companies disclose this information. According to As You Sow, 46% of the 100 largest companies by market cap in the S&P 500 have released their consolidated EEO-1 forms. JUST Capital found that only 6% of Russell 1000 firms disclose the type of intersectional data that can be derived from EEO-1 Surveys, while 68% do not publicize any statistics on the racial and ethnic makeup of their workforce.[14]

Last year, NYCRS and Calvert Research & Management conducted separate letter-writing campaigns urging the largest 100 U.S. companies to publish their EEO-1 reports. By year-end, NYCRS had obtained commitments from 40 of the 67 firms it had contacted and filed 2021 proposals at 24 unresponsive companies.[15] Calvert reported reaching agreements with 27 companies and submitted resolutions at 16 others.[16] As an additional impetus, SSGA announced that beginning in 2022 it will vote against

---

Hispanic and 2.4% are Asian, Hawaiian or Pacific Islander. See https://corpgov.law.harvard.edu/2020/10/18/corporate-board-practices-in-the-russell-3000-and-sp-500/. According to a September 2020 ISS ESG analysis, racial/ethnic minorities account for 16.8% of S&P 500 board seats and 12.5% of Russell 3000 board seats.

[12] See Spencer Stuart's 2020 Board Index report at https://www.spencerstuart.com/-/media/2020/december/ssbi2020/2020_us_spencer_stuart_board_index.pdf.

[13] For more on NYCRS' Boardroom Accountability Project 3.0, see https://comptroller.nyc.gov/newsroom/comptroller-stringer-nyc-funds-expand-campaign-to-diversify-recruitment-of-senior-executives-at-americas-largest-companies/.

[14] See JUST Capital's report at https://justcapital.com/news/a-small-fraction-of-corporations-share-diversity-data-but-disclosure-is-rapidly-on-the-rise/.

[15] See NYCRS' focus list companies at https://comptroller.nyc.gov/wp-content/uploads/2020/06/EE0-1-Focus-List.pdf and its related press releases at https://comptroller.nyc.gov/newsroom/comptroller-stringer-and-three-new-york-city-retirement-systems-call-on-67-sp-100-companies-who-issued-supportive-statements-on-racial-equality-to-publicly-disclose-the-composition-of-their-workforce/, https://comptroller.nyc.gov/newsroom/comptroller-stringer-and-nyc-retirement-systems-announce-34-sp-100-companies-will-publicly-disclose-workforce-demographics/ and https://comptroller.nyc.gov/newsroom/comptroller-stringer-nyc-funds-escalate-campaign-calling-on-major-companies-to-publicly-disclose-workforce-demographics/.

[16] See Calvert's January 2021 update at https://www.calvert.com/media/36659.pdf.

compensation committee chairs at S&P 500 firms that do not disclose their EEO-1 Survey responses.[17]

Also this year, As You Sow and other proponents are sponsoring approximately two dozen resolutions to publish annually a report assessing companies' DEI efforts, including the effectiveness of programs and goals, metrics and trends related to the promotion, recruitment and retention of protected classes of people. Since last November, As You Sow has been publishing workplace equity and racial justice scorecards for S&P 500 firms which will be used to identify best practices, expose laggards and inform shareholder advocacy.[18]

A new resolution for 2021 from organized labor asks companies to improve workforce diversity by adopting a Rooney Rule policy requiring that the initial pool of candidates from which new employees are hired shall include qualified women and minorities. One recipient—Activision Blizzard—observed that extending this protocol to all hiring decisions would amount to "an unworkable encroachment on the company's ability to run its business and compete for talent in a highly competitive, fast-moving market." The AFL-CIO reached agreements with five targeted banks, though in most cases the companies simply expanded their current Rooney Rule policies, which were applicable to executive positions, to other managers and mid-level employees.

Racial Equity Audits

Prompted by last year's social justice protests, labor groups and social investment funds have filed over a dozen proposals asking companies to conduct independent racial equity audits with input from civil rights organizations, employees and customers. The audit is intended to examine any adverse racial impacts resulting from the company's policies, practices, products and services.[19] A related proposal sponsored by As You Sow calls on five companies to report on their plans to promote racial justice in their workplaces and operations, including quantitative diversity and inclusion (D&I) information on recruitment, hiring and retention policies and outcomes.

Other proposal variations have emerged dealing with racially-motivated police misconduct. Several target retailers because of their partnerships with local police or their support for industry groups that have lobbied against criminal justice reforms that would reduce penalties for shoplifting. A new resolution asks Chubb, which provides law enforcement liability insurance, to report on its policies and programs to reduce the risk of police brutality, such as training, education or audits.

Gender/Racial Pay Equity

After a significant decline in support last year, Arjuna Capital and Proxy Impact have reworked their 2021 resolutions addressing workforce gender and racial pay disparities. Their 2020 proposals called for the disclosure of global median gender *and racial* pay gap data which are meant to show the extent that women and minorities are underrepresented in higher paying jobs. However, these requests were problematic for investors and proxy advisors because categories of race and ethnicity differ from country to country and collecting such data may be illegal in some nations.

---

[17] See SSGA's letter to CEOs on its 2021 proxy voting agenda at https://www.ssga.com/us/en/institutional/ic/insights/ceo-letter-2021-proxy-voting-agenda.

[18] For more on As You Sow's scorecards, see https://www.asyousow.org/press-releases/2021/3/3/racial-justice-dei-scorecard-leaders-laggards, https://www.asyousow.org/our-work/social-justice/workplace-equity/ and https://www.asyousow.org/our-work/social-justice/racial-justice.

[19] As examples, the proponents point to Airbnb, Facebook and Starbucks, which conducted third-party audits after facing discrimination controversies. See https://blog.atairbnb.com/wp-content/uploads/2016/09/REPORT_Airbnbs-Work-to-Fight-Discrimination-and-Build-Inclusion.pdf, https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf, https://stories.starbucks.com/uploads/2019/01/Covington-Report-to-Starbucks-Jan-23-2019.pdf and https://stories.starbucks.com/uploads/2020/02/Starbucks-Civil-Rights-Assessment-2020-Update.pdf.

The 2021 version asks companies to report the percentage median pay gap between all male and female employees and across race and ethnicity, *where appropriate*. Arjuna reached agreements with the Bank of New York Mellon and Adobe, which became the first U.S. technology company to commit to disclosing unadjusted median gender pay gap data immediately and median racial pay gap data by the end of 2021. Previous adopters include Citigroup, Mastercard and Starbucks.

Human Capital Management

Human capital management (HCM) was a standout E&S topic last year, producing two sizable majority votes. This year, shareholder requests for human capital reports have been supplanted by the SEC's new Regulation S-K requirement, which took effect last November. Companies must now disclose information on their human capital resources, including any human capital measures or objectives that they focus on in managing their business, to the extent they are material to understanding the company's business as a whole.[20]

Initial disclosures tracked by compensation consultants show that human capital statements in Form 10-K's are generally short, but often supplemented by a lengthier discussion in the proxy statement.[21] The most common topics considered material were diversity initiatives and employee training and development. Few companies are including human capital metrics aside from expanded headcount data and gender representation. Overall disclosure trends and industry practices will become more apparent as the proxy season progresses.

Climate Change

This season, a number of investors are ratcheting up their expectations of companies regarding climate change. BlackRock plans to escalate pressure on over 1,000 carbon-intensive companies globally to put forward business plans aligned with the Paris Agreement goal of limiting global warming to well below 2° Celsius. In conjunction with this, BlackRock will be more likely to support shareholder resolutions at companies that do not adequately disclose how they are addressing material risks or where support for the proposal would accelerate progress.[22] BlackRock's voting record in the second half of 2020 already signaled this shift: globally, it voted in favor of 89% of environmental proposals and 50% of all E&S resolutions.[23] BlackRock has also indicated that it expects boards to respond to shareholder resolutions that receive substantial (over 30%) support in addition to implementing those that obtain majority support.

Similarly, Legal & General Investment Management (LGIM) plans to boost its climate engagement to spur over 1,000 portfolio companies to step up their efforts to limit GHG emissions to net zero by 2050. Companies that fall short on disclosure and action may face negative votes at their annual meetings and even divestment.

The Climate Action 100+ Net-Zero Benchmark

As in 2020, this year's climate-related resolutions primarily focus on carbon transition planning and setting GHG emissions reduction goals. A new variation from As You Sow and faith-based investors asks four companies to report if and how they have met the criteria of Climate Action (CA) 100+'s Net-Zero Company Benchmark. The Benchmark includes 10 indicators of a company's alignment with the Paris

[20] See the SEC's final rule at https://www.sec.gov/rules/final/2020/33-10825.pdf.

[21] See the following reviews of human capital disclosure practices: Willis Towers Watson at https://www.willistowerswatson.com/en-US/Insights/2021/01/Initial-10-K-disclosures-provide-limited-data-on-human-capital-metrics, FW Cook at https://www.fwcook.com/Publications-Events/Alerts/10K-Filings-Show-a-Variety-of-Approaches-to-the-New-Human-Capital-Resources-Disclosure-Rules/, Semler Brossy at https://www.semlerbrossy.com/wp-content/uploads/SemlerBrossy_Proxy-Statement-HCM-Disclosure-Report-1.pdf, and Compensation Advisory Partners at https://s3.us-east-2.amazonaws.com/capartners.production/wp-content/uploads/2019/07/15125840/CAPintel-21-01-07-New-Human-Capital-Disclosure-Requirements-An-Early-Read-on-Developing-Best-Practices-v5.pdf.

[22] See BlackRock's 2021 Stewardship Expectations at https://www.blackrock.com/corporate/literature/publication/our-2021-stewardship-expectations.pdf and 2021 U.S. proxy voting guidelines at https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf.

[23] According to Morningstar, BlackRock voted against shareholder proposals aimed at tackling climate change more than 80% of the time in 2020. See https://www.morningstar.com/articles/1002749/fund-companies-climate-votes-not-much-changes-at-the-top.

Agreement goals, including a statement of ambition to achieve net-zero GHG emissions by 2050 for the company's Scope 1, 2, and applicable Scope 3 emissions.[24] The board of one targeted company—General Electric—is backing the shareholder measure. A related proposal asks several companies to report if and how they have met the Benchmark's Executive Remuneration Indicator by incorporating climate change performance into executive compensation.

Finance and Climate Change

In recent years, financial institutions have come under pressure from climate activists to scale down their exposure to fossil fuel assets. Since last proxy season, five out of six major U.S. banks have pledged to reduce their financed emissions to net-zero by 2050 and to disclose and measure their progress. As a result, the lead proponent on this issue—As You Sow—withdrew all of its 2021 resolutions, including at the sixth bank—Wells Fargo—which issued a report in March on how it plans to address the carbon intensity of its lending portfolio.

Exxon Mobil Proxy Fight

This season may invigorate "activist stewardship" as an emerging trend whereby passive investors partner with activist hedge funds to effect change at companies where traditional engagements have been unsuccessful.[25] The California State Teachers' Retirement System (CalSTRS) is backing newcomer E&S activist fund Engine No. 1, which has proposed an alternative director slate at Exxon Mobil to address the company's financial underperformance and transition to cleaner fuels. CalSTRS previously worked with one of Engine No. 1's founders—former JANA Partners partner Charlie Penner—on a 2018 campaign at Apple to develop parental controls for its iPhones.

To counter the dissident, Exxon Mobil recently added three new directors to the board, including veteran ValueAct activist Jeffrey Ubben, and announced plans to invest $3 billion in low-carbon energy technologies, primarily carbon capture and storage. So far, these actions have failed to appease Engine No. 1 which plans to move forward with its proxy fight.

Say on Climate

Traditional activist hedge fund TCI has also launched an ambitious initiative by calling on companies to hold an annual "say on climate" advisory vote so shareholders can weigh in on their climate strategy and progress on reducing GHG emissions. In TCI's view, the current engagement model of pushing for specific corporate actions has been ineffective. A more systemic approach would shift the discourse to what companies are actually doing to manage climate risk.[26]

Last year's inaugural resolution at Spanish airport operator Aena won 98% support, receiving not only the board's backing but also that of ISS, Glass Lewis and BlackRock. Other early adopters include Moody's, S&P Global and a handful of European, Australian and Canadian companies, most of which will hold their first advisory votes this year. For 2021, TCI, along with As You Sow and McRitchie, has say-on-climate resolutions pending at five U.S. companies, including a binding bylaw resolution at Monster Beverage. TCI aims to persuade at least 100 S&P 500 firms to adopt the initiative by the end of 2022, either voluntarily or through proxy proposals.

Political Activities

In line with 2020, shareholder support for proposals calling for greater transparency on political and lobbying activities is likely to rise in the 2021 proxy season. Last year, seven resolutions received majority

---

[24] For more details on CA100+'s Net-Zero Company Benchmark, see https://www.climateaction100.org/wp-content/uploads/2020/12/Net-Zero-Benchmark-Indicators-12.15.20.pdf. CA100+ investors have filed 37 resolutions at North American firms for 2021 with five flagged as key proposals for advancing the organization's goals. See https://www.climateaction100.org/news/climate-action-100-investors-to-raise-corporate-climate-ambition-for-2021-proxy-season/.

[25] For more on CalSTRS' activist stewardship, see https://corpgov.law.harvard.edu/2021/03/01/an-introduction-to-activist-stewardship/.

[26] See TCI's say-on-climate presentation at https://www.sayonclimate.org/presentations/ and associated deck at https://www.sayonclimate.org/wp-content/uploads/2021/01/Shareholder-votes-on-climate-transition-action-plans-FULL-SLIDES-2.pdf.

votes and another 15 garnered support in the 40% range. According to Majority Action, an additional eight proposals would have been approved if BlackRock and Vanguard Group had supported them.[27]

Recent shifts in investor voting policies are driving this trend. According to the Center for Political Accountability (CPA), 40 out of 69 large investors increased their backing of political contribution resolutions between 2019 and 2020.[28] More recently, BlackRock signaled a change to its approach when it supported an election spending proposal for the first time at Cintas' October 2020 annual meeting. Going forward, BlackRock will seek confirmation from companies—either through engagement or disclosure—that their corporate political activities are consistent with their public statements on material and strategic policy issues. It expects companies to monitor the policy positions taken by their trade associations and provide an explanation where inconsistencies exist. [29]

Vanguard also appears to be moving away from its longstanding opposition to politically-focused resolutions. Along with BlackRock, it supported a lobbying disclosure proposal for the first time at Tyson Foods' 2021 annual meeting due to a lack of clarity about the board's oversight of corporate political activities, especially compared to industry peers. The resolution garnered 17.9% support, the highest level in the six years it has been on the company's ballot. In another early-year vote, a lobbying proposal at AECOM received majority backing.

Paris-Aligned Lobbying

Lobbying alignment with climate change will also be a significant pressure point this year following a landmark majority vote at Chevron in 2020. A dozen similar proposals have been filed for 2021 following several investor letter-writing campaigns calling on carbon-intensive firms to proactively lobby—both directly and through their trade associations—for climate policies aligned with the Paris Agreement goals.[30] So far, four have been withdrawn due to company commitments.

SSGA indicated in its 2020 Climate Stewardship Review that it evaluates these types of proposals based on whether the company has disclosed its trade association memberships, whether there is board oversight of the company's participation in the political process, and whether the company has performed a gap analysis of its stated position positions on climate change versus those of its trade associations. SSGA ultimately supported two of the 2020 resolutions (Delta Air Lines and United Airlines Holdings) and abstained on the other (Chevron) because the companies fell short on performing a gap analysis.[31] In contrast, Vanguard opposed all three proposals and BlackRock only backed the one at Chevron.

Rethinking Political Contributions

In the wake of the Jan. 6 violence at the U.S. Capitol, companies, trade groups and asset managers are facing heightened pressure to reexamine their approaches to political spending. According to CNN, 121 Fortune 500 companies have halted their political action committee (PAC) donations, either to all federal

[27] See Majority Action's report at https://static1.squarespace.com/static/5d4df99c531b6d0001b48264/t/5f698600bdf79a75853d431c/1600751130906/ClimateintheBoardroom_MA_2020.

[28] See the CPA's 2020 report at https://politicalaccountability.net/hifi/files/2020-Proxy-Vote-Analysis-Report-CPA.pdf.

[29] See BlackRock's 2021 Stewardship Expectations at https://www.blackrock.com/corporate/literature/publication/our-2021-stewardship-expectations.pdf and its commentary on climate risk and the transition to the low-carbon economy at https://www.blackrock.com/corporate/literature/publication/blk-commentary-climate-risk-and-energy-transition.pdf.

[30] See ICCR's press release and sample letter at https://www.iccr.org/business-support-science-based-climate-policy-seen-critical-rein-climate-change-say-investors and https://www.iccr.org/sites/default/files/resources_attachments/climatelobbyingiinitialengagementletter11.16.20.pdf. Also see the Climate Action 100+ campaign and sample letter at https://www.climateaction100.org/news/major-us-investors-call-on-largest-corporate-emitters-to-disclose-how-their-climate-lobbying-aligns-with-climate-science/ and https://www.ceres.org/sites/default/files/2020%20Final%20Corporate%20Lobbying%20Letter.pdf.

[31] See SSGA's Annual Climate Stewardship Report at https://www.ssga.com/content/dam/ssmp/library-content/products/esg/annual-climate-stewardship-review.pdf.

candidates (60%), all Congressional candidates (12%) or to the 147 Republicans who objected to certifying the Electoral College votes (28%).[32] Notably, corporate boards played a limited role in these decisions.[33] However, the moves appear largely symbolic because most of the suspensions are temporary and the amounts involved are relatively small. Corporate-sponsored PACs, which are funded by employee contributions, can only give up to $5,000 per candidate per election.

For their part, shareholder activists are using the occasion to spur more far-reaching reforms to political giving. The Interfaith Center on Corporate Responsibility (ICCR) has asked BRT members to permanently end all political contributions, including through direct donations to politicians, PACs, Super PACs and 527 committees or through trade associations and social welfare organizations.[34] Another group of investors spearheaded by Majority Action and the Service Employees International Union (SEIU) is urging six major asset managers to not only hold their portfolio companies accountable for their political spending practices and disclosure—including by voting against directors—but also to reassess and disclose their own political giving.[35] According to Majority Action, SSGA suspended PAC donations to the Republican objectors, while BlackRock, Vanguard and JPMorgan Asset Management paused all PAC activity.

Looking Ahead

In the coming months, new leadership at the SEC and Department of Labor (DOL) may take steps towards reversing rules and guidance issued during the Trump administration and adopting new disclosure requirements around ESG matters.[36]

In his confirmation hearing, SEC Chair nominee Gary Gensler indicated that he would consider additional reporting requirements on climate risk, political spending and human capital, specifically workforce diversity statistics. Acting SEC Chair Allison Lee is already moving forward on potential updates to the SEC's 2010 climate change disclosure guidance. The SEC is soliciting public comments within 90 days on a March 15 release which poses 15 disclosure-related questions, including on various reporting frameworks, CEO/CFO certification, private company disclosures and the linkage between executive/employee compensation and climate risks and impacts.[37] Lee has indicated that other matters on the SEC's agenda include revising staff guidance on the no-action process, revisiting Rule 14a-8, modifying or replacing last year's guidance on investment advisors' proxy voting responsibilities and finalizing a universal proxy rule.

Incoming Secretary of Labor Marty Walsh plans to reexamine DOL rules adopted last year on ERISA plan fiduciaries' proxy voting obligations and consideration of pecuniary interests in selecting plan investments. In the meantime, the DOL announced that it would not enforce those rules until it can conduct additional stakeholder outreach and devise rules that better recognize the role that ESG integration can play in evaluating and managing plan investments.[38]

The extent of progress on these matters could have a profound effect on the corporate-shareholder dynamic in the years ahead. Alliance Advisors will be monitoring these and other issues as the 2021 proxy season progresses and will advise companies of any new developments that arise.

---

[32] See CNN's data as of Feb. 5 at https://www.cnn.com/interactive/2021/01/business/corporate-pac-suspensions/.
[33] See the Conference Board's survey at https://www.prnewswire.com/news-releases/survey-corporate-pacs-took-unprecedented-action-by-broadly-suspending-political-contributions-following-capitol-riot-301227621.html.
[34] See ICCR's letter to the BRT at https://www.iccr.org/sites/default/files/resources_attachments/finalstatementoncorppolspending01-28-21.pdf.
[35] The SEIU/Majority Action group sent letters to BlackRock, Vanguard, SSGA, Fidelity Investments, JPMorgan Asset Management and Bank of New York Mellon. For a sample, see https://static1.squarespace.com/static/5d4df99c531b6d0001b48264/t/600f52645de93024ba6f361f/1611616887756/Capitol+Invasion+Asset+Manager+Letter.
[36] The SEC has created a dedicated webpage to provide updates on Commission actions and information on ESG. See https://www.sec.gov/sec-response-climate-and-esg-risks-and-opportunities.
[37] See the SEC release at https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.
[38] See the DOL release at https://www.dol.gov/newsroom/releases/ebsa/ebsa20210310.

Table 1: 2020 E&S Majority Votes

Proposal	Company	Vote*
Climate change transition planning	Dollar Tree	73.5%
Climate change transition planning	J.B. Hunt Transport Services	54.5%
Climate change transition planning	Ovintiv	56.4%
Report on petrochemical operations	Phillips 66	54.7%
Deforestation	Procter & Gamble	67.7%
Sustainability report	Enphase Energy	52.3%
Board diversity - liberal	National HealthCare	59.2%
Board diversity - Rooney Rule	Expeditors International	52.9%
Workplace diversity	Fastenal	61.1%
Workplace diversity	Fortinet	70.0%
Human capital management	Genuine Parts	79.1%
Human capital management	O'Reilly Automotive	66.0%
Mandatory arbitration of employment-related claims	Chipotle Mexican Grill	51.0%
Opioid risk report	Johnson & Johnson	60.9%
Lobbying disclosure	Alaska Air Group	52.3%
Lobbying disclosure	McKesson	52.1%
Lobbying alignment on climate change	Chevron	53.5%
Political spending disclosure	Activision Blizzard	58.6%
Political spending disclosure	Centene	52.8%
Political spending disclosure	J.B. Hunt Transport Services	53.2%
Political spending disclosure	Western Union	53.3%

*Vote results are calculated as “for” votes as a percentage of “for” and “against” votes.
Source: SEC filings

Table 2: Most Numerous Shareholder Proposal Filings: 2020-2021

Proposal	2021 (as of March 29)	Proposal	2020 (full year)
Written consent	48	Written consent	68
Workplace diversity (EEO-1 report)	36	Special meetings	53
Independent chairman	35	Independent chairman	51
Grassroots lobbying	33	Grassroots lobbying	41
Political spending	30	Political spending	40
Carbon transition planning	28	Board diversity - liberal version	38
Special meetings	27	Proxy access	30
Proxy access	25	Declassify board	29
Supermajority voting	25	Supermajority voting	27
Workplace diversity (DEI report)	25	Majority voting	25
Convert to a PBC	18	Gender/racial pay equity	23
Racial justice/civil rights report	17	Human rights due diligence	23

Source: SEC filings, proponent websites and media reports.

Table 3: Board Diversity Policy Revisions

ISS:

- **2020:** ISS began recommending against the chair of the nominating committee at S&P 1500 and Russell 3000 firms if there were no women on the board, absent mitigating factors.
- **2021:** ISS will flag in its reports S&P 1500 and Russell 3000 boards that have no apparent racial or ethnic diversity.
- **2022:** ISS will recommend against the chair of the nominating committee at S&P 1500 and Russell 3000 firms that have no racially/ethnically diverse directors.

Glass Lewis:

- **2019:** Glass Lewis began recommending against the chair of the nominating committee at S&P 1500 and Russell 3000 firms if there were no women on the board, absent mitigating factors.
- **2021:** Glass Lewis will note as a concern in its reports boards that have less than two female directors. It will assess S&P 500 companies on their board diversity practices, including the percentage of directors who come from racially or ethnically diverse backgrounds. Though the assessment may play into voting recommendations where other board-related concerns exist, it will not be the sole factor. Glass Lewis's recommendations will also adhere to applicable state laws on board diversity as they come into effect.
- **2022:** Glass Lewis will recommend against the chair of the nominating committee at Russell 3000 firms that do not have at least two female directors, absent mitigating factors.

SSGA:

- **2017:** SSGA began voting against the chair of the nominating committee if there were no women on the board.
- **2020:** SSGA began voting against all members of the nominating committee if there were no women on the board and the company had not engaged SSGA successfully for three consecutive years.
- **2021:** SSGA will vote against the chair of the nominating committee at S&P 500 and FTSE 100 companies that do not disclose the gender, racial and ethnic composition of their boards.
- **2022:** SSGA will vote against the chair of the nominating committee at S&P 500 and FTSE 100 firms that do not have at least one director from an "underrepresented community."

Fidelity:

- **2021:** Fidelity will begin voting against certain or all directors if there are no women on the board or, in the case of boards with 10 or more members, if there are fewer than two female directors.

Vanguard: Vanguard is opposed to quotas, which it believes can be counter-productive.

- **2021:** Vanguard may vote against the chair of the nominating committee or other relevant directors at companies where progress on board diversity falls behind market norms and expectations. Most at risk are companies with no gender or racial/ethnic diversity or that lack a board diversity policy and disclosure.

Goldman Sachs Asset Management (GSAM):

- **2020:** GSAM began voting against all members of the nominating committee at any company globally that had no female directors.
- **2021:** GSAM will vote against the entire board at any U.S. company with no female directors. It will vote against all members of the nominating committee at U.S. companies that do not have at least one female director and one additional diverse director based on gender identity, sexual orientation and racial or ethnic background. A board with two white women would meet the standard.

Legal & General Investment Management (LGIM):

- **2020**: LGIM began voting against directors at the largest 100 companies in the S&P 500 and S&P/TSX where there were fewer than 25% women on the board.
- **2021:** LGIM is extending its board gender diversity policy to all companies in the S&P 500 and S&P/TSX. Its expectation is for all companies in these markets to have a minimum of 30% women on the board and in senior management level by 2023.
- **2022:** LGIM will vote against the chair of the nominating committee or the board chair at FTSE 100 and S&P 500 firms that do not have any ethnically diverse directors (black, Asian or another ethnic minority).

Massachusetts Pension Reserves Investment Board (PRIM):

- **2014:** PRIM began voting against the full board if there were no gender or racially diverse directors.
- **2016:** PRIM began voting against the full board if less than 25% of directors were diverse in terms of gender or race.
- **2017:** PRIM raised its threshold for board gender/racial diversity to 30%.
- **2020:** PRIM raised its threshold for board gender/racial diversity to 35%.
- **2021:** PRIM will vote against the full board if less than 35% of directors are racially diverse or if less than 35% are gender diverse.

New York State Common Retirement Fund (NYSCRF)

- **2020:** NYSCRF began scrutinizing boards that were not sufficiently diverse in terms of age, race, gender, ethnicity, sexual orientation and gender identity, geography and disability.
- **2021:** NYSCRF is expanding its policy at S&P 500 companies. It will vote against the board chair and all members of the audit committee if the company does not disclose the individual racial/ethnic diversity of its directors. It will vote against all members of the nominating committee if there is only one director identifying as an underrepresented minority (as defined by the EEOC) or if the committee has not made both gender and racial/ethnic diversity explicit considerations in its director searches. It will vote against the full board if there are no directors identifying as an underrepresented minority or if the company failed to adequately respond to NYSCRF's August 2020 letter requesting information on DEI practices.

Calvert Research and Management

- **2020:** Globally, Calvert began voting against all members of the nominating committee if there were no women on the board. In the U.S., U.K., Canada and Australia, it voted against all members of the nominating committee if the board lacked at least one woman and at least one person of color, and if collectively, the board was not at least 30% diverse.
- **2021:** In the U.S., U.K., Canada and Australia, Calvert raised its minimum board diversity standard to two women and two people of color and, collectively, 40% board diversity. For other countries, it raised the minimum diversity standard to two women on the board.