Trevor Norwitz

Sabastian V. Niles

Market Trends: Proxy Enhancements

by Trevor S. Norwitz, Sabastian V. Niles, Avi A. Sutton and Michael O. van den Berg, Wachtell, Lipton, Rosen & Katz

Overview

As short-termist pressure and activist campaigns mount, investors—recognizing that the incentive for long-term investment is broken—are working with companies to develop a new paradigm of corporate governance that prioritizes sustainable value over short-termism, integrates long-term corporate strategy with substantive corporate governance, and promotes transparency. A company's annual proxy statement is a key forum in which companies can communicate their engagement with investors, allowing a company to showcase its commitment to a business strategy that is on track for long-term value creation. Recent proxy enhancements have further given companies the ability to communicate these values clearly and compellingly to their investors, reinforcing the transparency and trust between a company and its shareholders.

The New Paradigm and the Proxy

One recent initiative in corporate governance is the new paradigm of corporate governance, which seeks to recalibrate the relationship between companies and their shareholders to restore a long-term perspective in the equity markets. This new paradigm reconceptualizes the relationship between companies, shareholders, and other stakeholders, and conceives of corporate governance as a collaboration towards long-term value.

The new paradigm's foundational quid pro quo looks for a company to voluntarily embrace principles of good governance in exchange for the benefit of the doubt from major shareholders, so management's performance will be evaluated through a long-term lens. Management should cultivate strong relationships with investors and demonstrate that the company has a reasonable, long-term business strategy. Boards and management will further work to convincingly communicate this strategy to investors. In return, institutional investors will listen and respond to a company's strategy, participate in meetings, and communicate with management. Investors should also be active and informed when voting, instead of relying blindly on proxy advisory firms. See Text of letter sent by Larry Fink, BlackRock's Chairman and CEO, encouraging engagement (January 17, 2012). For additional information on the role of proxy advisory firms, see Understanding the Role of Proxy Advisory Firms.

A company's annual meeting proxy statement is a central vehicle for a company's messaging, providing the opportunity to shape and present a coherent narrative and strategy to investors. In its annual proxy, the company has a chance to demonstrate that it has an engaged, thoughtful board overseeing a reasonable, long-term business strategy that is on track to achieve value creation. Additionally, the proxy provides an opportunity for a company to clearly articulate to investors the company's vision and strategy, including performance drivers, major risks and competitors, and business model evolution. An effective proxy also provides a strong foundation for the flip side of the coin: With clear, targeted messages to shareholders, a proxy can push investors to form their own voting decisions and reduce reliance on proxy advisory firms. For additional information on the proxy statement, see Drafting the Proxy Statement and Annual Report and Proxy Statement and Annual Meeting Resource Kit.

Proxy Enhancements

The new paradigm prescribes a few overarching principles for proxy statements. Information should be:

- Accessible

- User-friendly
- Well-organized

Moreover, companies should disclose information that investors want (and need) to make informed voting decisions. Finally, companies should disclose information that compellingly describes their long-term strategy.

Proxy Summaries

Over the last decade, federal legislation and Securities and Exchange Commission (SEC) rules have resulted in lengthier proxies. See, e.g., Dodd-Frank Act – Executive Compensation Provisions. The average proxy in 2006 was only 46 pages, while the average in 2016 was 80 pages. See Holly J. Gregory, Innovations in Proxy Statements 1 (July/August 2012) and Baker Botts, Proxy Season 2017, 18 (October 17, 2016). This fact, coupled with studies that reveal that investors claim to only read 32% of a typical proxy, indicates that companies seeking to communicate their message and strategy must balance mandated disclosures with proxy enhancements. See David F. Larcker and Brian Tayan, The Ideal Proxy Statement (February 17, 2015).

One recent solution to this challenge has been the proxy summary section—a highlight of the most important topics and statistics at the top of the proxy, often with eye-catching tables and graphics. The use of these summaries has drastically increased over the last five years. In 2012, only 38.8% of the S&P 100 companies included a proxy summary, compared to 79% by 2016. See Equilar, Innovations in Proxy Design 7 (February 2017) (the Equilar Study). These summaries are in line with stated investor preferences. A Stanford survey found that 70% of polled investors agreed that including a proxy summary at the beginning of the document made the proxy easier to read and navigate. See Stanford Graduate School of Business, R.R. Donnelley, Equilar, and Stanford Rock Center, 2015 Investor Survey Deconstructing Proxy Statements – What Matters to Investors (2015) (Stanford Graduate Business Survey).

Proxy summaries generally fall into three categories:

- A short navigational summary, with brief descriptions of the proposals put to a shareholder vote and board highlights
- A persuasive summary, which also includes performance, governance, and compensation highlights—typically drafted on the assumption that shareholders will only read the summary portion of the proxy, and written with a view towards winning shareholder support
- A change summary, which highlights recent changes, particularly with respect to board composition, governance, or compensation—common following a poor or failed say-on-pay vote, to demonstrate to investors how the company is responding to investor feedback

Cousins Properties Incorporated's proxy statement provides a navigational summary, giving information about business items and director nominees, with hyperlinks and page cross-references for easy access.

2017 PROXY STATEMENT SUMMARY

This summary highlights information contained elsewhere in this proxy statement. This summary does not contain all of the information that you should consider, and you should read the entire proxy statement carefully before voting.

2017 Annual Meeting Information

- *Date and Time:* April 25, 2017, at 11:00 a.m. Eastern Time.
- *Place:* 191 Peachtree Street NE, Atlanta, Georgia 30303-1740.
- *Record Date:* March 1, 2017.
- *Voting:* Holders of our common stock and limited voting preferred stock are entitled to one vote per share.

Items of Business

	Board Vote Recommendation	Page Reference (for more information)
1. Election of eight Directors named in this proxy statement	FOR ALL	12
2. Advisory vote to approve executive compensation	FOR	61
3. Advisory vote to approve frequency of future advisory votes on executive compensation	FOR	62
4. Ratification of Deloitte & Touche as our independent registered public accounting firm	FOR	63

Election of Directors

The Board of Directors (the "Board") of Cousins Properties Incorporated ("we," "our," "us," the "Company," or "Cousins") is asking you to elect eight Directors. The table below provides summary information about the Director nominees. All of the nominees currently serve on the Board. Our Bylaws provide for majority voting in uncontested Director elections. Therefore, a nominee will only be elected if the number of votes for the nominee's election is greater than the number of votes cast against that nominee. For more information about the nominees, including information about the qualifications, attributes and skills of the nominees, see page 12.

Note: Cousins Properties Incorporated, Schedule 14A (Form DEF 14A) 4 (March 17, 2017).

General Electric Company's proxy statement, by contrast, shows an effective example of the persuasive summary, with information about governance (including a question and answer portion with GE's lead director), board composition and nominees, compensation, chief executive officer (CEO) pay, and audit-related matters. The full summary is 12 pages long.

Proxy Overview

This overview highlights information contained elsewhere in the proxy statement and does not contain all of the information that you should consider. You should read the entire proxy statement carefully before voting.

Governance

Q&A WITH OUR LEAD DIRECTOR

Can you discuss the Board's role in the strategic planning process?

One of the Board's key roles is overseeing strategy, for which we use an annual rhythm that starts in mid-summer. The Board does a deep dive, working closely in small groups with executives of varying seniority. The output of these sessions provides the strategic context for the Board's discussions at its meetings throughout the year.

While we have a multi-year strategic plan, we also realize that in today's environment we need to be nimble and opportunistic, adjusting strategy as the world around us changes. This requires a lot of Board meetings. For example, we met as a Board 13 times last year.

Large capital allocation decisions are typically the product of an iterative Board discussion. For example, one of the most important things we did in 2016 was announce our planned combination of GE Oil & Gas with Baker Hughes. This was the result of discussions over the course of 10 meetings in which we engaged on the risks and opportunities.

How does the Board approach director recruitment?

Board recruitment is a topic that is front and center with investors today and, as a Board, we spend a lot of time on it. Over the last five years, we have refreshed more than half of the Board.

In looking for candidates, we start with character, seeking candidates with the highest standards, who are committed to upholding GE's values and who will be independent, strong stewards of our investors' capital. Then, as we go through the process of assessing future Board recruitment needs, we look to recruit candidates from different backgrounds so that they can contribute to the cognitive diversity on the Board.

This is an ongoing endeavor for us. We of course take a long-term look at the refreshment that is expected to occur over time as a result of our term limit and age limit policies, but we are always looking for new directors. It is vitally important that we continue to have the right skill sets on the Board as GE's portfolio and strategy change.

Can you discuss the Board's role in the investor outreach process?

One of the things that impressed me when I joined the Board was how front and center our investors were in the Board's discussions. We think about a number of stakeholders, but a key question for us is how our decisions impact the owners of the company.

There are several ways in which the Board receives investor feedback. Our IR and governance teams are on the front lines engaging with shareowners. Throughout the year, they have 1,000+ investor engagements, including 150+ meetings with senior management, and provide feedback to the Board.

The Board also hears directly from investors. Two years ago, we began a process of inviting major shareowners into the boardroom to meet in executive session with the independent directors. We listen to their views on strategy, business and financial issues, including what we are doing well and areas for improvement. In addition, in my role as lead director, I am available to our large investors and have had the opportunity to engage with several of them on governance and compensation matters.

How do GE's executive pay plans fit together and connect to GE's strategy?

An important focus area for the Board is executive pay and ensuring that the structure provides the right incentives for our leaders. We have 3 main performance-based compensation plans. First, we have an annual cash bonus plan, in which approximately 5,000 executives participate, and which aligns with our annual investor framework. It is a relatively new plan at GE, but so far has been a tremendous cultural enhancement to drive accountability. We also have a long-term cash incentive plan (our LTPAs), in which ~1,000 senior executives participate, and which aligns with our 3-year operating plan. It is important for ensuring that our leaders do not simply focus on annual results, but are managing the company for the long term. Lastly, we have a performance-based equity plan (our PSUs), in which <25 of our most senior officers participate, and which helps drive relative stock price outperformance over a 3-year period.

John J. Brennan, Lead Director

AN ACTIVE & ENGAGED BOARD

2016
Refreshed Board, recruiting 4 directors & retiring 3
Oversaw significant portfolio shifts: Baker Hughes and GE Digital & Additive

2015
Adopted director term limit of 15 years
Implemented proxy access

2014
Redesigned cash & equity incentive compensation programs
Eliminated dividend equivalents on unvested RSUs

BOARD ACCOUNTABILITY TO INVESTORS

Annual director elections with majority voting standard
+
Proxy access at 3%, 3 years, 20% of Board, up to 20 shareowners can aggregate
+
Annual Board governance review that includes investor views & feedback
+
Periodic independent director meetings with investors

INDEPENDENT BOARD LEADERSHIP

3X+/year
meetings in executive session without management present

2X+/year
visits to GE businesses by each director

30+
committee meetings in 2016 (all committees are independent)

annual
assessment of Board leadership structure

See our proxy website (www.ge.com/proxy) for a video Q&A with our Lead Director

Note: General Electric Company, Schedule 14A (Form DEF 14A) (March 8, 2017).

The proxy summary is one useful method for companies to communicate with investors, giving a company a unique forum to present the main takeaways about a company's long-term strategy.

Compensation Disclosures

Another significant focus for shareholder engagement is compensation. In keeping with expressly stated investor preferences, a company should structure its compensation to encourage and reward executives for achieving business goals in furtherance of the company's long-term strategy and to avoid incentives that could encourage either undue risks or short-term focus. See, e.g., BlackRock, Investment Stewardship: Our Engagement Priorities for 2017-2018. However, properly setting compensation is only half of the battle. A company must also message its compensation properly, bearing in mind the media, populist, and investor sensitivities to pay packages that could be deemed excessive, as well as the policies of proxy advisory services and investors. See, e.g., Preparing for ISS Proxy Voting Recommendations Checklist. The proxy provides an important venue for a company to articulate its rationale for how its executive compensation program strikes the right balance, highlighting the link between compensation design and long-term corporate strategy.

Recent proxy innovations help companies more effectively articulate this link. First, companies are reorganizing their Compensation Discussion and Analysis (CD&A) section to efficiently answer common shareholder questions, by providing a table of contents or summary at the top of the CD&A section to allow shareholders to easily reference relevant parts of the disclosure.

For instance, MetLife, Inc. organizes its CD&A section to quickly address shareholder questions, such as "How do we assess performance and determine compensation?" and "How did we compensate our CEO and other NEOs?" It also breaks every element of its compensation disclosure into a sub-header in a table of contents, which also has hyperlinks to quickly navigate to topics of interest.

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Compensation Discussion and Analysis

Table of Contents
for the Compensation Discussion and Analysis

MetLife 2017 Proxy Statement 42

Note: MetLife, Inc., Schedule 14A (Form DEF 14A) 42 (April 27, 2017).

Companies are also using innovative graphics and visuals to better communicate the connection between their compensation and strategy. One increasingly common practice is a compensation checklist, which is an easy and accessible way to communicate a company's approach to compensation. These checklists are frequently organized into a column of "dos" and "don'ts," which simplify and highlight key points of a company's compensation plan. The use of these checklists has exploded in recent years—5.1% of the S&P 100 used a compensation checklist in 2012, while 66% did so in 2016. See the Equilar Study at 16-17.

For example, Bank of America Corporation's 2017 proxy separates pay practices into "what we do" and "what we don't" categories. Each section contains some recognizable compensation and governance practices, and indicates whether the company implements them or not. Bank of America states that it "engage[s] with stockholders on governance and compensation," and does not provide "severance agreements for executive officers." See Bank of America Corporation, Schedule 14A (Form DEF 14A) (March 15, 2017).

✓ What We Do	✓	Pay for performance and allocate individual awards based on actual results and how results were achieved
	✓	Use balanced, risk-adjusted performance measures
	✓	Review feedback from independent control functions in performance evaluations and compensation decisions
	✓	Provide appropriate mix of fixed and variable pay to reward company, line of business, and individual performance
	✓	Defer a majority of variable pay as equity-based awards
	✓	Apply clawback features to all executive officer variable pay
	✓	Require stock ownership and retention of a significant portion of equity-based awards
	✓	Engage with stockholders on governance and compensation
	✓	Prohibit hedging and speculative trading of company securities
	✓	Grant equity-based awards on a pre-established date to avoid any appearance of coordination with the release of material non-public information
✗ What We Don't Do	✗	Change in control agreements for executive officers
	✗	Severance agreements for executive officers
	✗	Multi-year guaranteed incentive awards for executive officers
	✗	Severance benefits to our executive officers exceeding two times base salary and bonus without stockholder approval per our policy
	✗	Accrual of additional retirement benefits under any supplemental executive retirement plans
	✗	Excise tax gross-ups upon change in control
	✗	Discounting, reloading, or re-pricing stock options without stockholder approval
	✗	Single-trigger vesting of equity-based awards upon change in control
	✗	Adjust PRSU results for the impact of legacy litigation, fines, and penalties

Note: Bank of America Corporation, Schedule 14A (Form DEF 14A) 34 (March 15, 2017).

Finally, companies are also providing additional disclosures—above those mandated by SEC rules—to effectively highlight the connection between a company's compensation and its strategy and business goals. Companies have provided performance charts plotting metrics such as total shareholder return over time, or emphasizing the mix of a company's compensation relative to its peers. According to the Equilar Study, 89% of S&P 100 companies provided such disclosure in 2016, up from 76.5% in 2012. For instance, Ford Motor Company provided a supplemental graph breaking down its executive compensation into components, and comparing each component to that of its peer group.

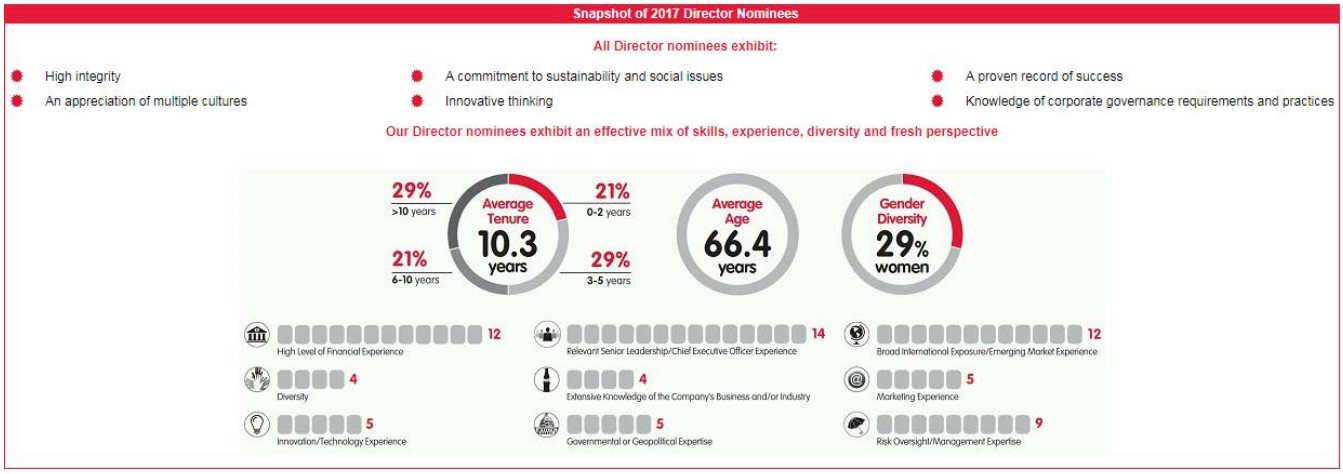
Note: Ford Motor Company, Schedule 14A (Form DEF 14A) 50 (March 31, 2017).

These proxy enhancements help companies more clearly communicate the link between their compensation programs and long-term strategy. By precisely communicating how a company's compensation practices encourage and reward long-term growth, promote implementation of the strategy and achievement of business goals, and protect shareholder value, companies encourage responsible stewardship from their investors. For further information on the CD&A, see Drafting the CD&A and Compensation Discussion and Analysis Drafting Checklist.

Director Qualifications

The proxy is also a key forum for a company to demonstrate that the right mix of directors is at the helm. To that end, a company should present the diverse skills, expertise, and attributes of its board as a whole and of individual members, and link them to the company's needs and risks. Although disclosures on director qualification have long been mandated by SEC rules under Item 401 of Regulation S-K (17 C.F.R. § 229.401), creative proxy enhancements are providing innovative ways for companies to demonstrate the qualifications of their directors to shareholders.

The Coca-Cola Company's proxy is generally recognized as a trendsetter for excellence in investor communications, and its enhanced summary of director qualifications is no exception. In its proxy summary, Coca-Cola clearly lays out certain qualities that all of its director nominees share, such as "high integrity," "innovative thinking," and "a proven record of success." See The Coca-Cola Company, Schedule 14A (Form DEF 14A) 8 (March 9, 2017). Coca-Cola also graphically shows director tenure, diversity, and board age, and provides a bar graph showing the relevant skills of its various directors.



Note: Coca-Cola Company, Schedule 14A (Form DEF 14A) 8 (March 09, 2017).

Clear communication of director qualifications to investors is a lynchpin of maintaining the trust necessary for companies to build long-term value, and the foregoing proxy enhancements are new tools for companies to lucidly illustrate their directors' qualities to shareholders annually.

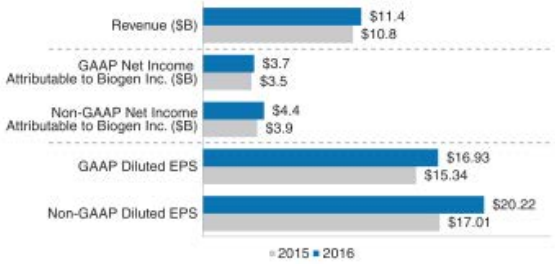
Non-GAAP Measures

Effective use of measures that are not in accordance with generally accepted accounting principles (non-GAAP) can articulate a company's vision and strategy, illustrating risks or performance drivers that might be obscured in GAAP reporting. Although the SEC's May 2016 Compliance and Disclosure Interpretations limited the use of these measures, 75% of the S&P 100 uses non-GAAP measures in their proxies, indicating their importance in articulating corporate strategy and performance. See the Equilar Study at p. 41.

For instance, Biogen Inc. used graphics—charts showing GAAP and non-GAAP net income side by side—to supplement their standard reporting. Biogen also provided appendices clarifying how these metrics help shareholders interact with the company's results and strategy.

Financial Performance

We had moderate financial growth in 2016 when compared to our performance in 2015.



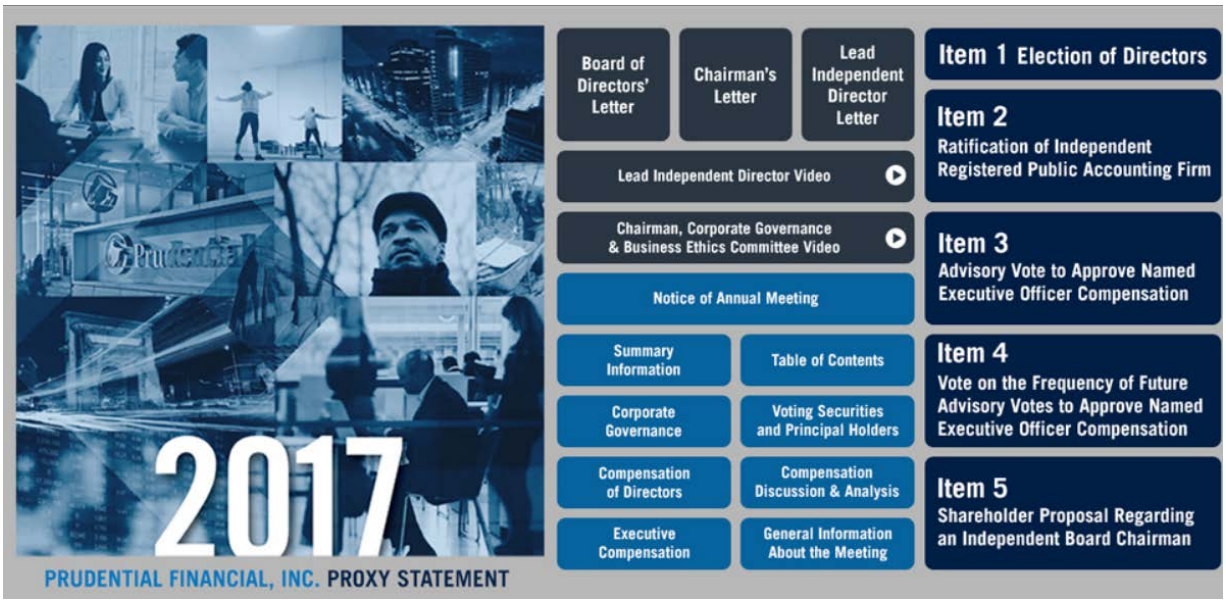
A reconciliation of our GAAP to non-GAAP financial measures is provided in Appendix A to this Proxy Statement.

Note: Biogen Inc., Schedule 14A (Form DEF 14A) 28 (April 26, 2017).

These non-GAAP measures can be critical for companies seeking to present a compelling long-term narrative to their shareholders (a practice called for by investors like BlackRock) by highlighting to shareholders what measures a company uses to gauge its *own* performance. These metrics—alongside comparable GAAP metrics—should clearly present how a company thinks about its own strategy, performance, assets, and alternatives. For further information on non-GAAP measures, see Understanding SEC Regulation of Non-GAAP Financial Measures and Market Trends: Public Company Reporting and Corporate Governance — Intensified Scrutiny of Non-GAAP Financial Measures by SEC Staff.

Multimedia

Companies are also using mixed media to relay their results and strategic direction to investors. One recent innovation in this field has been the director video, in which members of a company's board convey a short message directly to investors. Prudential Financial, Inc., has been a trailblazer in this regard. Their eye-catching website provides a link to a five-minute interview with Prudential's lead independent director, Karl Krapek, and director and chief governance officer, Gilbert Casellas. In the interview, the directors discuss the qualities that set Prudential apart from peer companies, such as the cohesion and collaboration of the Prudential board. See Prudential Financial, Inc., Schedule 14A (Form DEFA 14A) (March 21, 2017).



Note: Prudential Financial, Inc., 2017 Prudential Financial, Inc. Proxy Statement, http://www3.prudential.com/annualreport/report2017/proxy/HTML1/tiles.htm.

To further promote shareholder engagement, companies are increasingly holding virtual shareholder meetings, which allow shareholders (and company directors or management) the flexibility of attending the meeting from any location. Secure log-in features validate shareholders upon meeting entry, enabling shareholders to securely vote and ask questions, as they would in a physical meeting. In 2016, over 135 virtual shareholder meetings were held by public companies, with particular popularity among recently public and technology companies. See Lisa Fontenot and Linda Dang, The Pros and Cons of Virtual-Only Shareholder Meetings (November 29, 2016). For further information on technology company practices, see Technology Industry Practice Guide.

Sustainability and Human Capital Management

Investors have grown increasingly focused on sustainability and corporate social responsibility, with environmental, social, and governance (ESG) shareholder proposals doubling between 1999 and 2013. See, Grewal, Jyothika and Serafeim, George and Yoon, Aaron S., Shareholder Activism on Sustainability Issues (July 6, 2016). Companies have responded to this increased focus in their proxies. Indeed, companies can preempt shareholder criticism, including shareholder proposals pushing for increased ESG disclosure, by proactively disclosing their sustainability or ESG initiatives in their proxy.

Bank of America's 2017 proxy statement stands out in this regard, highlighting the company's commitment to "Responsible, Sustainable Growth." The proxy describes the company's strategy of investing in the "Health, Emotional & Financial Wellness" of their employees, and highlights a number of the company's ESG initiatives, including issuing a $1 billion green bond for renewable energy projects and a number of multi-million philanthropic commitments.

Bank of America's proxy provides a chart tying its various ESG initiatives to results:

Growing Our Diverse & Inclusive Workforce	• Our Global Diversity & Inclusion Council, chaired by our CEO, is responsible for setting and upholding diversity and inclusion goals and practices • We are a diverse and inclusive company where our employees are actively encouraged to bring their full selves to work. Currently, our global workforce is more than 50% female; 44% of the U.S.-based workforce brings a racially or ethnically diverse background. Our senior leadership is also diverse; five of our CEO's 13 direct reports and six of our 14 Board members are women and/or persons of color • Our most recent campus recruiting class was more than 50% diverse, as we focus on building the next generation of leaders
Rewarding Performance That Balances Risk & Reward	• All of our compensation plans are reviewed and certified annually by our risk management function • We have an enhanced performance review process for senior leaders and employees who have the ability to expose our company to material risk; since 2010, the number of senior leaders and employees who have been identified as "covered" employees has doubled • We've paid our hourly, non-commissioned U.S. employees at a rate higher than federal, state and local minimum wage requirements for several years; we've made regular increases during that period, with efforts in progress to continue to increase our minimum • Our company is committed to fairly and equitably compensating all of our employees and maintains robust policies and practices to reinforce our commitment
Empowering Professional Growth & Development	• We have launched multiple internal job search/career planning tools to better facilitate career growth at our company; we are expanding the scope of these tools in response to positive feedback • We support the professional growth and development of our managers through programs like Manager Excellence, which helps managers develop their skills with practical tips on professional topics. Last year, more than 75% of eligible managers participated in some form of manager development program • We have a range of programs to connect employees, executives, and thought leaders across our company • Our tuition reimbursement program provides thousands of employees up to $5,250 per year for courses related to current or future roles at our company
Investing in Health, Emotional & Financial Wellness	• We are focused on offering innovative and affordable benefits and programs that meet the diverse needs of our employees and their families, including up to 16 weeks of paid parental leave, flexible work arrangements, and competitive 401(k) benefits • We are focused on supporting our employees' physical, financial, and emotional well-being. In 2016, we offered U.S.-based employees additional medical coverage options. We continue to offer health insurance benefits to U.S.-based employees who regularly work 20 or more hours per week • We aligned the cost of health coverage with compensation through progressive premiums to provide affordable coverage; in 2011, we reduced premiums by 50% for employees making less than $50,000 while keeping their premiums flat for the past five years • Our approach is built on the things we can do together with our employees to address health risks and manage health care costs, including focusing on wellness, providing education and support, and partnering with efficient and accountable health care providers; 93,000 employees participated in the Get Active! health improvement challenge in 2016, walking 33.7 billion steps

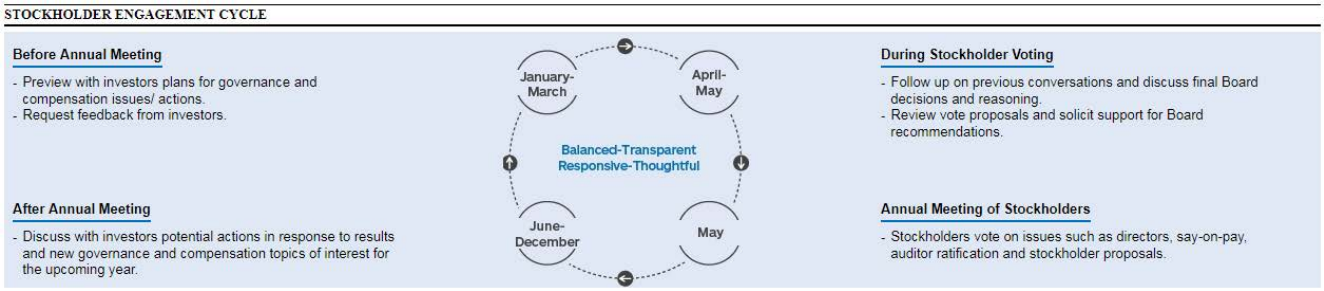
Note: Bank of America Corporation, Schedule 14A (Form DEF 14A) 21 (March 15, 2017).

In addition, companies are disclosing how they are managing employees below the senior management and director level. For instance, XPO Logistics, Inc.'s proxy includes a section on "Human Capital Management," describing XPO's efforts to maintain its "great work environment." See XPO Logistics, Inc., Schedule 14A (Form DEFA 14A) (April 17, 2017). XPO's proactive disclosure on this point responded to a shareholder proposal from International Brotherhood of Teamsters General Fund, resolving that XPO provide an annual ESG report, including addressing "human capital management" and other ESG issues. XPO's board recommended against the proposal on the ground that it was duplicative of efforts already undertaken by the company. See XPO Logistics, Inc., Form 8-K (May 12, 2017). Ultimately, XPO's proactive disclosure on human capital management and other ESG matters carried the day, and the Teamsters' shareholder proposal only received 27% of the votes cast at XPO's annual meeting.

Shareholder Engagement

Companies are increasingly using their proxies to communicate their engagement with shareholders. As short-termist pressures mount, this practice has grown quickly. In 2012, only 12.2% of the S&P 100 disclosed shareholder engagement in proxies, while in 2016 63% of the S&P 100 did so. See the Equilar Study at p. 29.

Proxy disclosure of shareholder engagement provides a company with a strong platform to demonstrate to all shareholders that the company has a profound and sincere interest in establishing communication channels with investors. For instance, the Allstate Corporation provided disclosure regarding its engagement measures with shareholders on a proposed proxy access bylaw, and also provided a graphic to succinctly illustrate how the company approached any interactions with its shareholders on shareholder proposals, with buzzwords like "Transparent, Thoughtful, Responsive and Balanced."



Note: The Allstate Corporation, Schedule 14A (Form DEF 14A) 25 (April 12, 2017).

Many companies are also taking the next step and disclosing modifications as a result of shareholder feedback. In 2016, 42% of S&P 100 companies disclosed changes based on feedback from shareholders. This engagement is critical for companies that might be flagged for governance or performance lapses by proxy advisors or institutional shareholders. To increase buy-in from shareholders, corporations making this disclosure frequently go beyond simply disclosing that engagement occurred, preferring instead to describe key topics raised in conversations, the relevance of those issues, and what, if any, actions were taken as a result. Shareholders have taken note: When polled, 75% of investors said that a "list of significant changes from [the] previous year" made a proxy easier to read and navigate. See Stanford Graduate Business Survey.

These presentations are often made in tabular or chart form. Activision Blizzard, Inc. included a CD&A subheading called "Actions in Response to Our Recent Stockholder Advisory Votes on Executive Compensation," and indicated in tabular format how it responded to specific items of importance to shareholders. For instance, in response to concerns about the single trigger change of control provision in the CEO's employment agreement, Activision Blizzard eliminated this provision from the agreement. See Activision Blizzard, Inc., Schedule 14A (Form DEF 14A) (April 21, 2017).

What We Heard	→	What We Did
Stockholders expressed concerns about a specific target relative to our comparator group for components of compensation (i.e., 75th percentile, 50th–75th percentiles)		• Our Compensation Committee revised our approach to establishing executive pay levels, to utilize a more holistic consideration of a number of factors and reference points when determining target compensation (rather than targeting a specific percentile or percentile range when benchmarking targeted compensation levels against our comparator companies). • The factors the Compensation Committee will consider when establishing our executive compensation include labor market conditions, individual considerations, Company performance, internal pay equity and stockholder feedback. • Compensation data from our comparator group and published surveys helps our Compensation Committee understand the sectors in and with which we compete for talent, providing it with an important frame of reference.
Stockholders expressed concerns about the "single trigger" change-of-control provision in our Chief Executive Officer's employment agreement		• We eliminated the single trigger change-of-control provision from our Chief Executive Officer's employment agreement. • As a result, none of our named executive officers have a single trigger change-of-control provision.
Stockholders expressed concerns about excise tax gross-up provisions in our Chief Executive Officer's employment agreement		• We eliminated the excise tax gross-up provision from our Chief Executive Officer's employment agreement. • As a result, none of our named executive officers have an excise tax gross-up provision.
Stockholders wanted to see the use of multi-year and more varied financial performance objectives underlying our executive compensation		• Our Compensation Committee continues to believe that measuring performance against our AOP targets is an appropriate assessment of financial performance. • Our Compensation Committee believes that operating income is a strong indicator of the Company's performance, as it measures our profitability while accounting for the revenue fluctuations from the year-over-year variance in the number of game titles we release. • The incentive awards that has been made, or may be made, to our Chief Executive Officer under his new employment agreement include performance objectives based on multiple financial metrics (e.g., earnings per share, operating income and TSR). • Our Chief Executive Officer's 2020 long-term incentive includes a TSR component (a) targeting 36% shareholder return over the next four years and (b) in comparison to relative shareholder return among the S&P 500, in the case of a market downturn. • Our Chief Executive Officer's 2021 long-term incentive will measure performance over a cumulative five-year period (from 2017 to 2021).

Note: Activision Blizzard, Inc., Schedule 14A (Form DEF 14A) 37 (April 21, 2017)

Effectively communicating to shareholders how a company responds to them is a foundational cornerstone of good corporate governance. It indicates to shareholders that their concerns are being addressed in a serious and thoughtful way and helps build a strong foundation between a company and its shareholders. For further information on shareholder engagement, see Board Engagement with Shareholders Policy Checklist.

Recommendations

Boards and management should consider implementing these enhancements to their proxy statement:

- Provide a short, persuasive, compelling summary of the proxy to shareholders, in a way that highlights the positives in a company's annual performance and ties annual performance to long-term strategy.
- Organize the CD&A section to anticipate common shareholder questions and clearly tie a company's compensation package to its long-term strategy.
- Insert graphics in the CD&A section and throughout, to provide shareholders easily digestible information about otherwise complex subjects.
- Communicate the diverse skills, expertise, and attributes of the board as a whole (and of individual members) and link them to the corporation's needs and risks.
- Use appropriate non-GAAP measures to illustrate how a company considers its own performance, and help shareholders understand why this narrative is compelling.
- Utilize multimedia to increase direct engagement with shareholders and meeting participation.
- Proactively demonstrate engagement with sustainability and ESG initiatives.
- Disclose shareholder engagement in the proxy, including specifics about company responses to significant feedback received.

Market Outlook

Proxy enhancements have moved in line with the organic development of the new paradigm of corporate governance, allowing companies to transparently and convincingly communicate with their shareholders, in a forum that encourages tangible shareholder feedback via the shareholder vote. As time passes, proxy enhancements are expected to further strengthen the new paradigm's quid pro quo: Transparent, good governance in exchange for committed, patient investing.


Sabastian V. Niles *Trevor S. Norwitz*

Market Trends: Shareholder Proposals

by Trevor S. Norwitz, Sabastian V. Niles, Avi A. Sutton and Anna S. Greig, Wachtell, Lipton, Rosen & Katz

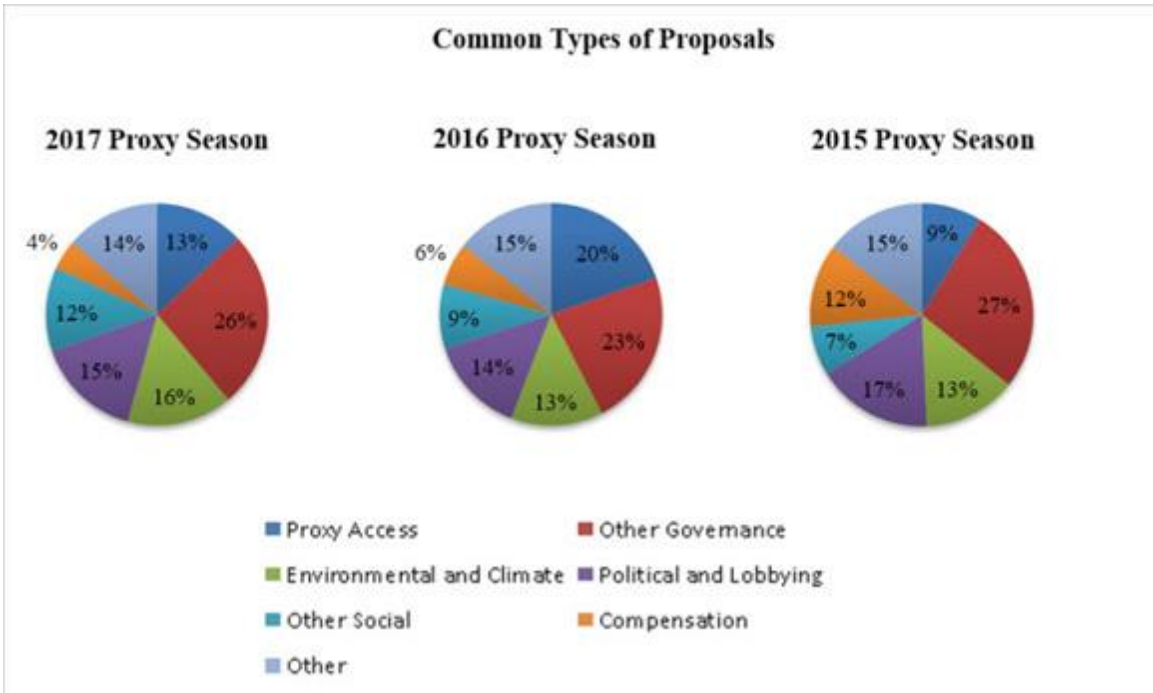
Overview

Shareholder proposals are a popular and effective mechanism enabling shareholders to recommend or require that a company and/or its board of directors take a specified action. To be eligible to submit a proposal for consideration at a meeting of the company's shareholders and have such proposal included in the company's proxy statement and proxy card under federal law, a shareholder must have held company shares with a market value of at least $2,000 (or at least 1% of the company's securities entitled to vote on the proposal at the shareholder meeting) for at least one year, and comply with additional substantive and procedural rules set forth in Rule 14a-8 (17 C.F.R. § 240.14a-8) under the Securities Exchange Act of 1934, as amended (the Exchange Act). There has been criticism that the dollar threshold in Rule 14a-8, which was adopted decades ago in 1998, is too low. See e.g., Comment Letter of The Business Roundtable, File No. S7-25-97 (Dec. 9, 1997). It is possible that this threshold may be raised in the future and that other reforms may be made to the shareholder proposal process. Alternatively, albeit infrequently used, a shareholder may submit a proposal under state law, without regard to the requirements of Rule 14a-8, but must bear the cost of preparing and mailing its own proxy statement to the company's shareholders. For additional information on shareholder proposals, see Excluding Shareholder Proposals and Seeking No-Action Letters and Rule 14a-8 Shareholder Proposals Timetable. For additional information on the proxy and annual meeting process in general, see Proxy Statement and Annual Meeting Resource Kit.

After a significant increase in the frequency of shareholder proposals in the 2015 proxy season—due in large part to the prevalence of proxy access proposals described below—the number of shareholder proposals submitted to U.S. public companies has been decreasing somewhat (from 943 in 2015, to 916 in 2016, down to 861 in 2017), though the number of proposals still exceeds the 2013 level (820), according to the Institutional Shareholder Services (ISS) Voting Analytics database and other privately sourced data. (All 2017 data herein is as of July 1, 2017.) As the number of shareholder proposals submitted has increased since 2013, however, the average investor support for shareholder proposals has actually been declining over the past five years, down from 34.4% in 2013 to 29.8% in 2016 and 25% in 2017.

As discussed in detail below, prior trends are expected to continue. In particular, it is expected that:

- The pressure to adopt proxy access bylaws will continue to increase at large-cap companies and begin spreading to mid-cap companies.
- Proponents of proxy access will attempt to refine proxy access bylaws by proposing amendments to existing proxy access bylaws.
- Other governance-related proposals will decline at large-cap companies, but increase at mid-cap companies.
- Specific compensation-related proposals will reappear in light of high-profile controversies and legislative uncertainty.
- Shareholder support for environmental and social topics and board diversity—gender diversity in particular—will increase.
- While less common, shareholder proposals may continue to address economic/business issues and be put forward by economic-oriented activists/hedge funds (e.g., Greenlight's spring 2017 proposal at General Motors, which ultimately failed).

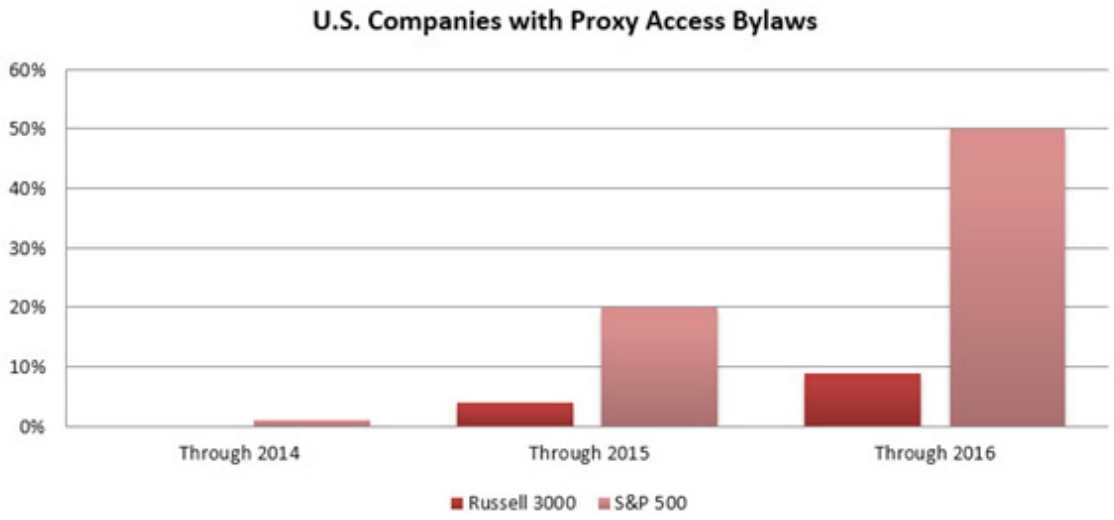


Governance

Proxy Access

Proxy access gives shareholders who meet specified conditions the right to include one or more shareholder-nominated candidates for election to the board of directors in the company's proxy statement and on its proxy card. Since 2015, proxy access has been one of the more dominant shareholder proposals at large-cap companies and the most likely type of shareholder proposal to obtain majority shareholder support. This has resulted in a majority of S&P 500 companies adopting some form of proxy access, either as a result of a successful shareholder proposal or due to voluntary adoption of a proxy access bylaw with terms consistent with market practice.

Given this widespread adoption, pressure to adopt proxy access at remaining large-cap companies is likely to increase, but the focus of proponents of shareholder proposals may begin shifting to the amendment or refinement of existing proxy access bylaws. However, unless they target real outliers, fix-it proposals that make it to a vote will likely fare poorly—during the 2016 and 2017 seasons, all proposals for bylaw amendments failed at every company that had already adopted proxy access with market standard terms (i.e., those that permit a shareholder, or group of up to 20 shareholders, owning 3% or more of the company's common stock continuously for at least three years, to nominate up to 20% of the company's board).



While during the 2015 season and much of the 2016 season companies often excluded proxy access proposals on the basis of a conflicting management proposal on the same topic, recent guidance issued by the Securities and Exchange Commission (SEC) has narrowed the ability of companies to exclude shareholder proposals. See SEC Staff Legal Bulletin No. 14H (October 22, 2015) and Legal and Regulatory Trends below. As a result, proxy access proposals that were excluded in 2017 were primarily excluded on the basis of substantial implementation by the company, rather than a conflicting management proposal.

Separate Chairman and CEO

Shareholder proposals regarding the separation of the chairman and chief executive officer (CEO) positions are common, as they have been for a number of years. While still popular, the total number of these proposals decreased in 2016 and 2017 at S&P 500 companies (41 and 36, respectively) as compared to 2015 (55), due in large part to their low success rate in 2015 (average 3.6% of support and none achieved majority support in 2016). This decline in proposals has also been seen in the subset of independent chair proposals that were actually submitted for a shareholder vote, rather than withdrawn by the proposing shareholder or omitted by the company; however, the proposals that ultimately make it to a vote have seen modest increases in support.

Independent Chair Proposals Submitted to a Vote (Excludes Withdrawn or Omitted Proposals)								
# of Proposals Voted On			Average % Support			Proposals Passed		
2017	2016	2015	2017	2016	2015	2017	2016	2015
31	35	44	33.5%	27.0%	30.1%	0	0	2

Although proxy advisory firms such as ISS and Glass Lewis generally support these proposals, investors increasingly are of the view that a lead independent director with broad powers and responsibilities is an acceptable alternative to separation of the chairman and CEO roles. For additional information on proxy advisory firms and their role, see Understanding the Role of Proxy Advisory Firms, Preparing for ISS Proxy Voting Recommendations Checklist, and Market Trends: Additional Proxy Soliciting Materials Responding to Negative Voting Recommendations.

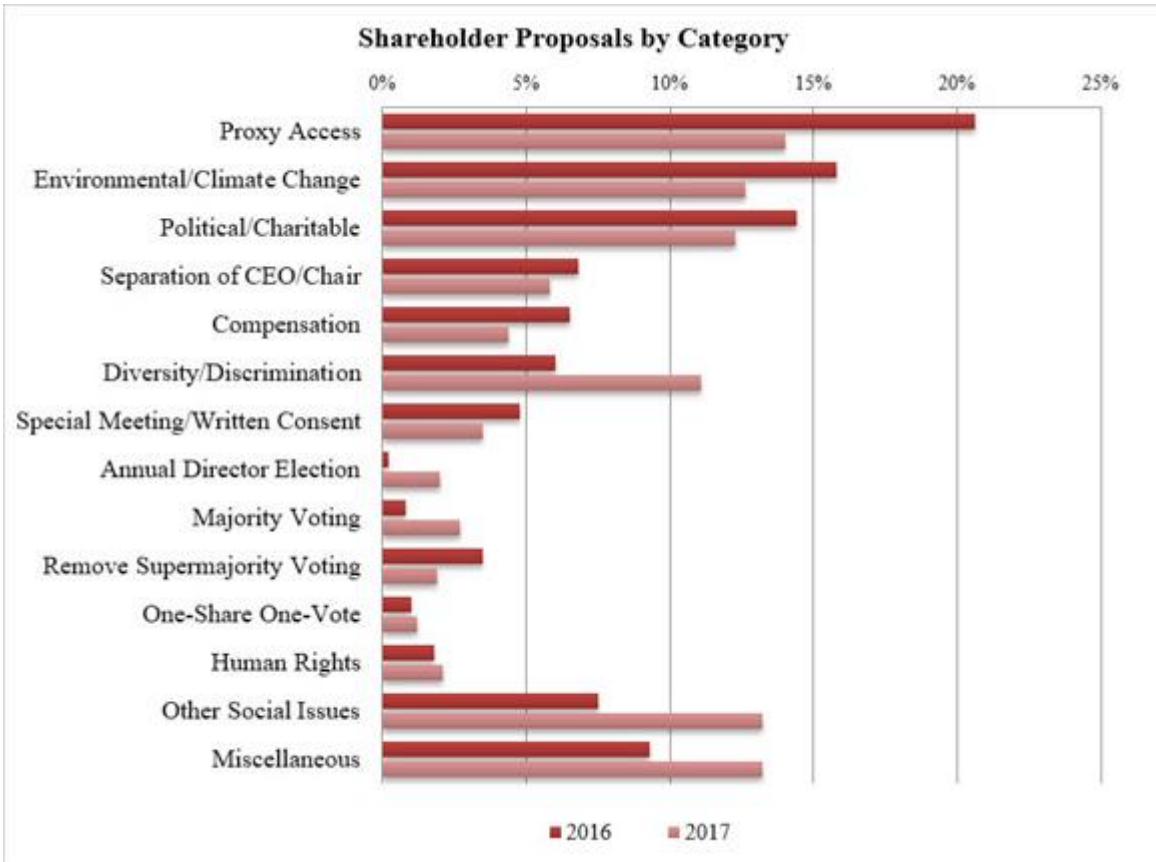
Due to the low overall success rate of these proposals over the past few years, whether due to a withdrawal, omission, or failed vote, shareholder proponents may be more selective going forward about the companies targeted with this type of proposal. Instead, shareholder proponents may focus on companies with more significant or pervasive performance or governance concerns in order to garner higher support. For additional information on the chairman, CEO, and lead director roles, see CEOs, Chairs and Lead Directors: Who Leads the Board?. For model proxy disclosure relating to the issue of separation of the CEO and chairman positions, see Model Proxy Disclosure: Combined CEO and Chairman and Model Proxy Disclosure: Split CEO and Chairman.

Shareholder Off-Cycle Action Rights

Proposals regarding shareholders' right to call a special meeting or to act by written consent are also relatively common.

A significant majority of large-cap companies already grant shareholders the right to call special meetings, so most new shareholder proposals on the topic call for a reduction in the ownership threshold of existing special meeting rights.

Additionally, proposals requesting that companies permit shareholders to act by written consent have dropped significantly since 2015. The shift of focus to proxy access is partially responsible for this decrease, but many investors have also come to believe that special meeting rights are a sufficient (and more appropriate) mechanism to allow shareholder action outside of the annual shareholder meeting.



Other Governance Topics

Traditional governance proposals, such as board de-staggering, majority voting, and elimination of supermajority voting, have become less common as most large-cap companies have already adopted these measures. Rather than turning their attention to the same issues at smaller companies, proponents of shareholder proposals have typically moved on to new causes, the most notable being proxy access. Nevertheless, in 2016 the Council of Institutional Investors announced a campaign to target close to 200 Russell 3000 companies that still have a plurality standard in director elections, and such proposals typically pass when submitted. See Council of Institutional Investors, Majority Voting for Directors.

Compensation

The 2016 proxy season marked a five-year low for the number of compensation-related shareholder proposals voted upon—and none received majority support. This is due in large part to the required say-on-pay votes, which provide investors an alternative mechanism to express their approval or disapproval of a company's executive compensation program. For additional information on say-on-pay, see Complying with Dodd-Frank's Say-on-Pay Provisions.

However, a number of proposals on new compensation topics surfaced in 2016, including calls to adjust incentive metrics to account for share buybacks and the prohibition of government service golden parachutes. Although none received majority support, one proposal at Xerox to adjust incentive metrics to account for share buybacks did receive 45.6% support. See Sydney Carlock, et al., 2016: Proxy Season Review – Compensation, ISS Report Center (Sept. 22, 2016). For information on golden parachutes, see Guide to Disclosure and Shareholder Vote for Golden Parachute Compensation.

While compensation-related proposals had been on the decline, in light of recent high-profile controversies and uncertainties surrounding legislative solutions, the 2017 season actually saw an increase in the number of proposals on compensation, in particular compensation clawbacks. Additionally, due to investors' heightened focus on climate change, shareholder proponents submitted eight proposals relating to the linking of executive pay to sustainability or climate metrics. More of these may be on the horizon. For further information on sustainability, see Introduction to Corporate Sustainability.

Environmental and Social

Proposals relating to environmental and social issues were the most common proposal type at S&P 500 companies for each of the last five years (up to 354 in 2017). This figure includes all topics in the broad environmental and social category, including climate change and climate regulation; environmental health and safety; political, lobbying, and charitable disclosure; human rights; diversity, gender, and discrimination topics; and other miscellaneous social topics. Specifically, proposals requesting increased climate risk disclosure had greater support in 2017 (33.7%) and 2016 (34.5%) as compared with 2015 (23.2%). Although the 2016 proxy season did not see majority support for environmental and social proposals, the increasing support culminated in the passage of climate-related proposals at four S&P 500 companies in 2017, most notably support by 62% of ExxonMobil shareholders for a proposal that requires ExxonMobil to report on the impacts of climate change to its business. In 2016, only 38% of ExxonMobil shareholders supported a substantially identical proposal, indicating the rapid pace at which shareholder support for climate related proposals is increasing year over year.

Support from large institutional investors for shareholder resolutions on climate change is also increasing. For example, State Street backed 51% of such resolutions in 2016, compared with only 14% in 2015. See Shirley Westcott, Proxy Advisors and Investors Prep for 2017 Proxy Season, Harvard Law School Forum on Corporate Governance and Financial Regulation (Dec. 22, 2016). Additionally, a number of significant institutional investors have recently committed to supporting enhanced climate risk disclosure. BlackRock, which holds a stake in most major U.S. public corporations, identified climate risk as one of its top engagement priorities for 2017. See Annual Letter to CEOs from Larry Fink, Chairman and Chief Executive Officer of BlackRock (Jan. 24, 2017).

In addition to climate and sustainability proposals, shareholder proposals relating to political expenditures and lobbying are common, though decreasing. Notably, conservative shareholder groups have joined their progressive counterparts in putting forth shareholder proposals on social issues. However, shareholder support for proposals on these topics is generally quite low, with only two proposals out of 61 voted on in 2016 receiving majority support. See Glass Lewis, 2016 Season Review: United States and Canada Governance Lessons from January to June 2016 (Aug. 31, 2016). In 2017, none of the 50 political/lobbying proposals that went to a vote received majority support.

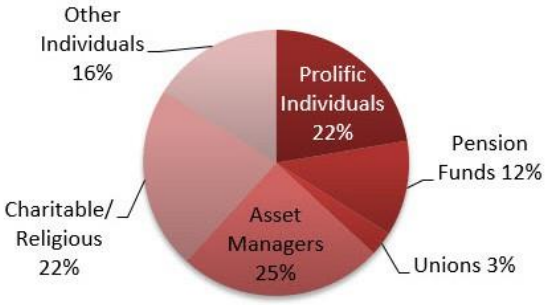
Finally, gender pay equity garnered increasing attention in the 2016 and 2017 proxy seasons, highlighted by the increased shareholder support for a proposal at eBay to sponsor a gender equality study that was submitted in each of the 2015 and 2016 proxy seasons. The proposal received only 8.5% support in 2015, followed by 51.2% support in 2016 to pass.

Proponents

The most prolific proponents of shareholder proposals are individual investors John Chevedden, James McRitchie, William and Kenneth Steiner, and Jing Zhao. Chevedden alone accounts for approximately 14% of all shareholder proposals submitted in the 2017 season. Individuals of this ilk are sometimes referred to as “gadfly investors” as their interests are generally not as typical investors but to instigate and bring about change. The New York City Comptroller submitted a large number of shareholder proposals on behalf of five New York City pension funds in 2015 and 2016, primarily focused on proxy access as part of the Comptroller’s “Boardroom Accountability Project.” The initiative targets companies where three priority issues generate concerns: (1) climate change risk, (2) board diversity, and (3) excessive executive compensation. In 2017, the Comptroller was less active in submitting proposals related to proxy access. Instead, the Comptroller focused its attention in 2017 on proposals requesting enhanced sustainability disclosure.

Other proponents of shareholder proposals include:

- Public pension funds, which focus their proposals mainly on governance issues related to board diversity and social proposals relating to employee diversity, political contribution disclosure, and environmental issues
- Labor unions, which focus primarily on governance and compensation-related issues
- Asset management or advisory institutions, which focus on environmental and social issues



Legal and Regulatory Trends

The 2017 proxy season has unfolded during a time of considerable legal and regulatory uncertainty across a broad range of topics. In particular, the regulation of proxy advisors may gain traction with the new U.S. administration, giving proxy advisors reason to actively engage with companies as they shape their voting recommendations. Both ISS and Glass Lewis have new staff members in critical roles, and therefore institutional knowledge and precedent may not carry the same weight as in prior years.

In addition, the regulatory framework addressing no-action relief for the exclusion of shareholder proposals from proxy materials is evolving. Generally, a company may exclude a shareholder proposal from its proxy materials if the proposal fails to meet any of the procedural and substantive requirements of Rule 14a-8. A company may seek no-action relief from the SEC to exclude a proposal from its proxy materials on a number of additional grounds, most usually because of a direct conflict with a management proposal (Rule 14a-8(i)(9)) or because there has already been substantial implementation of the proposal (Rule 14a-8(i)(10)).

In the fall of 2015, the SEC issued Staff Legal Bulletin No. 14H, making it more difficult to obtain no-action relief on the direct conflict ground. After initially granting no-action relief to Whole Foods for a shareholder proposal seeking to amend the company's existing proxy access bylaw, the SEC reversed course and refused to grant no-action relief on the basis of a direct conflict. The SEC stated that it would permit a company to exclude a shareholder proposal on the basis that it directly conflicts with a management proposal only "if a reasonable shareholder could not logically vote in favor of both proposals, *i.e.*, a vote for one proposal is tantamount to a vote against the other proposal."

As a result, proposals with similar objectives on different terms will not be considered to directly conflict with one another. In light of this development, the number of ballots containing competing proposals increased in the 2016 and 2017 seasons. The board of directors in such a circumstance may have to consider the effects of both proposals, and any company that includes a shareholder proposal and a management proposal on the same topic may have to include proxy statement disclosure explaining the differences between the proposals and how the company expects to consider the voting results.

Following the issuance of Staff Legal Bulletin No. 14H, a higher proportion of no-action requests were made on the basis of substantial implementation. The substantial implementation ground permits exclusion if a company has satisfied the essential objective of the proposal. While this basis for exclusion remains viable in many cases, in July 2016 the SEC denied no-action relief on the basis of substantial implementation in the case of a proxy access bylaw when the provision already implemented by the company was very similar to that proposed. The denial suggests that companies may not easily be able to rely on substantial implementation as a basis to exclude shareholder proposals calling for revisions to proxy access bylaws, though it is likely still a basis for exclusion of proxy access adoption proposals. In certain cases, proposals to revise existing proxy access bylaws will still be excludable. For further information, see Rule 14a-8 Stockholder Proposal Exclusion Flowchart.

Market Outlook

Overall, the rate of shareholder proposals across all topics should remain relatively stable, with individual investors such as John Chevedden continuing to submit a large quantity of proposals at an array of companies.

Fix-it campaigns to amend existing proxy access bylaws are expected to continue and, as more companies adopt proxy access, increase in frequency. Proposals targeted at companies with primary proxy access provisions that already conform to the market standard are not likely to generate significant shareholder support, but proposals at companies that significantly deviate will likely attract more support.

As noted above, while traditional governance-related proposals have focused on large-cap companies, now that the majority of such companies have adopted the proposed measures, investors may begin to shift focus to small- and mid-cap companies.

Companies should also expect a high number of proposed resolutions on climate change, requests for lobbying and political expenditure disclosure, and workplace diversity. Climate-related proposals will likely see increasing support, and companies should be attentive to changes in their investors' voting policies and practices to best prepare and predict the outcome of proposals that go to a vote.

As in past years, boards that are seen as insufficiently responsive to shareholder votes may suffer from a negative ISS or Glass Lewis recommendation. With the uncertainty surrounding the legal and regulatory framework for the exclusion of shareholder proposals, companies should be prepared to include shareholder proposals and provide thoughtful and well-reasoned recommendations for or against such proposals.

Approaches to Proxy Season

Given the change in leadership at both ISS and Glass Lewis, companies should refresh and update their proxy advisor outreach plans to ensure a clear narrative, in addition to their plans for shareholder engagement. For additional information, see Board Engagement with Shareholders Policy Checklist. Companies should develop a keen understanding of shareholder perspectives on the company and foster long-term relationships with major shareholders, including by appropriately handling shareholder requests to discuss governance, the business portfolio, capital allocation and operating strategy, environmental, and social and governance matters, and for greater transparency into the board's practices and priorities. Companies should also integrate business relevant environmental and social governance considerations into long-term strategy and be prepared to respond to increasing investor attention on the topic.

Boards should evaluate every shareholder proposal thoughtfully and resist changes that the board believes will not be constructive, while addressing any modifications that in the board's judgment will result in transparent, good governance and promote the long-term interests of shareholders.