

# 2020 Proxy Season Results & Corporate Governance Developments

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Fall 2020

# Agenda

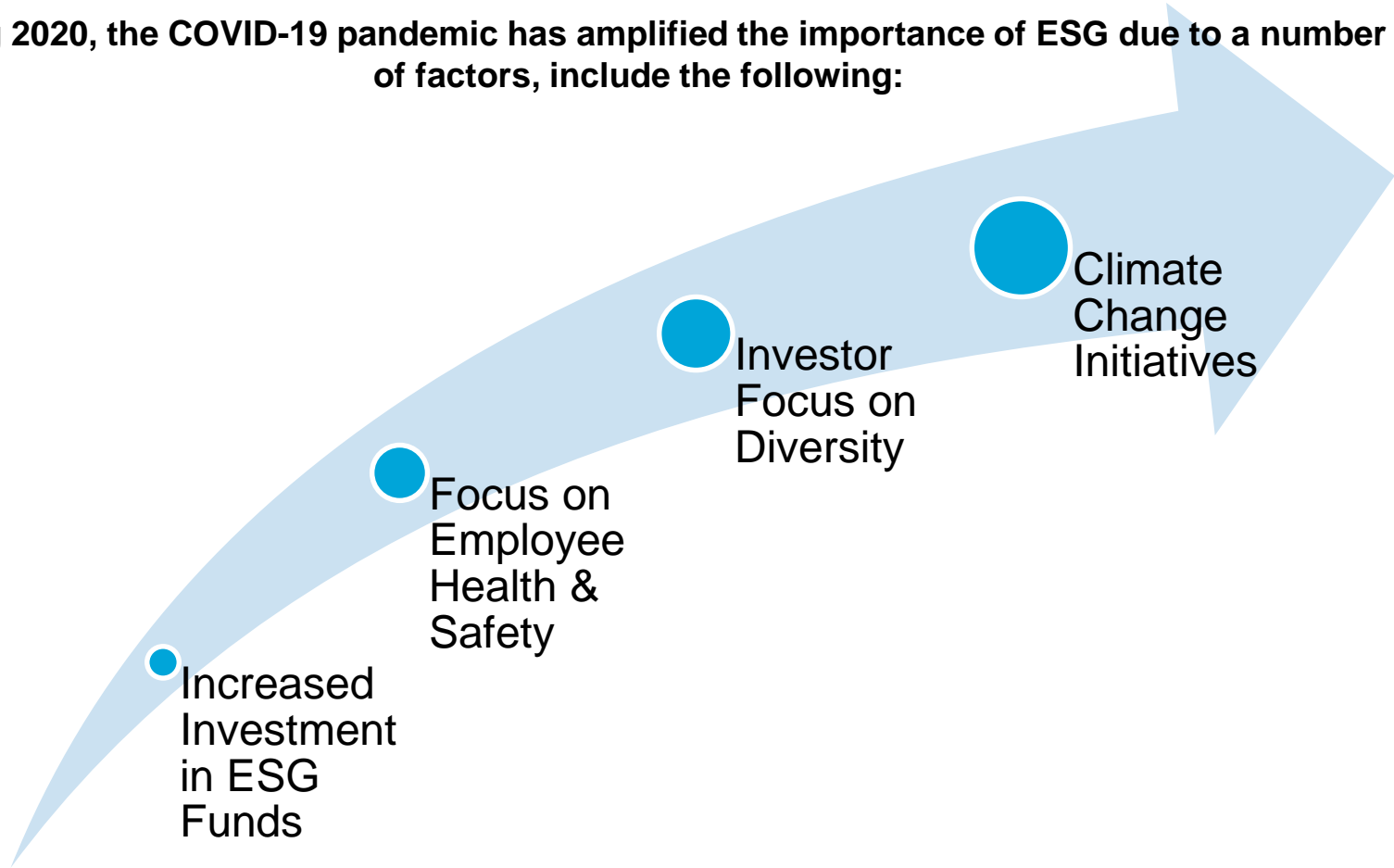
- 1 COVID -19 Impact and General Shareholder Proposal Trends
- 2 ESG Proposals and “Hot Topics”
- 3 Executive Compensation Developments
- 4 Board Accountability and Shareholder Engagement

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# COVID-19 Impact and General Shareholder Proposal Trends

# The Rise of ESG

During 2020, the COVID-19 pandemic has amplified the importance of ESG due to a number of factors, include the following:



# COVID-19 Impact on Governance

## RISE IN VIRTUAL MEETINGS

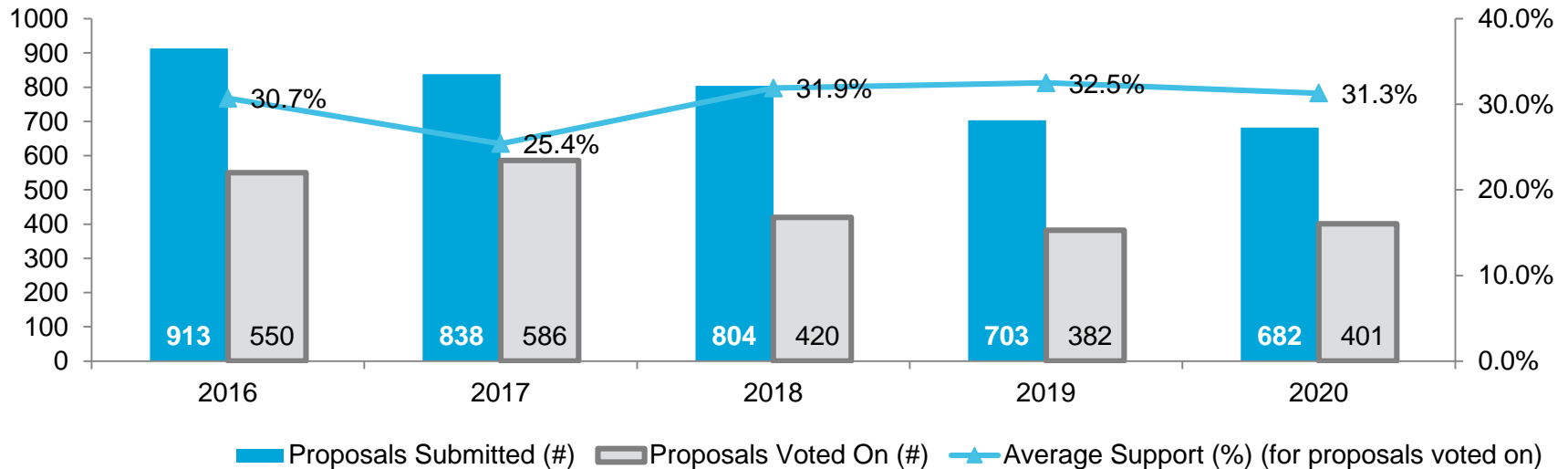
- Virtual Meetings increased nearly **700%** since 2019.
- Proxy advisory firms and some investors expressed concerns.
- However, most investors:
  - expect to see increased use of virtual meeting technology (**90.5%**)
  - expect more hybrid meetings (**64.3%**);
  - support the use of virtual meetings generally (**58.4%**);
  - support the use of virtual meetings if appropriate shareholder rights protections are in place (**82.2%**); and
  - support a hybrid model (**81%**).

## INCREASE IN POISON PILLS

- Over **40** companies have adopted poison pills this year (vs. 25 in 2019).
- Proxy advisory firms issue guidance for companies seeking to adopt temporary pills in response to the economic downturn.

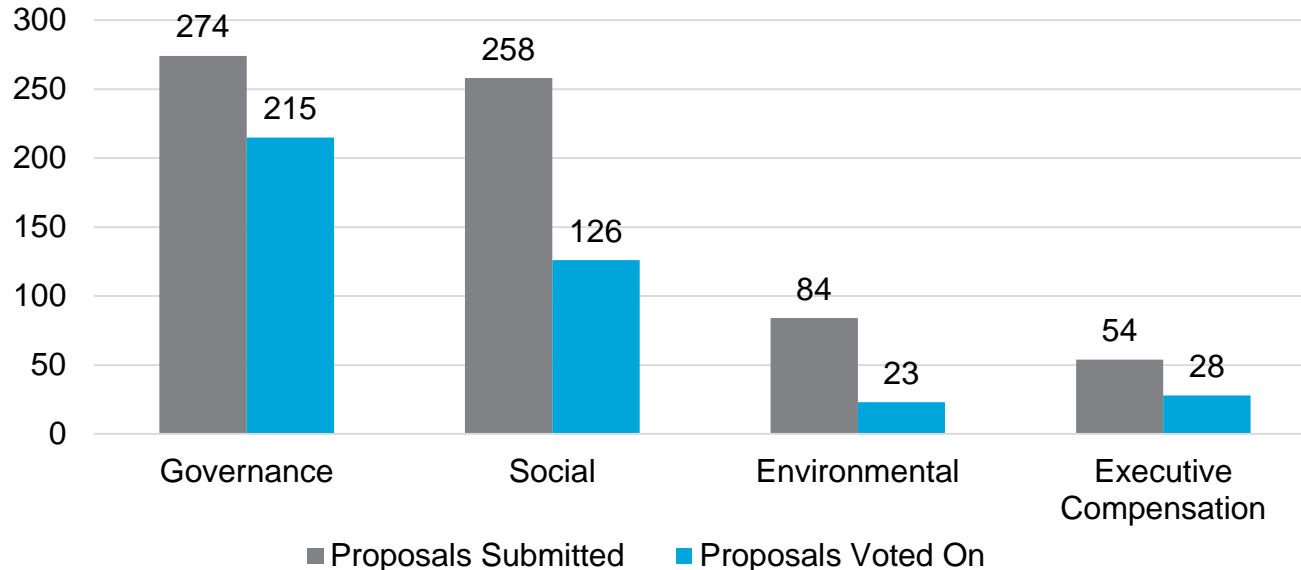
# Proposals and Support Holding Steady, Slight Increase in Proposals Voted On

Shareholder Proposals – (2016 – 2020)  
(through June 15, 2020)



- **Slightly Fewer Proposals Submitted, Continued Strong Support.**
- In 2020, **59%** of proposals went to a vote, slightly up from 2019 (**54%**), due in part to:
  - an increased number of governance-related proposals, for which withdrawals are less common,
  - decreasing withdrawal rates for social and environmental proposals, and
  - an increase in the sophistication of the proposals, resulting in fewer being omitted.
- Approximately **15%** of proposals were withdrawn in **2020**, vs **26%** in 2019 and **20%** in 2018.

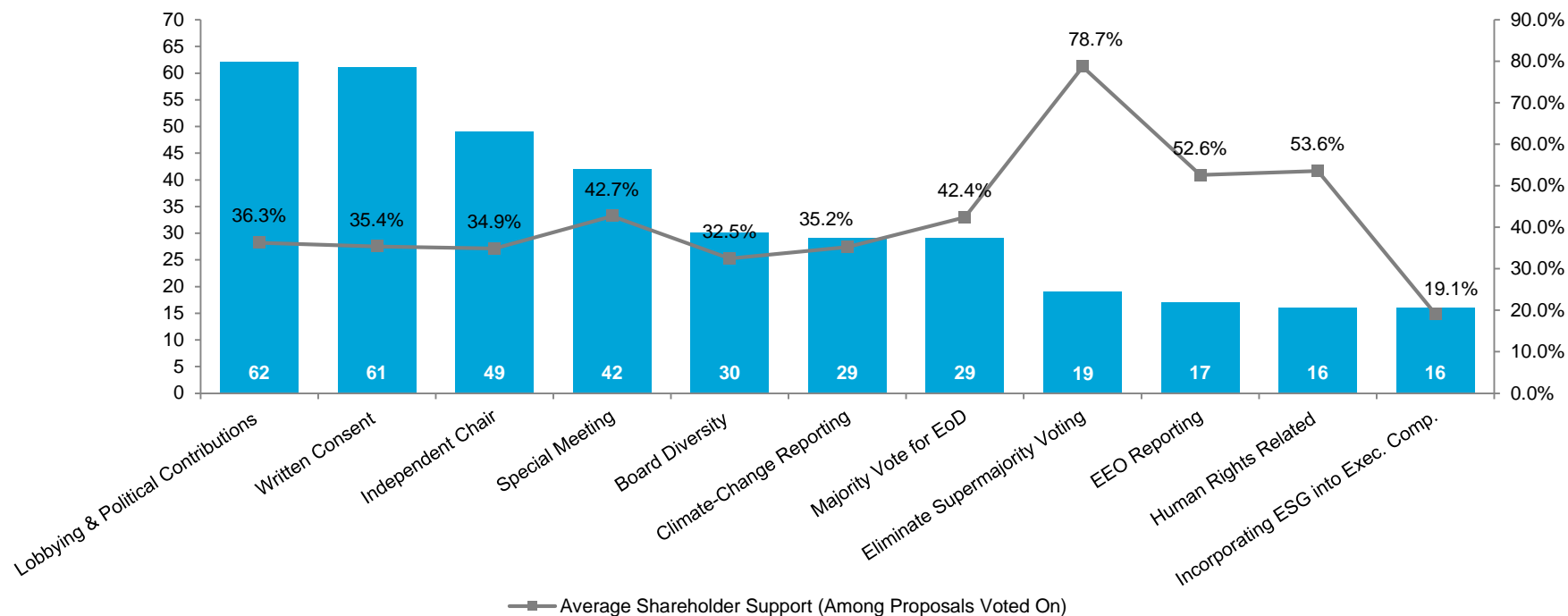
# Proposals Submitted vs. Voted on, by Type



- **2020 saw a resurgence in governance proposals** – more were voted on and certain topics are receiving heightened investor interest (e.g., independent chair). ‘Gadfly’ proponents may increase efforts going forward with the ease of physical requirements that virtual meetings offer.
- **Social proposals continue to have a strong presence** – almost half went to a vote, and many topics saw significant spikes in shareholder support (EEO reporting, board diversity).
- **Although there was a slight decrease in submissions for environmental proposals, six received majority support** this year, whereas none did in 2019 – this follows a number of high profile investors placing heightened priorities on companies providing disclosure of environmental initiatives.

# Top Shareholder Proposals Submitted in 2020

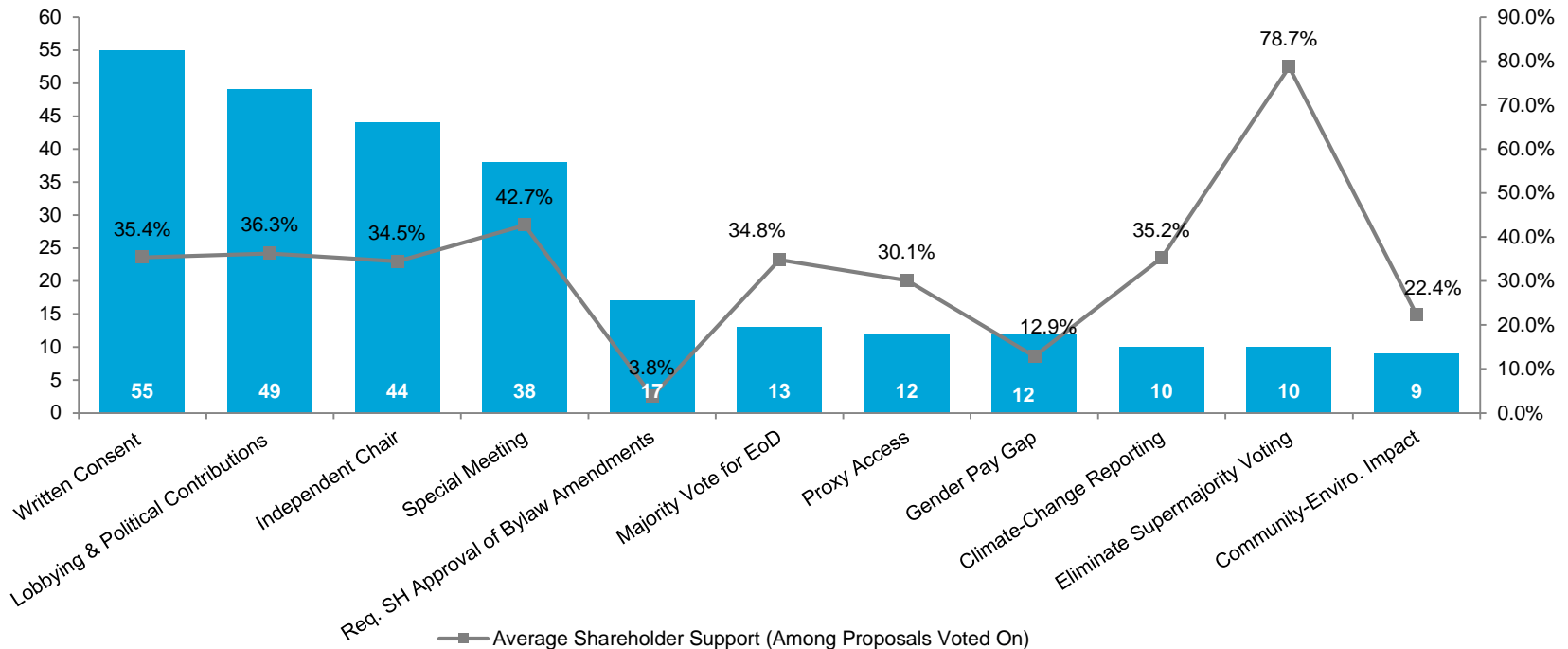
Proposals Submitted Jan. 1, 2020 – June 15, 2020  
(Russell 3000)





# Top Shareholder Proposals Voted on in 2020

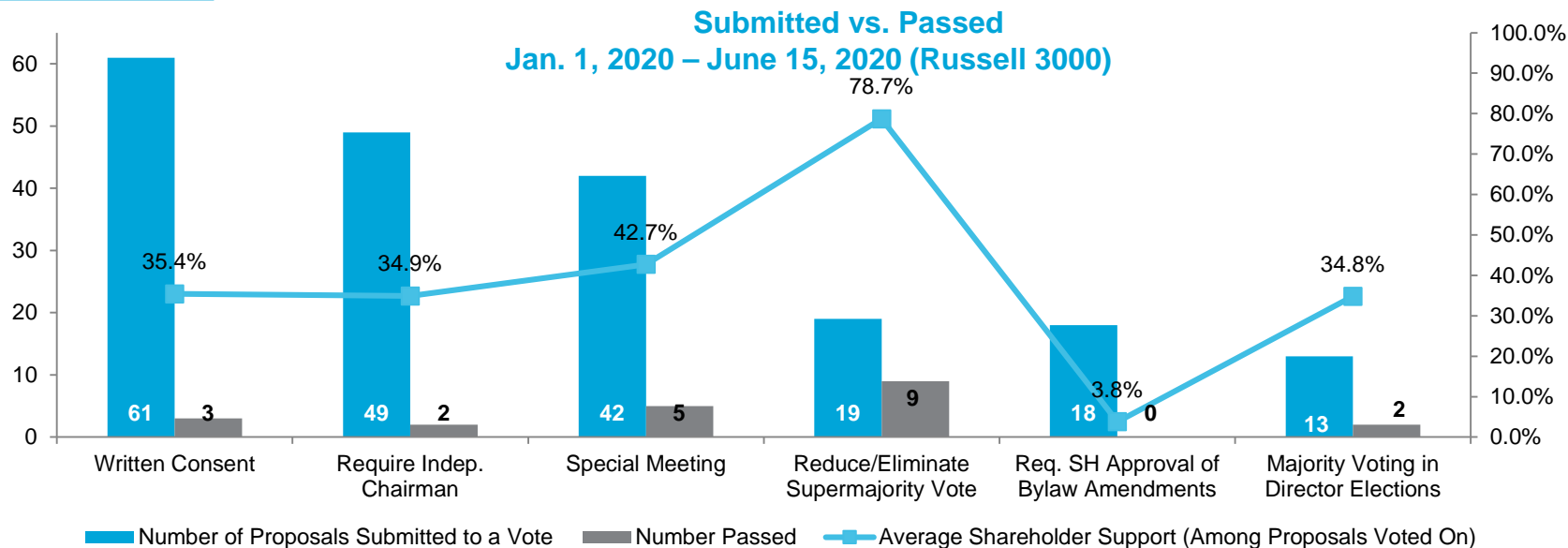
Proposals Voted on Jan. 1, 2020 – June 15, 2020  
(Russell 3000)



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# ESG Proposals and “Hot Topics”

# Corporate Governance Proposals in 2020



- **Written Consent** proposals became the most common governance proposal submitted this year, increasing by approximately 50% from 2019.
- There was an increase in proposals to **lower the ownership threshold to call a special meeting** (42 vs 28 in 2019).
- There was a decrease in proposals to **require a majority vote for the election of directors** (13 vs. 29 in 2019).
- **Other proposals that passed:** Declassify the board (6); allow for removal of directors (1); repeal specific charter amendments (1).

# Spotlight: Governance Issues

## Independent Chair

- **Investors view strong, independent board leadership as critical to effective board oversight and accountability to shareholders.** An independent lead director *can* be an acceptable alternative, but investors increasingly prefer an independent board chair.
- Prolific since the mid- 2000s, but average support in the range of **29% to 32%** since 2012.
- **From 2014-2019, only one proposal passed, but two proposals passed in 2020.**
  - **11** proposals received support in excess of **40%** in 2020 vs. **four** proposals in 2019.
- COVID-19 may have fueled shareholders' focus on improving board oversight, effectiveness and independence by requiring an independent chair. Overall average support was **34%** in 2020.

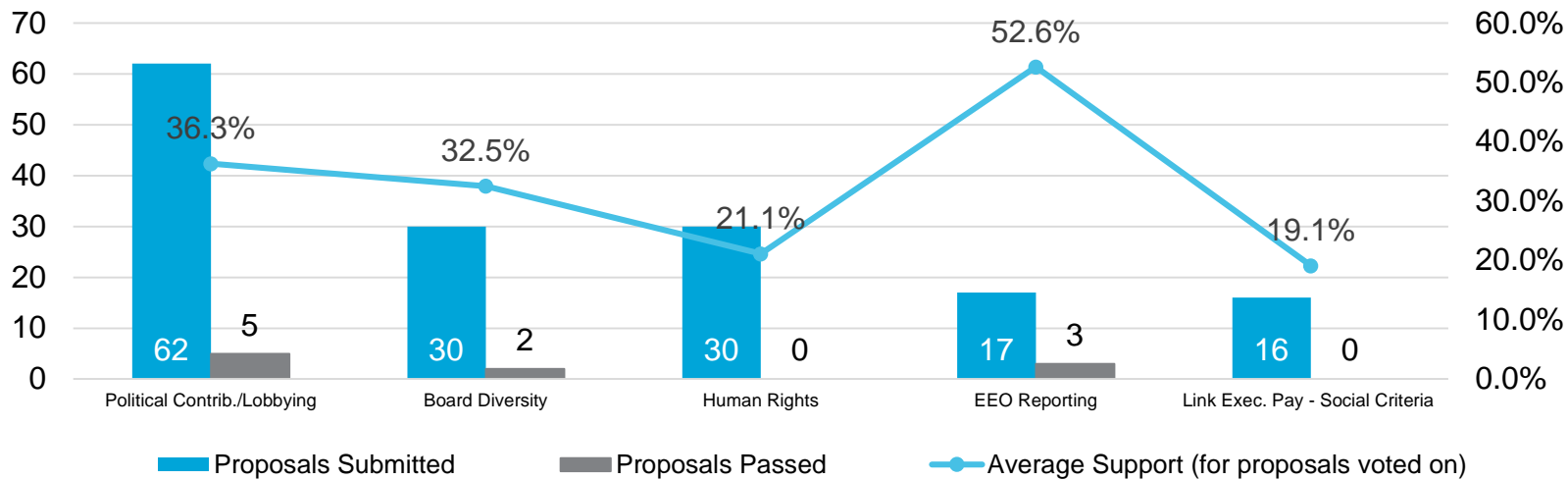
## Reduce Threshold to Call a Special Meeting

- **Shareholders' ability to call special meetings is broadly considered to be a fundamental right, but there is less consensus as to the specific ownership threshold that should be required.**
- Proposals saw an increase similar to the 2018 proxy season, with **40** such proposals going to a vote this year. The Chevedden Group submitted at least **33** of these.
- Continued high average support (**42%**)
- **The threshold percentage is often a determining factor as to whether these proposals pass.** Of the **six** proposals that received majority support, **three** sought to reduce the threshold from 25% to 10%.

## Right to Act by Written Consent

- **56** went to a vote in 2020, compared to **34** in 2019.
- Average support continued downward trend from high of **45%** in 2017 to **35%** in 2020.
- **Shareholders' decisions to support proposals demanding a right to act by written consent are often influenced by whether shareholders have an existing right to call a special meeting at an acceptable threshold (generally ranging from 10% to 25% depending on the investor).**
- For the two proposals that passed, one was at a company that did not provide shareholders with the right to call a special meeting and one was at a company that provided the right at a 35% threshold.

# Top Social Proposals in 2020



**The number of social proposals submitted decreased slightly from 2019, about half went to a vote.**

- **Political contributions and lobbying proposals** continue to take the lead in terms of submissions, and an increasing number are passing – **five** this year compared to three last year.
- Proposals submissions lowered slightly to **258** this year (2019:274), with almost half making it onto ballots – similar to what we saw in 2019.
- Significant jumps in shareholder support were recorded for proposals requesting **EEO-1 reporting** (**52.6%** vs 38.6% in 2019) and board diversity (**32.5%** vs 13.3% in 2019).

# Spotlight: Diversity

## Workforce Diversity

- Increase in EEO proposals submitted (**17** vs. 14) and average level of support (**52.6%** vs. **38.6%** in 2019);
- **Four** passed (three to report on diversity along EEOC categories, one requesting a report assessing the company's diversity and inclusion efforts).
- **NYC Comptroller** sent letters to CEOs of **67** S&P 100 companies that had made statements in support of racial equality and diversity asking them to: (i) adopt a policy to publicly disclose their annual Consolidated EEO-1 Reports, which reflect the race, ethnicity and gender of their employees, with oversight to be provided by independent members of the board, and (ii) commit in writing by August 30, 2020 to publicly disclose their EEO-1 Report when they submit their next Report in 2021.
  - If companies are unresponsive, the NYC Comptroller may submit **shareholder proposals** or factor such unresponsiveness into **voting decisions for director nominees** at the company's next annual meeting.

## Board Diversity

- **Surge in Support**, which may be due to increased focus and strengthened position of institutional investors and proxy advisory firms (see appendix for policies).
- **Two** proposals passed in 2020, compared to **none** in 2019.

## NYC Comptroller: "Rooney Rule"

Sent letters to **56** S&P 500 companies requesting they adopt a diversity search policy requiring initial list of management-supported director nominees and CEO candidates to include qualified female and racially/ethnically diverse candidates from non-traditional fields (ex. government, academia and not-for-profit sector).

### "Rooney Rule" Shareholder Proposals:

- Submitted shareholder proposals to **17** of 56 targeted companies in 2020.
- Negotiated settlements with **14** (or **82.4%**) of those companies, in each case, after the company agreed to adopt and disclose a compliant board and CEO diversity search policy.
- Of the three companies where the proposal went to a vote, **one** received majority support (53% support). The other two proposals received 24% and 12%, respectively.



# Human Capital Management Tops E&S Disclosure; Proposals Strong in 2020

**HCM Disclosure:** Survey of Fortune 50 companies disclosure on HCM found that the largest increase in E&S disclosures came in HCM, with 90% of companies now including this in their 2020 10-K or proxy. Disclosure topics include employee diversity, employee training, employee pay/benefits and employee feedback.

- Human Capital Management (HCM) proposals remain strong in 2020.
  - Driven in part by an increased focus on workplace diversity and equality, as well as growing awareness that human capital can be an important driver of business success.
- HCM-related proposals included:
  - **Employment Diversity/EEO Reporting:** 17 (94%) went to a vote in 2020 vs. 14 (82%) in 2019. Support significantly increased (**52.6%** vs. 38% in 2019).
    - **Four** passed (three to report on diversity along EEOC categories, one requesting a report assessing the company's diversity and inclusion efforts).
  - **Gender/Racial Pay Gap:** 12 (92%) went to a vote in 2020, vs. 14 (54%) in 2019. However, support decreased (**12.9%** vs. **21.7%** in 2019) likely due to inclusion of race as a category (ISS recommended in favor of only three proposals due to concerns about how a racial pay gap ratio would be calculated, vs. recommended in favor for 13 of the 2019 pay gap proposals).
    - None passed.
  - **Sexual Harassment/Gender Identity and Sexual Orientation Discrimination:** 10 proposals submitted this year (vs. 9 in 2019), with 4 voted on, including one that received **32%** support.
    - None passed.

# Human Capital Maintains Center Stage in ESG Evolution

## Investor Views of Human Capital

- HCM is one of top institutional investor priorities. For example, BlackRock identified human capital management as one of its engagement priorities. HCM is also an integral part of ESG disclosure frameworks, including SASB.

## Rulemaking Petition Submitted to SEC

- In a petition for rulemaking, the Human Capital Management Coalition, a group of 25 institutional investors, asked the SEC to adopt rules requiring “issuers to disclose information about their human capital.”

## SEC Takes Note

- In August 2020, the SEC adopted amendments to Item 101 of Reg S-K to include HCM disclosure requirements, noting that **human capital can be an important driver of performance** for many companies.

Chairman Jay Clayton: *“Turning to human capital, I believe that the strength of our economy and many of our public companies is due, in significant and increasing part, to human capital, and **for some of those companies human capital is a mission-critical asset.** Disclosure should focus on the material information that a reasonable investor needs to make informed investment and voting decisions.”*



# What is “Human Capital”?

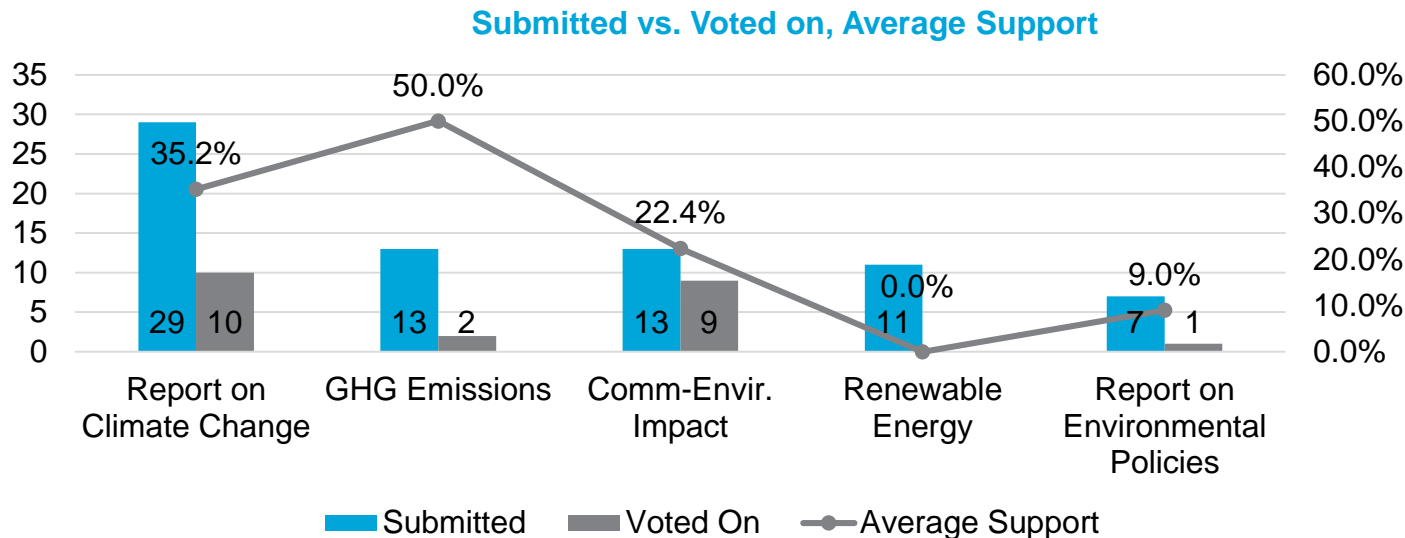
## SEC Rule

- The rule provides non-exclusive examples of human capital measures that may be material, such as measures that address the “**attraction, development, and retention of personnel**”.
- Each industry, and each company, has its own human capital considerations that may evolve over time.
- Disclosure is intended to help investors understand and evaluate human capital as a company resource and to **see through the eyes of management** how this resource is managed.

## Investor Perspective on “Human Capital”

- Investors including members of the HCM Coalition view Human Capital Management as encompassing a broad range of corporate practices related to the management of employees, including:
  - *Workforce stability, recruitment, hiring and retention practices*
  - *Workforce composition, demographics and diversity*
  - *Employee engagement*
  - *Employee skills, capabilities, training and retraining (and company investment in training)*
  - *Employee compensation, benefits and incentive structures*
  - *Workplace health and safety*
  - *Workforce culture and empowerment*
  - *Workforce productivity*
  - *Human rights commitments*
  - *Worker grievance mechanisms*
  - *Responsible contracting and ethics, both with respect to a company’s direct employees and to the employees of vendors throughout the company’s supply chain*

# Top Environmental Proposals in 2020



Number of proposals decreased slightly (**84** vs. **100** in 2019), but **six** received majority support, compared to none in 2019.

**Requests for Climate Change Reporting:** top environmental proposal submitted, most passed. Excluding anti-climate proposals, support increased from **30%** in 2019 to **31.9%** in 2020.

- **14** went to a vote, with **three** passing. Two additional passing proposals included climate-related elements
- Nearly **40** environmentally-focused proposals were withdrawn, presumably after negotiations with the company.

**Other Passing Proposals:** **1** on report on sustainability, **1** on GHG reporting, **1** asking for a report on the risks of Gulf Coast Petrochemical Investments.

**Continued “Anti-ESG” Proposals:** but all received only single-digit support.

# Spotlight: Climate Change

- **Climate Action 100+** is an initiative aimed at ensuring the world's largest corporate GHG emitters take necessary action on climate change. The companies include 100 'systemically important emitters', and is backed by more than 360 investors with more than \$34 trillion in assets under management.
- **Business Roundtable** called on "businesses and governments around the world to work together to limit global temperature rise this century to well below 2 degrees Celsius above pre-industrial levels, consistent with the goals of the Paris Agreement."
- **The Oil and Gas Climate Initiative (OGCI)**, a group that includes some of the largest oil & gas companies in the world, announced a target to reduce the collective average carbon intensity of member companies' aggregated upstream oil and gas operations by 2025.
- **BlackRock and Vanguard** have disclosed voting decisions in favor of climate change resolutions at companies where they have concerns around the company's management of climate risk.
- **Environmental Disclosure:** 29% of Fortune 50 companies increased their environmental disclosure from 2019. Nearly all (94%) included environmental disclosure in their 2020 Form 10-K and/or proxy statement, and 42 filings included quantitative metrics (up from 32 in 2019), such as information on GHG emissions reductions and renewable energy use.

# Investor Focus on SASB and TCFD

## BlackRock

“[W]e are asking the companies that we invest in... to: (1) publish a disclosure in line with industry-specific **SASB** guidelines by year-end...or disclose a similar set of data in a way that is relevant to your particular business; and (2) disclose climate-related risks in line with the **TCFD**’s recommendations...”

## State Street

“[A] company’s ESG score will soon effectively be as important as its credit rating...[W]e will [vote against] board members at companies...that [lag] based on their R-Factor scores and that cannot articulate how they plan to improve their score. We believe doing so is in the best interests of investors and companies alike.”

## SASB vs. TCFD

### SASB

- Provides **industry-specific** standards for disclosing performance on material sustainability topics in a comparable manner, focused on topics and metrics that illustrate how climate risk is most likely to impact financial performance of companies in a specific industry.
- Standards include:
  - Disclosure topics
  - Accounting metrics
  - Technical protocols
  - Activity metrics

### TCFD

- Provides an **overarching four-part framework** applicable regardless of sector, (with limited additional guidance for select sectors) to report to investors information related to the specific topic of climate risk.
- Recommendations are organized into four categories and encourage corporate disclosures related to a company’s:
  - Governance
  - Strategy
  - Risk Management
  - Metrics and Targets

# No-Action Relief

***For the 2019-2020 proxy season, the SEC implemented its new policy:*** when a company tries to exclude a shareholder proposal, the staff will inform the proponent and the company of its position, which may be that the staff concurs, disagrees or declines to state a view. ***The staff may respond orally instead of in writing to some no-action requests. The staff intends to issue a response letter where it believes doing so would provide value, such as more broadly applicable guidance about complying with Rule 14a-8.***

- **79%** of no-action responses to date have been oral, *however* this has not significantly decreased processing time (46 days for requests submitted between September 2019 and June 2020, vs. 50 days for requests submitted between September 2017 and June 2018).

**As of June 30, S&P 1500 companies challenged 244 proposals (37.1% of total submitted):**

- SEC responded to 200, 142 were granted (71%), 57 denied (29%) and 1 declined to state a view (on the basis that there was pending litigation over the exclusion of the proposal)

**Basis for Relief:**

- **Substantial Implementation: 46 (23%)**
- **Ordinary Business: 37 (18.5%)**

**Conflicting Management Proposals:** Companies should consider ISS and Glass Lewis voting guidelines → may recommend against directors at companies that have excluded shareholder proposals as a result of conflicting management proposals.

# SEC continues to be active: Additional Rulemaking

## PROXY ADVISORS

- The SEC codified that it regards the distribution of voting recommendations and related research and analysis by proxy advisors as a "solicitation" under the Exchange Act. In order to be exempt from the information and filing requirements of the Exchange Act, advisors have to:
  - disclosure material conflicts of interest in their proxy voting advice;
  - simultaneously provide companies with a copy of their proxy voting advice; and
  - ensure there is a mechanism by which clients can reasonably be expected to become aware of any written statements regarding its proxy voting advice by registrants who are the subject of such advice, in a timely manner before the security holder meeting date, (or, if no meeting, before the date consents, or authorizations may be used to effect the proposed action).

## SHAREHOLDER PROPOSALS

### RULE 14A-8

- The SEC approved changes to Rule 14a-8, the shareholder proposal rule, under which an investor must meet one of the following requirements to be eligible to file a shareholder proposal at a company:
  - Holding \$2,000 in the company's stock for at least three years;
  - Holding \$15,000 in the company's stock for at least two years; or
  - Holding \$25,000 of the company's stock for at least one year.
- \*Transition period → Any shareholder currently eligible to submit a proposal (by holding \$2,000 or 1% of company securities for one year) will retain this eligibility if they maintain current holdings through the date of submission, for shareholder meetings until January 2023.
- In addition, the rule: (i) requires a shareholder proponent to provide his/her availability to engage with the company; (ii) prevents a single person from submitting multiple proposals at the same shareholders' meeting, whether as a shareholder or as a representative of a shareholder; and (iii) increases the levels of required shareholder support a proposal must receive to be eligible for resubmission at the same company's future meetings.



# ISS – 2021 Proposed Policy Updates

## **Board Diversity, Race and Ethnicity:**

- For companies in the Russell 3000, or S&P 1500 index, highlight boards with no apparent racial and/or ethnic diversity.
- For companies in the Russell 3000 or S&P 1500 index, effective for meetings on or after Feb. 1, 2022, generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) where the board has no apparent racially or ethnically diverse members. Mitigating factors include the presence of a racial and/or ethnic minority on the board at the preceding annual meeting and a firm commitment to appoint at least one racial and/or ethnic diverse member.

**Director Accountability:** ISS policies globally will explicitly note that significant risk oversight failures related to environmental and social concerns may, on a case-by-case basis, trigger vote recommendations against board members.

## **Shareholder Litigation Rights:**

### **• Federal Forum Selection Provisions**

- Generally vote for federal forum selection provisions in the charter or bylaws that specify "the district courts of the United States" as the exclusive forum for federal securities law matters.
- Vote against provisions that restrict the forum to a particular federal district court. Unilateral adoption of such a provision will generally be considered a one-time failure under the Unilateral Bylaw/Charter Amendments policy.

### **• Exclusive Forum Provisions for State Law Matters**

- Generally vote for charter or bylaw provisions that specify Delaware, or the Delaware Court of Chancery, as the exclusive forum for corporate law matters for Delaware corporations, in the absence of serious concerns about corporate governance or board responsiveness to shareholders.
- For states other than Delaware, vote case-by-case on exclusive forum provisions.

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# Executive Compensation Developments



# Breakdown of Say on Pay Vote Results

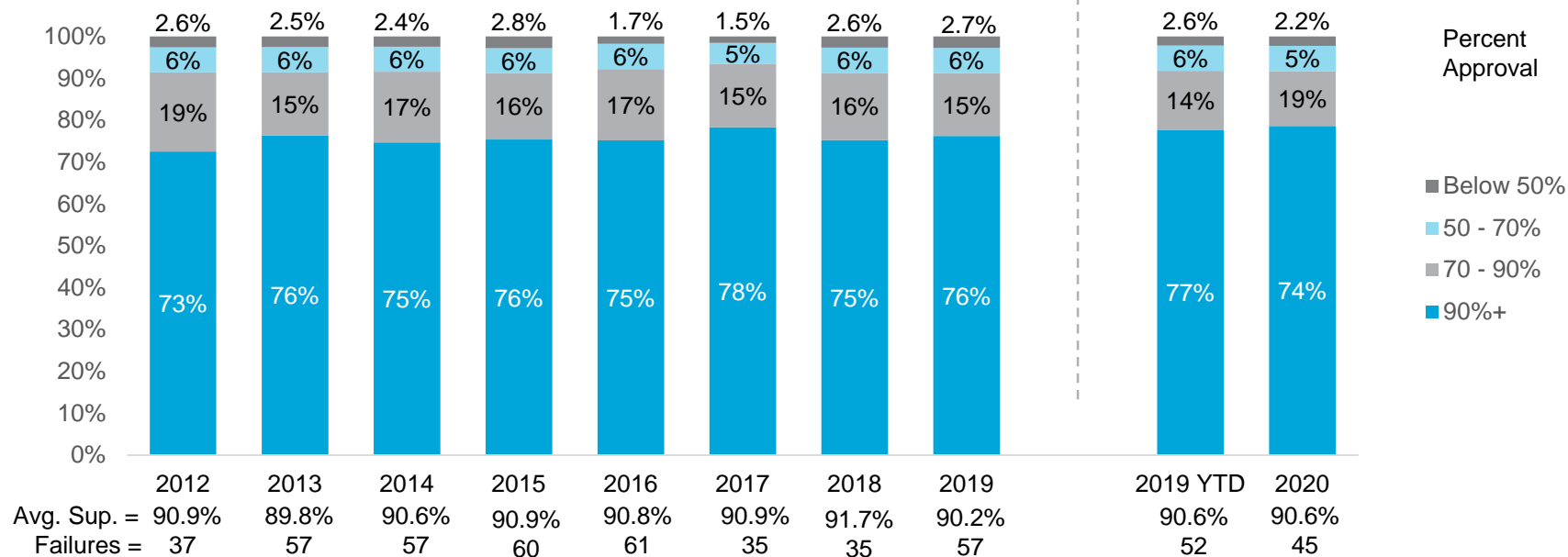
**45** Russell 3000 companies (**2.2%**) failed their “Say on Pay” votes in 2020 (as of 7/9) (vs. **2.6%** YTD 2019)

- The average vote result was **90.6%** (same as in YTD 2019)

**33%** of S&P 500 companies received vote support below 70% at least once since 2011.

**10%** of the Russell 3000 and **8%** of the S&P 500 have failed Say on Pay at least once since 2011.

**ISS Impact:** On average, vote result is **30%** lower for companies that received an ISS “against” recommendation.



# COVID-19 & Executive Compensation

- The pandemic's impact on company financial performance varies by industry, ranging from severely harmed to positively impacted → resulting in a wide range of pay implications. Adjustments to executive compensation range from **cutting executive and/or director compensation** to demonstrate aligned interest with shareholders to **adjusting metrics and resetting triggers** to reflect market volatility:
  - Companies are spending considerable time reviewing the status of in-cycle incentive awards and evaluating the potential need for changes to future years' incentive plans.
  - Some companies — particularly those severely impacted by the global pandemic— have revised or modified in-cycle cash and/or equity awards, while others are taking a “wait and see” approach.
  - Many companies, guided by their pay-for-performance philosophies, are reluctant to make changes to in-cycle awards; however, these companies also recognize we are truly in unprecedented times.
- At May 15<sup>th</sup>, approximately **25%** of the S&P 500 had published executive compensation-related responses to the pandemic in various filings (Form 8-Ks, proxy statements).
  - Pay actions appear to center on **salary reductions** vs. the loss of incentive plan compensation.
  - According to Semler Brossy, salary reductions for CEOs have typically been 20% or greater. Half of companies who announced adjustments cut CEO salary by 50% or more. Unsurprisingly, as one of the sectors with the largest declines in market cap, over 50% of Consumer Discretionary companies in the Russell 3000 announced pay changes.
- It is reasonable to expect additional investor focus on how companies adjust executive compensation practices and programs as compared to broader employee compensation decisions in light of pandemic-related financial issues.

# Spotlight: Compensation Proposals and E&S Issues

The most common type of **compensation-related** proposal sought to link executive compensation to E&S issues.

- Averaged **19.1%** support.
- **19** submitted. **None** passed, but shareholders are increasingly focused on this issue.

## Examples of Proposal Types:

- “Assess Feasibility of Cyber Security and Data Privacy as a Performance Measure for Senior Executive Compensation”
- “Assess Feasibility of Including Sustainability as a Performance Measure for Senior Executive Compensation”
- “Assess Feasibility of GHG Reduction as a Performance Measure for Executive Compensation”
- “Report on Integrating Risks Related to Drug Pricing into Senior Executive Compensation”
- “Report on Executive Pay Links to ESG Metrics”

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# Board Accountability and Shareholder Engagement

# Key Reasons ISS Recommends Against Directors

- Lack of Response to Shareholder Concerns
- Compensation Issues (including lack of responsiveness to low say on pay vote)
- Poor Meeting Attendance
- Unilateral board action that reduces shareholder rights (ex. limiting shareholders' rights to amend the bylaws, adopting a fee-shifting bylaw, amending the company's charter to effect a reverse stock split, adopting a classified board structure and increasing the percent threshold to call a special meeting)
- Overboarding
- IPO Company with adverse provisions
- Lack of independence
- Absence of nominating committee
- Failure of risk oversight

# Director Voting Results – Institutional Investor Overboarding Policy Impact

**Significant opposition to directors of Russell 3000 companies increased to its highest level since 2011, due in part to new or stricter overboarding policies of some institutional investors.**

- Public company executives on more than two boards were particularly hard hit, and a number of directors saw their support drop **25%** or more on a year-over-year basis.
- Directors who received a negative recommendation from ISS based on overboarding averaged **70%** support due to investor alignment with ISS, however none received less than **50%** support.

**ISS:** Generally recommend against/withhold from directors who (i) sit on more than five boards; or (ii) are CEOs of public companies who sit on the boards of more than two other companies (withhold only at their outside boards).

**Glass Lewis:** Generally recommend against a director who serves as an executive officer of any public company while serving on more than two public company boards and any other director who serves on more than five boards.

**BlackRock:** CEO can sit on one outside board (total of two); Other directors can sit on three outside boards (total of four).

**Vanguard:** A named executive officer can sit on one outside board (total of two). Other directors can sit on four boards. \*(This change was effective as of April 1, 2019, so many of the affected directors and companies did not to have adequate time to address this issue for the current proxy season).

**State Street:** CEO can sit on one outside board (total of two). Other directors can sit on four boards (or three for board chairs or lead directors).

# Shareholder Engagement\*

## **SUMMER**

Review shareowner votes from most recent annual meeting & current trends in global governance.

## **FALL**

Conduct face-to-face meetings with largest investors to assess which governance & comp practices are a priority.

## **SPRING**

Conduct follow-up conversations with largest investors to address important annual meeting issues.

## **WINTER**

Review feedback from fall meetings with Board & use it to enhance proxy disclosures & make appropriate governance & compensation changes.

## **ANNUAL SHAREOWNERS MEETING**

\*For calendar year-end companies

# Importance of Ongoing Dialogue with Shareholders

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Thank you

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# Appendix

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# Proxy Advisory Firms – Voting Impact and 2020 Policy Updates

# Corporate Governance Proposals – ISS Impact

ISS recommended a vote “For” 143 of 176 select governance proposals (81%); however, only 22 such proposals (approximately 12.5%) received majority support.

Type of Proposal	Number of Proposals Voted On (Jan. 1–June 15, 2020)	Number of ISS “FOR” Recommendations	Average Shareholder Support	Number Passed
Independent Chair	48	27 (56.3%)	34.9%	2
Written Consent	51	42 (82.4%)	35.9%	3
Reduce/Eliminate Supermajority Voting	9	8 (88.9%)	78.7%	9
Proxy Access	12	12 (100%)	30.1%	0
Majority Voting in Director Elections	16	16 (100%)	37.0%	3
Special Meeting	40	38 (95%)	41.7%	5
<b>TOTAL</b>	<b>176</b>	<b>143</b>		<b>22</b>

**ISS Impact:** When there is broad shareholder support for a proposal, ISS recommendations can impact the result.

In the governance proposal landscape, outcomes are generally more predictable, which informs strategy.

# Select Social Proposals – ISS Impact

ISS recommended a vote “For” 74 of 97 select social proposals (76.3%); however, only 10 such proposals (10.3%) received majority support.

Type of Proposal	Number of Proposals Voted On (Jan. 1–June 15, 2019)	Number of ISS “FOR” Recommendations	Average Shareholder Support	Proposals Receiving Majority Support
Political Contributions/Lobbying	51	48 (94.1%)	36.3%	5
Board Diversity	6	3 (50%)	32.3%	2
Employment Diversity	6	6 (100%)	52.6%	3
Human Rights-Related	13	9 (69.2%)	21.1%	0
Gender Pay Gap	12	3 (25%)	12.9%	0
Link Executive Pay to Social Criteria	7	5 (71.4%)	19.1%	0
<b>TOTAL</b>	<b>97</b>	<b>74</b>		<b>10</b>

Combined with institutional investor support, ISS recommendations could have an impact on voting results for proposals receiving strong support.

# Environmental Proposals – ISS Impact

ISS recommended a vote “For” 15 of 23 select environmental proposals (65.2%); however, six of these proposals received majority support.

Type of Proposal	Number of Proposals Voted On (Jan. 1–June 15, 2020)	Number of ISS “FOR” Recommendations	Average Shareholder Support	Number Passed
Climate Change/GHG	12	9 (75%)	37.4%	4
Community-Environmental Impact	9	5 (55.6%)	22.2%	1
Sustainability Reports	1	1 (100%)	51.8%	1
Report on Environmental Policies	1	0 (0%)	9.4%	0
<b>TOTAL</b>	<b>23</b>	<b>15</b>		<b>6</b>

ISS recommendations can be impactful – it recommended FOR every proposal that passed - but engagement with investors can help companies overcome an environmental proposal.

# 2020 Policy Updates – ISS

## **Problematic Governance Structures at Newly Public Companies**

- Clarified approach toward newly public companies by creating two separate policies that address (1) problematic governance provisions post-IPO and (2) multi-class capital structures with unequal voting rights.
- The new policy provides a framework under which the reasonableness of a time-based sunset provision for dual-class stock will be considered based on the company's lifespan, post-IPO ownership structure and board's rationale for the duration selected – no sunset period of more than seven years from the date of the IPO will be deemed reasonable by ISS.

## **Independent Board Chair Shareholder Proposals**

- ISS support for a proposal will be likely at companies where boards rely on a weak independent director role or there is evidence that directors failed to oversee material risks facing the company or did not adequately respond to shareholder concerns.

## **Share Repurchase Program Proposals**

- The updated policy provides safeguards against (1) the use of targeted share buybacks as greenmail or to reward company insiders by purchasing their shares at a higher price than they'd receive in the open market; (2) the use of buybacks to boost EPS or other compensation metrics to increase payouts to executives/insiders; and (3) repurchases that threaten a company's long-term viability.

## **Restrictions on Shareholder Rights, Rule 14a-8**

- ISS will generally recommend shareholder vote against members of the governance committee until shareholders are provided with an unfettered ability to amend bylaws or a proposal providing for such right is submitted for shareholder approval.

## **Board Gender Diversity**

- ISS will recommend against the chair of the nominating comm. at companies where there are no women on the board. A commitment from a board with no prior women directors will only be a mitigating factor in 2020, not beyond, as will having gender diversity in the immediately preceding year.

## **Equity Plan Scorecard Analysis**

- ISS will now include having an 'Evergreen' provision as an overriding factor in the Equity Plan Scorecard Analysis.

# 2020 Policy Updates – Glass Lewis

## **Evaluation of Company Action on Shareholder Proposals in Response to New SEC 14a-8 Policy**

- GL will likely recommend against members of the governance comm. if a company excludes a shareholder proposal after submitting a no-action letter on which the SEC declines to state a view.
- GL will generally recommend against members of the governance comm. if a company does not provide adequate disclosure concerning its exclusion of a shareholder proposal based on verbal permission from the SEC.

## **Standards for Assessing the Audit Committee**

- GL will recommend against the audit comm. chair when fees paid to an issuer's external auditor are not disclosed.

## **Nominating and Governance Committee Performance**

- GL will now recommend voting against the nominating and governance comm. chair when (i) directors' records for board/committee meeting attendance are not disclosed; or (ii) when disclosure indicates that a director attended less than 75% of board/committee meetings but is insufficiently specific as to which director's attendance was lacking.

## **Contractual Payments and Arrangements**

- GL disfavors contractual agreements that are excessively restrictive in favor of the executive, including excessive severance payments, excise tax gross-ups and multi-year guaranteed awards.

## **Company Responsiveness**

- GL expects robust disclosure of engagement and specific changes made in response to shareholder feedback following low say on pay results. Absent this, GL may recommend against the upcoming say-on-pay proposal.

## **Exclusive Forum Provision**

- While GL ordinarily recommends against the governance comm. chair when a board adopts an exclusive forum provision without shareholder approval, it may now make exceptions where it can be reasonably determined that the provisions of a forum selection clause are narrowly crafted to suit the unique circumstances facing the company.



# Proxy Advisory Firm Policies & How to Respond to a Low Say on Pay Vote

## Proxy Advisory Firm Policies on Low Say on Pay Vote

- **ISS:** If company fails to adequately respond to previous Say on Pay proposal which received **less than 70% support**, may recommend against *compensation committee members* and *ballot items related to executive pay* in the following year.
- **Glass Lewis:** If company fails to adequately respond to previous Say on Pay proposal which received **less than 80% support**, may recommend against *compensation committee members* the following year.

## How to Respond to a Low or Failed Say on Pay Vote

- Assemble the appropriate response team.
- Review proxy statement, ISS and Glass Lewis reports and vote results.
- Review issues raised and assess potential responses and any company-specific reasons to explain noted issues.
- Engage with major shareholders to determine why they voted against the SOP.
- Discuss specific shareholder concerns raised during engagements.
- Take specific and meaningful action to address shareholder concerns, which generally includes:
  - Improving proxy statement disclosure to describe shareholder engagement and responsive actions, and
  - Revising compensation programs, when appropriate.

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# Human Capital – “Definition” and Diversity Policies of Institutional Investors and Proxy Advisors

# Spotlight: Diversity Policies

## Institutional Investors

- **State Street:** Starting in 2020, voted against the entire nominating committee if there were no female directors on the board. Asks companies for disclosure of both board **and** workforce diversity and what role diversity plays in firm's broader HCM practices and long term strategy.
- **BlackRock:** Expects at least two female directors on every board. In February 2018, sent letters to all Russell 1000 companies with fewer than two female directors asking the companies to justify how their board diversity aligns with their long-term strategies.
- **Vanguard:** *"Through both our engagement and voting efforts, the Funds will support disclosure of a broad set of director characteristics, **including race, ethnicity, national origin and age** as well as **gender**."* Encourages broadening search for director candidates to bring in diverse perspectives.
- **CalPERS:** Engaged more than 700 companies in past two years regarding lack of board diversity and adopted a voting enhancement to hold directors accountable for failure to improve board diversity or diversity and inclusion disclosures.

## Proxy Advisory Firms

- **Glass Lewis:** In 2019, began recommending against the chairs of the nominating committees of Russell 3000 companies with all-male boards.
- **ISS:** In 2020, began recommending against nominating committee chairs of Russell 3000 or S&P 1500 companies with no female directors. ISS ESG recently announced that it's including some director and NEO racial and ethnic diversity information in the proxy advisor's data service offerings