CLEARY GOTTLIEB

2020 Post-Proxy Season Review and Governance Trends

August 2020

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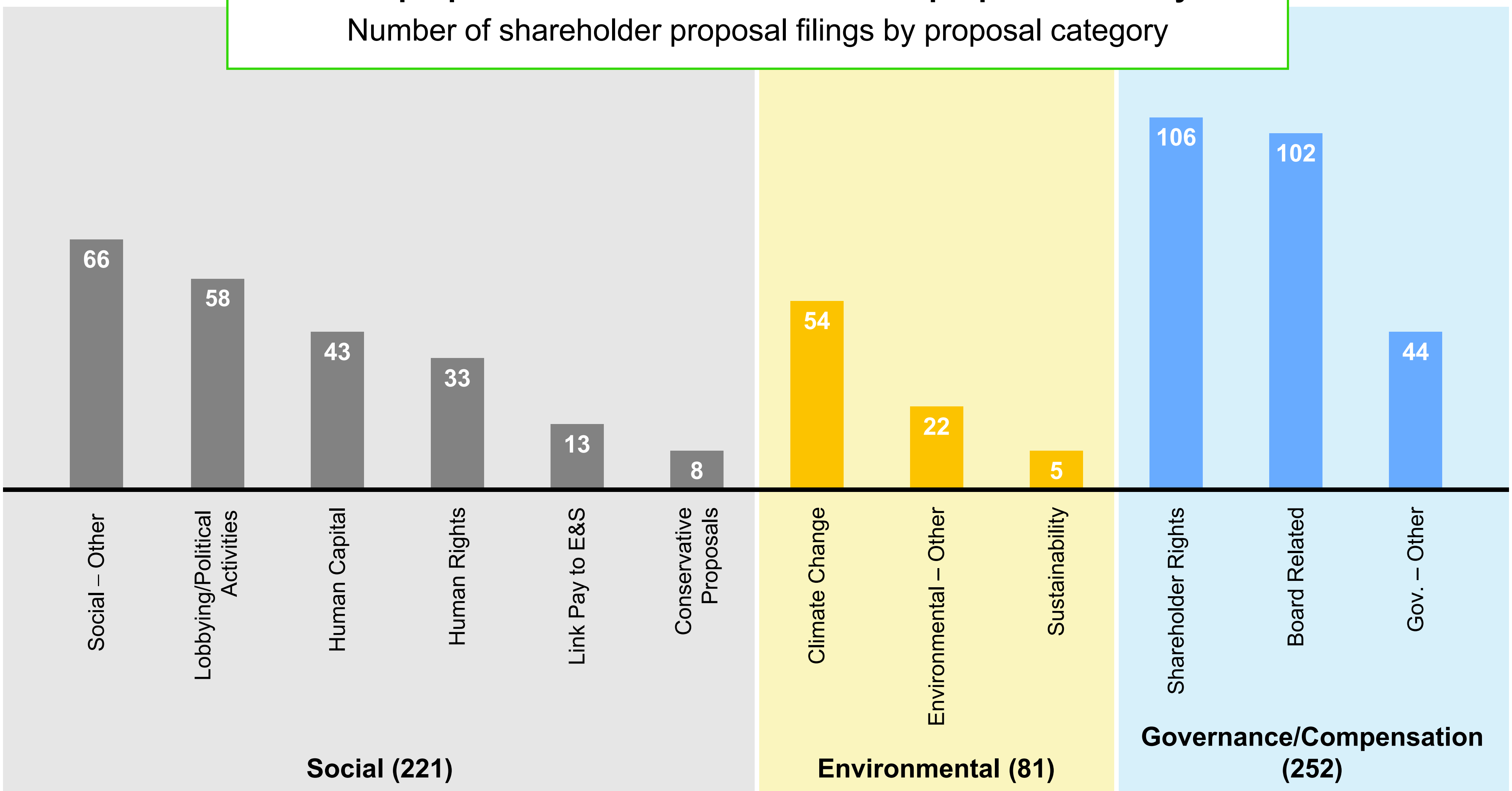
Table of Contents

I. 2020 Proxy Season Overview

Shareholder Proposals in Early 2020

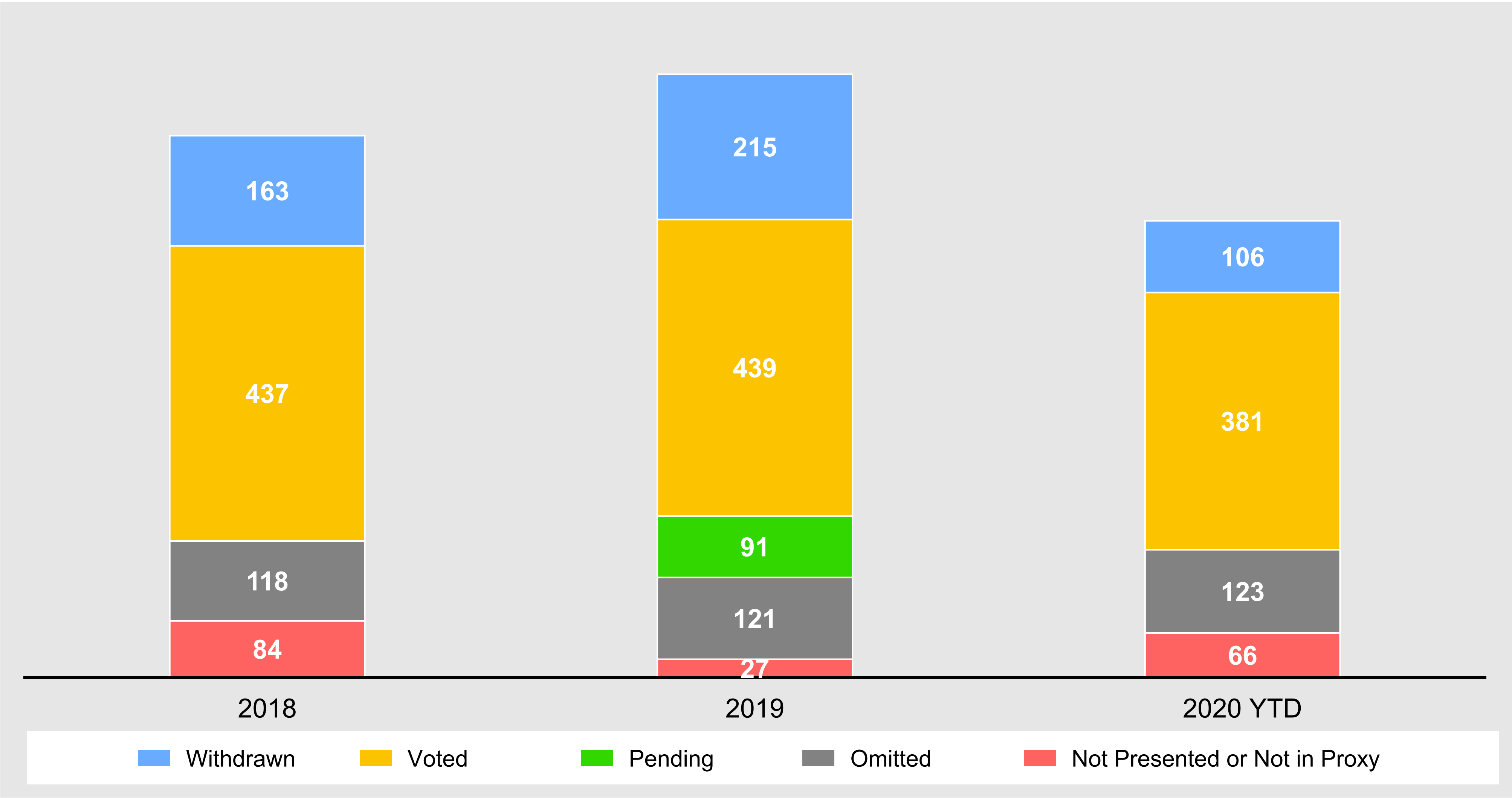
Total E&S proposals continue to outnumber G proposals in early 2020

Number of shareholder proposal filings by proposal category



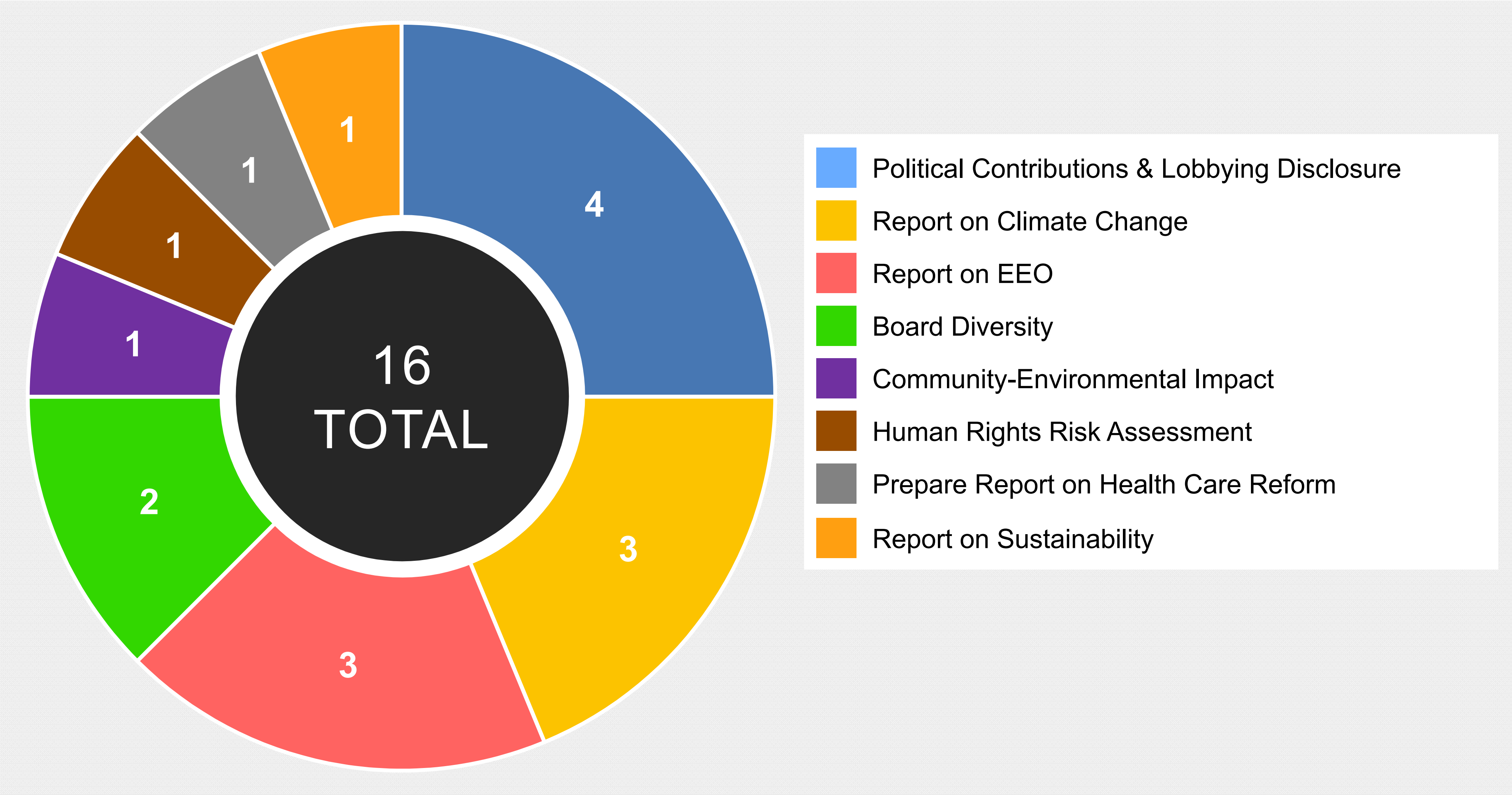
Source: ISS Analytics as of June 9, 2020

Proponents Appear Less Willing to Compromise in 2020



Source: Georgeson

Majority Supported E&S Proposals



Source: Georgeson, June 10, 2020; ISS Analytics

2020 Proxy Season Highlights – Environmental

Environmental proposals, especially climate change, gain increasing support

— Climate change proposals focus on alignment with the **Paris Climate Accord**.

— A majority of **Chevron** shareholders, led by **BNP Paribas**, supported a proposal requesting more disclosure about Chevron's lobbying efforts through trade associations. The proposal asked for details about how Chevron's lobbying payments align with the Paris Climate Accord.

— A shareholder proposal at **JP Morgan** requesting the bank disclose its carbon footprint and plan to reduce it in line with the goals of the Paris Climate Accord won close to majority support.

— Environmental proposals also passed at **Phillips 66, JB Hunt Transport Services, Ovintiv,** and **Enphase Energy**, supported by institutional investors such as Vanguard.

— At **National Fuel Gas Company**'s annual meeting, BlackRock voted against the re-election of the company's audit committee chair due to "the company's lagging disclosure related to the oversight and management of climate-related risks and the materiality of the risk to the company."

Pre-vote engagements and negotiations continue to increase

— The proportion of environmental proposals that come to vote continue to drop, partly due to SEC granting more no-action letters in this category (e.g. at Chevron) and partly due to more companies successfully negotiating with proponents.

Source: ISS, FT, Georgeson, Alliance Advisors, Vanguard

2020 Proxy Season Highlights – Social

Diversity and human capital proposals gain increasing voice and support

— New York City's comptroller won majority support for proposal asking **Chipotle** to disclose mandatory arbitration claims in employee contracts. Mandatory arbitration can prevent employees from suing their employer, including over sexual harassment, New York said.

— New York state also won at **National Healthcare** with a proposal that demanded board diversity.

Increasing breadth and depths of social proposals

— Similar to proposals regarding climate change, proponents starting to look at lobbying spending – whether it's consistent with the company's statements on diversity.

— Diversity is expanding to cover not just gender but also race/ethnicity.

— Rooney rule requirement is expanding to cover not just board, but also management.

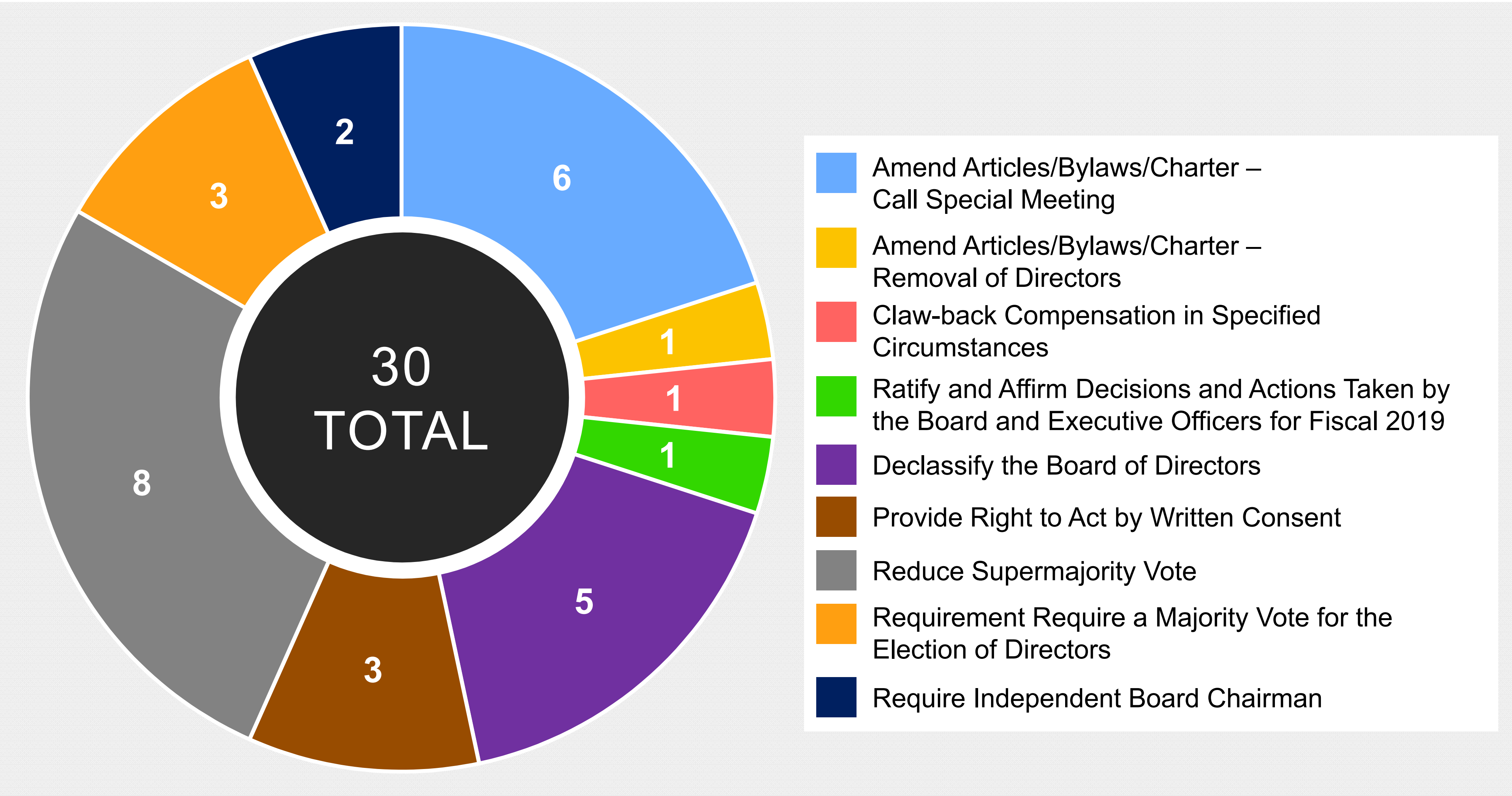
COVID-19's impact expected in 2021

— Most proposals voted on in 2020 were submitted before COVID-19 quarantine.

— The 2021 proxy season will likely reflect COVID-19's impact, for example in employee health and safety, supply chain management and human capital management.

Source: FT, Georgeson; Harvard Roundtable

Governance Proposals with Majority Support



Source: Georgeson, June 10, 2020

2020 Proxy Season Highlights - Governance

Governance proposals focus on existing hot topics

— Split CEO and Chair: increasingly hot topic, proposal passed at **Baxter** and **Boeing.**
  - Average support increased from 30.2% in 2019 to 34.8% as of June 4, 2020.

— Eliminate shareholder supermajority vote: widely supported, at least 8 proposals passed.

— Shareholder action by written consent: proposal passed at **Stanley Black & Decker.**

— Shareholder rights to call a special meeting: proposal passed at **Verizon.**

Say on pay

— Average support for say on pay proposals remained strong at 91%.

— In total, 195 companies failed to reach at least 80% support—the "red zone" threshold at which Glass Lewis begins to scrutinize companies' responsiveness to shareholder concerns. ISS reviews companies' responsiveness with additional scrutiny where shareholder support fails to reach 70%.

Source: ISS, Georgeson, Alliance Advisors

No-Action Letter Trends

More than half of all no-action requests granted since 2016 were granted to companies on the basis of ordinary business (14a-8(i)(7)) and substantial implementation (14a-8(i)(10))

Requests based on multiple prongs most commonly succeeded on the basis of ordinary business (14a-8(i)(7)), substantial implementation (14a-8(i)(10)) or technical eligibility requirements

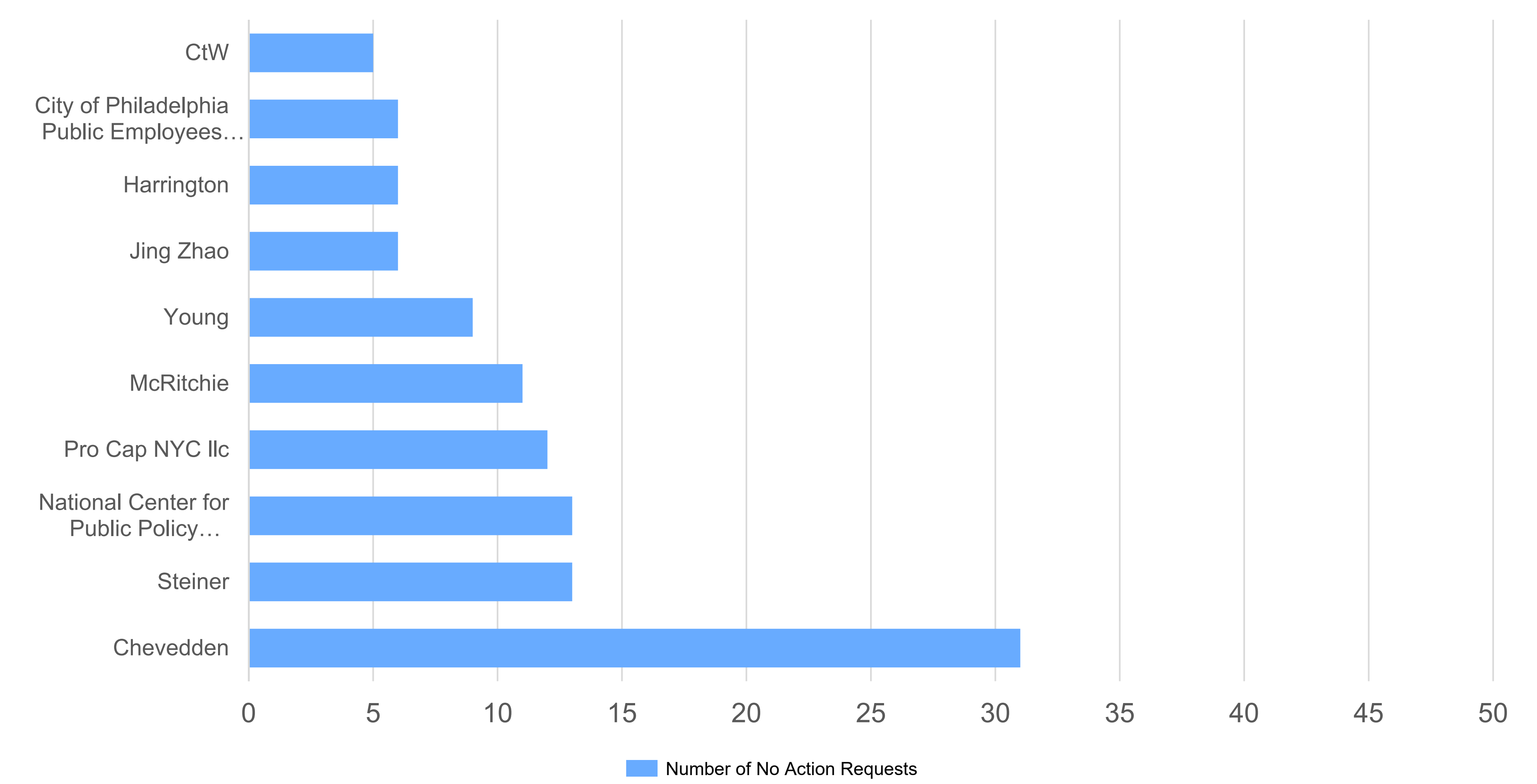
Exclusions are almost never granted on the basis of a violation of proxy rules, including the proponent making materially false or misleading statements (14a-8(i)(3))

More than

40%

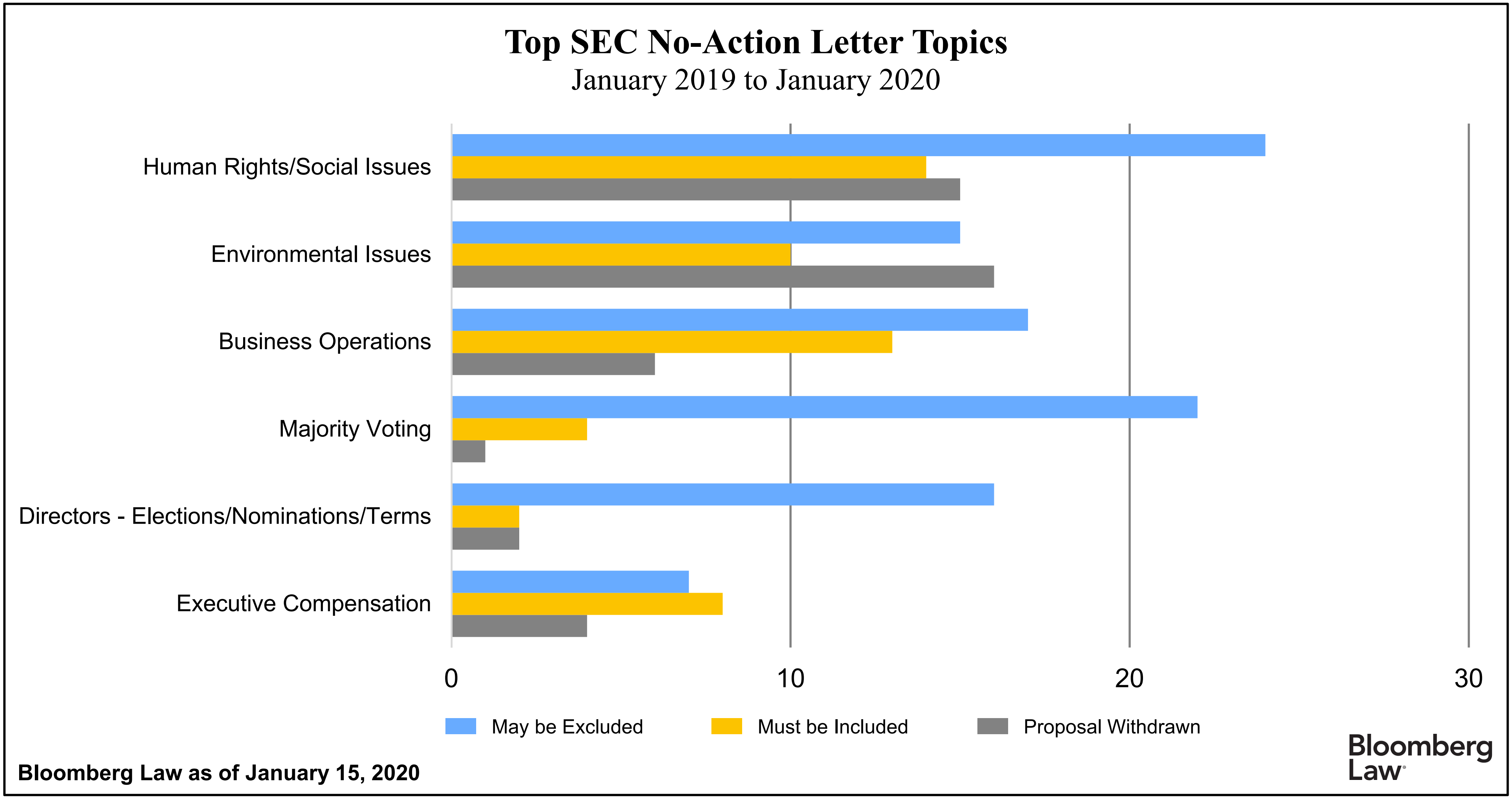
of environmental-related proposal no-action requests were granted on the basis of the ordinary business exception since 2016

Proponents that Generated the Most No-Action Requests between 11/21/2019 and 6/19/2020



Source: SEC https://www.sec.gov/divisions/corpfin/shareholder-proposals-2019-2020.pdf

Top Topics for Requests for No-Action Relief



Source: Bloomberg Law https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-esg-concerns-demonstrated-in-sec-no-action-letters®

II. Fall 2019 Review and Developments

SEC Regulatory Updates

SEC's new website on NALs has worked well and was useful to companies navigating the process.

In the coming months, the SEC is expected to finalize updated rules on the shareholder proposal process. As proposed:

— Eligibility requirements for submitting and resubmitting shareholder proposals would be tightened.

While a welcome development for issuers, the proposed revisions are viewed as draconian by a number of investors and Democrats recently proposed a block on the shareholder proposal changes in the House spending bill.

— According to research by the Sustainable Investment Institute (Si2), many shareholder resolutions on political spending, environmental issues and human rights would effectively be shut out. Investor groups have indicated that they are preparing themselves for legal challenges.

Proxy advisors rules were released in July 2020 requiring proxy advisors to enhance their disclosures of potential conflicts of interest, give issuers access to their voting recommendations and provide clients access to any company response. Rules are effective December 20201.

Proxy Advisors' Response

ISS has filed a lawsuit against the SEC to overturn interpretive guidance issued last fall that categorizes proxy voting advice as a solicitation under the federal proxy rules. The litigation was held in abeyance until the earlier of Jan. 1, 2021 or completion of the proxy advisory firm rulemaking and is likely now to move forward.

Glass Lewis has come up with a similar solution, although at a cost. It is giving issuers and shareholder proponents the ability to include their unedited feedback on its research reports through its Report Feedback Service (RFS).

Glass Lewis Report Feedback Service (RFS)

Starting with the 2019 proxy season, Glass Lewis offers a new Report Feedback Statement (RFS) service to U.S. public companies and shareholders. In Spring 2020 the RFS service became a permanent feature. Over 600 companies have added statements to GL reports.

RFS allows companies, shareholder proponents, dissident shareholders or parties to an M&A transaction to express their views on any differences of opinion they may have with Glass Lewis' research.

- However, the service is not intended to serve as a means for companies to report *factual* errors – factual errors are reported through a separate channel.
- Participants must purchase the report—which by some estimates is $6,000 for an S&P 500 report—and submit their comments within 7 days after publication of the report and no later than 14 days before the shareholders' meeting.

Companies and shareholder proponents may submit their statements noting their differences of opinion with Glass Lewis' analysis of their proposals to Glass Lewis' research and engagement team, which will then distribute the statements directly (without editing) to Glass Lewis' investor clients, along with Glass Lewis' response to the statements.

Source: Glass Lewis

Looking Forward to Fall 2020

Virtual meetings and COVID-19 related issues will be key topics for the 2021 proxy season.

Continuing rise of Environmental & Social issues

— Primary environmental issue remains climate change.

— Primary social issues will likely be diversity and human capital management.

III. COVID-19 Issues

Virtual Meetings

In response to COVID-19, both the SEC and state governments (including Delaware and New York) have provided guidance and relief to facilitate virtual shareholder meetings. Most issuers are moving their annual meetings completely online. As of May 13, ISS counted 2,208 U.S. companies that are switching to virtual-only formats and 159 companies that are postponing their meetings.

A number of organizations that ordinarily oppose cyber-only events, such as ISS, Glass Lewis and NYCRS, issued statements that they will not take voting action against board members if they publicly disclose that the switch to a virtual meeting is due to the coronavirus outbreak and commit to resuming in-person meetings in the future.

By contrast, the Council of Institutional Investors (CII) remain openly skeptical of virtual meetings, and has highlighted specific examples of shareholders facing obstacles to participation in virtual annual meetings during the 2020 season.

Source: Alliance Advisors
ISS (https://www.issgovernance.com/covid19-resource-center/**)**
CII (https://www.cii.org/files/April%2030,%202020%20-%20Shareholders%20Face%20Obstacles%20to%20Participation%20in%20Virtual%20Annual%20Meetings.pdf**)**

Workforce Protections During COVID-19

A group of 251 institutional investors issued a statement in March, urging the business community to prioritize the health, safety and stability of their workforce. In particular, they asked companies to make every effort to retain employees and provide them with emergency paid leave so they can comply with social distancing and self-isolation mandates. If financially feasible, they also recommend offering additional benefits such as childcare assistance, hazard pay and employer-paid health insurance to laid-off workers.

Within this context, shareholders and proxy advisors are eyeing companies' capital allocation decisions. ISS advised that dividend cuts may be appropriate if companies disclose their intent to use the preserved cash to support the business and employees. However, stock buybacks will be viewed harshly, particularly in cases where the workforce has been reduced. This echoes the use of proceeds restrictions against dividend payments, stock repurchases, and executive compensation for federal loans received under the Coronavirus Aid, Relief and Economic Security Act of 2020 (CARES Act).

Source: Alliance Advisors

Defensive Measures in Response to the Crisis

Firms in particularly vulnerable sectors have been rapidly arming themselves with poison pills—or at least drafting on-the-shelf versions—to fend off the reemergence of activist investors and hostile acquirers anticipated in the aftermath of the crisis. Activist Insight reported a rate of pill adoption not seen since the 2008-2009 financial crisis, with 23 announced so far this year—including 17 in March alone—compared to 18 introduced in all of 2019. And although almost half of the pills tracked by Activist Insight have low 10% triggers, some provide a higher trigger point—typically 20%—for passive investors.

ISS clarified that its benchmark policy provides companies with latitude in adopting short-term pills with reasonable triggers in response to active threats, which in most cases will include a severe stock price decline as a result of the coronavirus pandemic.

Source: Alliance Advisors

IV. Environmental and Sustainability Issues

Climate Change

A 2020 Morrow Sodali survey found that 86% of institutional investors surveyed consider climate change to be the most important engagement topic, compared to 85% in 2019 and 31% in 2018.

91% of respondents expect companies to demonstrate clear connections between the climate-related data and financial risks and opportunities.

Increased focus from investors comes as CDP, an international non-profit, analyzed the submissions from 215 of the world's largest 500 corporations and found that companies potentially face $1 trillion in costs related to climate change unless they take proactive steps to prepare

According to Ceres, 131 climate-linked resolutions have been filed in 2020 – a significant increase compared to 2019 – of which 32% have been withdrawn—compared to 39% for all of 2019—and 14% have been omitted.

BlackRock. Vanguard® Fidelity INVESTMENTS STATE STREET GLOBAL ADVISORS

BlackRock's heightened attention to climate risk disclosure follows harsh public criticism and protests over its investments in fossil fuels and its proxy voting on climate-related shareholder proposals. Various reviews of fund voting in 2019 singled out BlackRock, along with Vanguard Group, JPMorgan Asset Management and T. Rowe Price Group, as among the worst performers in supporting climate change resolutions.

Since then, BlackRock and JPMorgan Chase had joined Climate Action 100+, a global investor coalition which is engaging over 100 companies on reducing their carbon emissions. In a 2020 letter to clients, BlackRock also announced that it will improve transparency around its company engagements in its annual stewardship reports and it will move from annual to quarterly voting disclosures, with more frequent reporting of high-profile votes.

In March 2020, ISS introduced a new custom climate voting policy to allow clients to integrate climate-related factors into their voting decisions. It will initially cover 3,700 companies globally, including S&P 500 and Russell 1000 firms in the U.S.

Climate Change – Notable Proposals

Climate change proposals requesting alignment with the Paris Climate Accord passed at Chevron, Phillips 66, JB Hunt Transport Services and Ovintiv.

— Phillips 66 and Chevron are two of the 161 companies targeted by the Climate Action 100+ investor initiative focused on climate change, which continued to gain momentum. Notably, in line with BlackRock's vocal focus on climate change this season, it became a Climate Action 100+ signatory in January 2020.

— BlackRock's disclosed stewardship activities to date suggest it is taking a firmer stance on climate change than in the past. At Chevron's May 28th annual meeting, BlackRock disclosed voting in favor of the above-mentioned lobbying proposal. In doing so, it noted that investors would benefit from understanding the "alignment between Chevron's political activities and the goal of the Paris Agreement to limit global warming to no more than two degrees Celsius…" BlackRock also reported supporting the proposal at Ovintiv, while voting against the proposal at J.B. Hunt.

Source: Georgeson

Climate Change – Notable Proposals (cont'd)

In conjunction with the Climate Majority Project launched in 2019, NYCRS stepped up pressure on the 20 largest U.S. publicly traded electric utilities to commit to achieving net-zero carbon emissions by 2050 in order to stay within the 1.5° Celsius global warming limit recommended by the U.N. Intergovernmental Panel on Climate Change (IPCC). Although many utilities have established ambitious carbon reduction goals—including net-zero targets in some cases—a sticking point for the proponent has been their shift from coal generation to increased reliance on lower carbon natural gas, another fossil fuel.

In 2020, NYCRS is asking three of the utilities—Dominion Energy, Duke Energy and Southern—to name independent board chairs to provide stronger oversight to spur their decarbonization process.

As You Sow separately reached agreements with Duke Energy and Southern to report on their risk of having stranded natural gas assets as the global response to climate change intensifies. Similar proposals at Dominion Energy, PNM Resources and Sempra Energy were omitted as substantially implemented.

Climate Change – Defunding and Divestment Proposals

Shareholders are turning their attention to the role of banks in transitioning to a low-carbon economy. U.K.-based Barclays—Europe's biggest financier of fossil fuels—is facing a first-of-its-kind resolution this spring from ShareAction to abandon fossil fuel finance altogether. Barclays recently pledged to align its financing activities to the temperature reduction goals and timeline of the Paris accord, but it stopped short of committing to phase out all fossil fuel lending. It is putting its plan to a shareholder vote at the annual meeting alongside the ShareAction proposal.

Less extreme proposals have been filed at a half dozen major U.S. banks by an investor coalition led by As You Sow. To avoid micromanagement omissions as occurred last year, the resolutions have been framed as requests for reports on the banks' plans to measure, disclose and reduce the carbon emissions associated with their lending activities. Although most are getting withdrawn, the banks' commitments appear to be limited to restricting funding of new coal-fired plants and ending financing of new oil and gas exploration in the Arctic National Wildlife Refuge.

Sustainability – Institutional Investors

In their 2020 annual letters to portfolio companies, **BlackRock** and **State Street Global Advisors** put CEOs and boards on notice that they expect companies to produce robust sustainability disclosures and will start wielding their proxy votes against boards that are viewed as not adequately managing material risks.

By year-end, BlackRock wants companies to conform their sustainability reporting to SASB's industry-specific guidelines and to align their climate risk disclosures to the TFCD recommendations.

State Street will evaluate companies' ESG disclosure and performance using its proprietary R-Factor scoring system, introduced in 2019. Beginning this proxy season, State Street will take "appropriate voting action" against board members at S&P 500 firms that are laggards on their scores and by 2022 it will expand its voting action to companies that have consistently underperformed their peers on their R-Factor scores for multiple years.

Sustainability Ratings – Competing Standards

At the end of 2018, 92% of S&P 500 companies provided sustainability disclosures on their websites and 78% of them produced standalone sustainability reports, according to Si2. However, nearly all of the companies followed or referenced multiple reporting standards rather than adhering to a single one.

Given BlackRock's considerable influence in the marketplace, its reliance on the SASB and TFCD guidelines will likely forge more reporting conformity around those frameworks and encourage other investors to incorporate climate risk into their proxy voting policies. Vanguard also refers to TCFD recommendations as standard for sustainability-related disclosures.

According to Modali's 2020 survey, the vast majority of investors recommend SASB (81%) and TCFD (77%) as best standards to communicate their ESG information.

Source: Modali; Vanguard

Sustainability Ratings – SASB

— Announced in November 2018 that they published the first set of 77 industry-specific sustainability accounting standards covering material issues

— View towards ensuring disclosure is material, comparable and relevant for investors

— SASB standards support robust, investor-grade reporting in a range of communications channels, including financial filings, sustainability reports, annual reports and corporate websites

— The standards can be used with other sustainability frameworks and specifically are known to align with the 2017 recommendations of the Task Force on Climate-related Financial Disclosures (TFCD)

- SASB and the Climate Disclosure Standards Board released the TCFD Implementation Guide – a how to for companies on implementing the June 2017 recommendations

— Many companies have begun using SASB standards

Sustainability Ratings – State Street's R-Factor ESG Scoring

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SSGA has created and is applying a new ESG scoring platform – the R-Factor – to better inform investment, engagement, voting and other decisions

The R-Factor uses the SASB Materiality Map as its framework for materiality and imports data from certain ESG data providers (including Sustainalytics, Vigeo EIRIS, ISS Governance and ISS Oekom) and the SASB materiality framework for E&S scoring

SSGA says the R-Factor is designed to address the current limitations of ESG data by providing consistent transparent methodology that creates standards for disclosure and financial materiality

SSGA also uses another in-house proprietary tool for governance scoring across regions and countries

Sustainability Ratings – ISS

ISS has continued rolling out environmental and social scores as part of its QualityScore reports

— Unlike the governance scores, ISS E&S scores are based on the amount of disclosure, not relative risk
  - E&S scores continue to be decile-based, meaning that a company's E&S disclosure will be measured against the E&S disclosure at other companies to generate scores

Because the scores are disclosure-based, it can be relatively easy for companies to address areas in which there is relatively little disclosure

— However, because many companies are in the initial stages of receiving reports and reviewing scores, it is anticipated that many companies will be adjusting disclosure in some areas, which may make it more difficult, at least initially, to raise scores

ISS E&S SCORES FOCUS ON:

ENVIRONMENT	SOCIAL
Management of environmental risks and opportunities	Human rights
Carbon and climate	Labor, health and safety
Natural resources	Stakeholders and society
Waste and toxicity	Product safety, quality and brand

Sustainability Ratings – Glass Lewis

— Glass Lewis includes E&S information in the Proxy Paper reports they release

— E&S scores, reports and evaluations are based on disclosure and are often used by shareholders as the basis for shareholder proposals

INTEGRATION OF SUSTAINABILITY RATING METRICS

— Glass Lewis Proxy Paper reports integrated data and ratings from Sustainalytics for 4,500 companies

- Sustainalytics provides Glass Lewis with raw data on 20,000 companies, even those on which Glass Lewis does not provide reports
- The ratings will measure how proactively a company is managing E&S issues that are material to its business
  - However, the E&S profile is not determinative of Glass Lewis voting recommendations

— Guidance on material ESG topics from the Sustainability Accounting Standards Board (SASB) started to be integrated into Proxy Paper research reports and Glass Lewis' vote management application in the 2019 proxy season

In general, Glass Lewis supports on a case-by-case basis proposals involving E&S concerns when there is impact on shareholders' value and supports voting against the directors when it determines that the board has failed to sufficiently identify and manage a material E&S risk that did or could negatively impact shareholder value

Sustainability Ratings – Other Metrics

— In May 2019, NASDAQ issued a new global voluntary ESG Reporting Guide

- Expanded from a Nordic/Baltic initiative to a global guide
- Aimed at helping companies understand the complex and sometimes conflicting ESG-reporting environment
- Specifically integrated perspectives from GRI, SASB, the Task Force on Climate-Related Financial reporting and the UN Global Compact

Many other third party providers of ESG reports and ratings exist

— Some of these ratings and reports are the result of voluntary disclosure and surveys that companies receive and answer

Sustainability Ratings – Other Metrics (cont'd)

Other common ratings/reports include:

Dow Jones Sustainability Indexes

— DJSI was the first global index to track sustainability-driven public companies
- Companies are rated on a 100 point scale and it is updated annually
- An annual questionnaire is sent in early April and results are announced in early September
  - Questions cover topics such as corporate governance, risk and crisis management, codes of business conduct, customer relationship management, policy influence, brand management, tax strategy, information security & cybersecurity, privacy protection, environmental reporting, environmental policy & management systems and operational eco-efficiency

MSCI

— MSCI is one of the largest independent providers of ESG ratings
- MSCI looks at 37 ESG areas with ten themes: climate change, natural resources, pollution & waste, environmental opportunities, human capital, product liability, stakeholder opposition, social opportunities, corporate governance and corporate behavior
- Data is collected from government databases, company disclosure and from academic, government and NGO databases
- Companies are monitored and reviewed in weekly reports, while in-depth reviews occur annually
- Companies are permitted to participate in a data verification process prior to the report publication

Integrated Reporting and GRI Guidelines

Integrated reporting combines the different areas of reporting (financial, management commentary, governance and compensation and sustainability reporting) into a single picture that explains the ability of a company to create and sustain value

— The International Integrated Reporting Council aims to have a single integrated report that would be a company's primary report

Often integrated reporting concerns arise in the ESG and sustainability area, where there are concerns about how to disclose material risks that do not fit squarely in the balance sheet, management commentary or current disclosure regimes

— A recent speech by Commissioner Hester Peirce rebuts the idea that ESG reporting is comparable to financial reporting, in part because it is difficult to compare factors across sectors, and often among competitors

Currently, there is little resembling a standard or framework for integrated reporting, although many feel that the GRI Sustainability Reporting Standards are the next-closest

— GRI Standards provide a holistic framework that addresses ESG reporting for companies

- GRI Standards feature a modular, interrelated structure that represents best practices for reporting on ESG issues
- Companies that participate in the GRI framework typically self-report their compliance with GRI standards

V. Board Refreshment and Diversity Issues

Board Refreshment Trends

Board refreshment continues to be one of the top governance areas of investor focus

Companies are responding by bringing on new directors

— **432** new independent directors were elected to S&P 500 companies in 2019
  - Highest number of new directors since 2004
  - Represents 8% of all directors
  - 59% women or minority, a new record high, up from 50% in 2018
  - 16% under 50 years old, same as 2018

Companies are expanding searches for new directors

— **27%** of the new class of directors are first time directors

— Only 30% of new directors are former CEOs
  - Represents a drop from 47% from 10 years ago, most notably among active CEOs
  - 41% of CEOs are serving on one or more outside boards, a drop from 49% in 2009 and 45% in 2018

Shift in director skills and experiences to align with strategic goals

— **65%** of new directors not from senior board and leadership roles

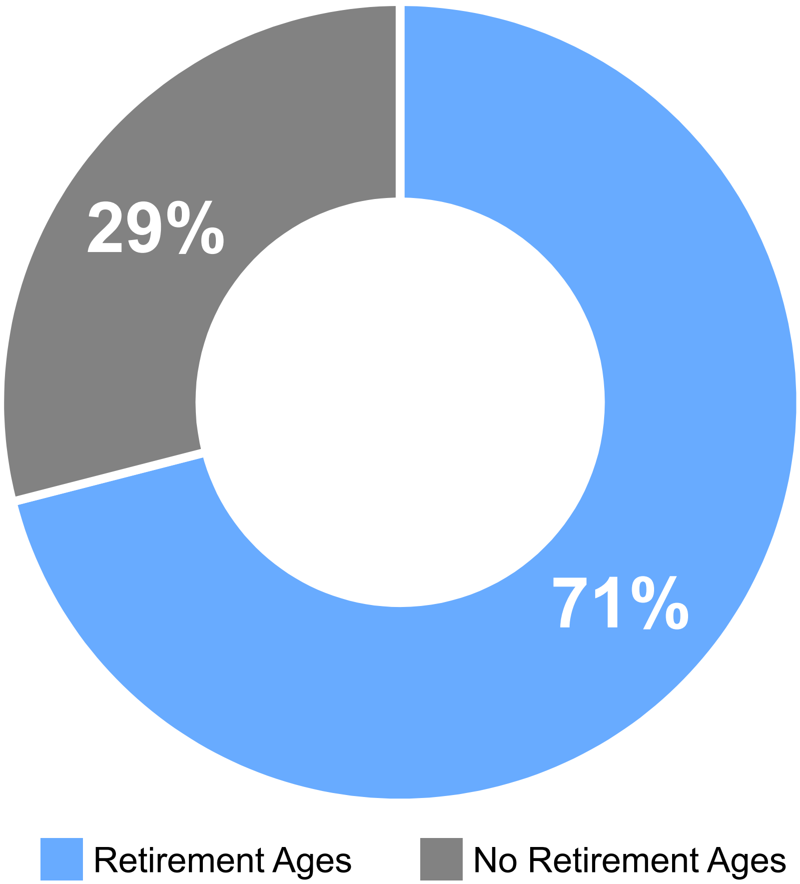
— **59%** bring experiences from the private equity/investment management, consumer and information technology sectors

— Directors with experience in finance and particularly investing/investment management experience are growing – 27% of incoming directors are financial experts

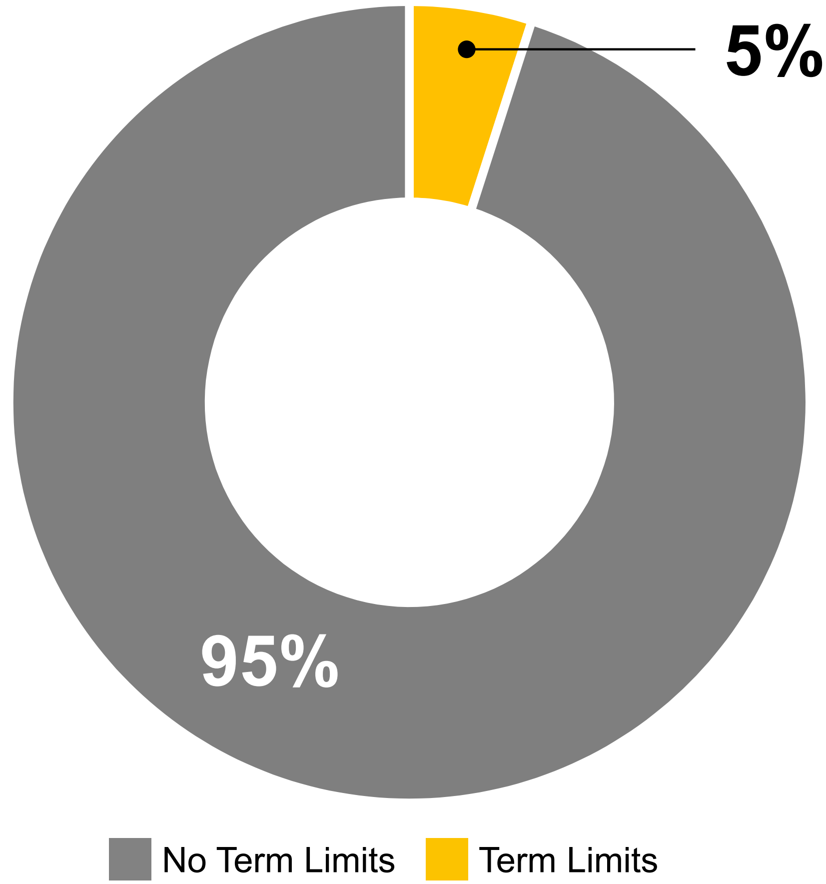
Source unless indicated otherwise: 2019 Spencer Stuart Board Index

Company Refreshment Policy Frequency

Mandatory Retirement Age Policies in the S&P 500



Mandatory Term Limit Policies in the S&P 500



Source: 2019 Spencer Stuart Board Index

Refreshment, Age and Tenure

62.7 Years

Average S&P 500 independent director age

In spite of increased refreshment, average age does not decrease

— Most (74%) independent directors are 50-69 years old
  - 21% of directors are older than 70

— 392 independent directors left boards at average age and tenure of 68.7 and 12.3 years

Increasing questions about whether a lack of age diversity should be considered in the boardroom

— Younger directors may be perceived to have a new outlook and be more attuned to increasing social and sustainability issues

— Concerns that longer tenure may impact independence

— Research by Equilar finds no correlation between younger directors and better company performance

Many investors continue to focus on director tenure and correlate lengthy tenures with the need to scrutinize boards for independence from management

— CalPERS' Global Governance Principles state that "director independence can be compromised at 12 years of service" and that a company should conduct rigorous evaluations to (i) classify the director as non-independent or (ii) provide a detailed annual explanation of why the director can continue to be classified as independent

— ISS' QualityScore metric gives positive scores to companies where the proportion of non-executive directors with fewer than six years tenure makes up more than one-third of the board and scrutinizes boards where average tenure > 15 years

— But, in its 2019 proxy voting guidelines for U.S. securities, BlackRock stated that it supports regular board refreshment, but is "not opposed in principle" to long-tenured directors and does not correlate long tenures with an impediment to independence

- BlackRock's stance strikes the balanced view that diversity of tenure is important to the refreshment process but provides the benefit of continuity of strategy, culture and experience

Director Gender Diversity

The number of women on boards is reaching record numbers and, in a minority of cases, women represent an equal or greater number of directors on a board

46%

Percentage of S&P 500 board seats were filled by women in 2019 (compared to only 17% in 2009) and 26% of all seats are held by women

10

Number of S&P 500 companies that have 50% or more women on their boards

MORE THAN 50%	50%
Viacom General Motors American Water Works Omnicom Group CBS	Alaska Air Group Amazon Best Buy Autodesk Capri Holdings

31% of new female directors were added to boards that increased their number of directors, down from over 50% in 2018.

— Average board size in the S&P 500 remains at 10.7 (compared to 10.8 in 2018).

Goldman Sachs decided to only take companies public with a woman on the board. Bloomberg estimated this could cost Goldman $101M in lost fees.

— Other banks have not yet followed this example.

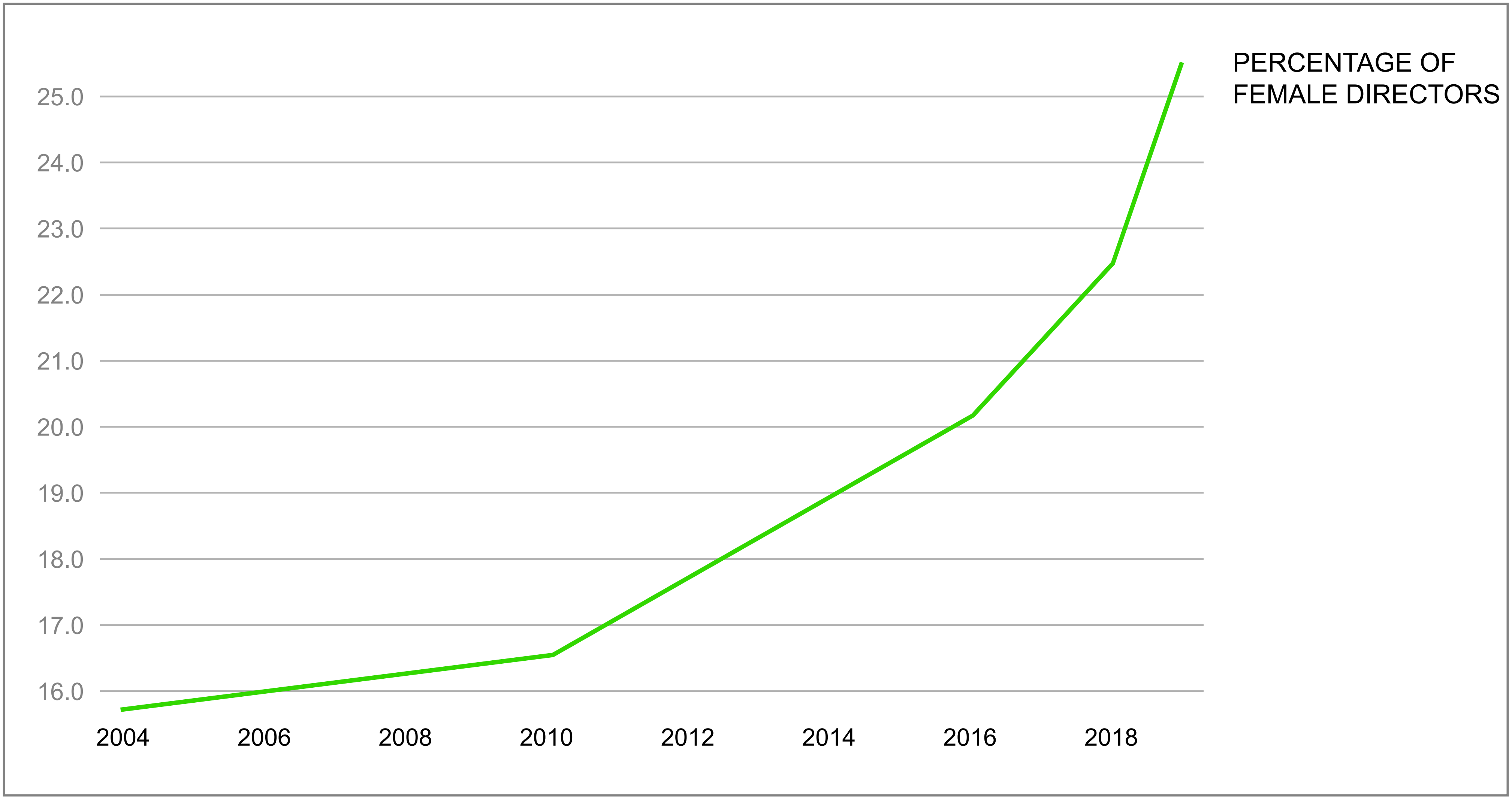
Sources: Bloomberg and 2019 Spencer Stuart Board Index unless otherwise indicated

Director Gender Diversity (cont'd)

Boards are increasingly placing women into committee leadership roles	— 23.2% of audit committee chairs, 23.2% of compensation committee chairs and 30.9 % of nominating and governance committee chairs are women — However, women still lag behind on board chair and lead independent director roles, representing only 10% of all board leadership positions
Women director backgrounds tend to differ from men	— Women less frequently have CEO experience but are more likely to be functional leaders and financial executives from the technology and telecommunications sectors

Sources: Equilar, ISS Analytics and 2019 Spencer Stuart Board Index

Percentage of Female Directors on Fortune 500 Boards



Source: Fortune

Investors Drive Movement on Director Gender Diversity: NYC Comptroller's Efforts

In Fall 2019, NYCRS launched the third phase of its Boardroom Accountability Project by writing to 56 S&P 500 companies to adopt "Rooney Rule" policies to consider women and minorities for board as well as CEO appointments. NYCRS has followed up with shareholder resolutions at 17 focus list companies that have no disclosed board and CEO search policies and lack any apparent racial diversity at these levels. The NYCRS campaign marks the first time a large institutional investor has called for this type of structural reform for CEO searches.

After receipt of the shareholder proposals, 13 of the 17 companies implemented Rooney Rule policies. Accordingly, the Comptroller's Office withdrew the proposals at these companies, including Activision Blizzard, Dover Corporation, Expedia Inc., Hilton Worldwide Holdings, L Brands and Verisign.

Among the remaining companies where the proposal was not withdrawn, one proposal received majority support, two implemented policies partially addressing the Comptroller's proposal, and one (at Berkshire Hathaway) did not receive meaningful support.

NYCRS has separately reached agreements with five major healthcare and insurance companies to address gender pay disparities, bringing to 30 the number of firms that have responded to its campaign since 2017.

Source: Georgeson

Investors Drive Movement on Director Gender Diversity

Institutional investor attention to diversity has been rising over the last few proxy seasons

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— Starting in 2017, SSGA began to require at least one female director on each board, and since then, more large institutional investors have become vocal about improving gender diversity and have introduced similar voting policies and engagement priorities
  - SSGA currently votes against the chair of the nominating and governance committee at companies without women on the board
  - In 2020, SSGA will vote against the entire nominating and governance committee for companies that have failed to engage in successful dialogue on SSGA's board diversity program for three consecutive years
  - SSGA credits itself for being a catalyst for female director inclusion at more than 300 companies

— In 2018, SSGA released refreshed guidance on board diversity, updating the initial March 2017 release
  - SSGA released a six-step framework designed to help directors increase female representation on their boards
  - The 2018 update also included a suggestion to address gender bias in the management hiring and promotion process

Vanguard

— Vanguard will support proposals requesting diversity policies (*e.g.,* the Rooney Rule) and board skills matrices

— One of Vanguard's four pillars of corporate governance is board composition, which includes board diversity

BlackRock

— BlackRock expects companies to have two women directors on the board and has sent notifications to companies that it will vote against the nominating and governance committee for failure to improve diversity if there are not two women directors

— BlackRock has endorsed anti-discrimination legislations and contributed to causes promoting diversity. A co-founder of BlackRock stated in June that BlackRock wants companies to disclose more about human capital matters, such as their hiring practices and how they "are addressing the race issues that have come up."

Canada Pension Plan Investment Board announced a 2019 global policy to vote against the chairs of board committees responsible for director nominations at companies with no women directors after a successful launch in Canada

Investors Drive Movement on Director Gender Diversity

The Goldman Sachs Group, the top underwriter of initial public offerings (IPOs) in 2019, will refuse to take companies public in the U.S. and Europe after June 2020 unless they have at least one director from a traditionally underrepresented group based on gender, race, ethnicity, sexual orientation or gender identity. It plans to up the number to two diverse directors in 2021.

Beginning in 2020, Canada's RBC Global Asset Management (RBC GAM) will vote against nominating/governance committee members on boards that are less than 25% female. The U.K.'s Legal & General Investment Management (LGIM) has adopted a similar policy for the largest 100 S&P 500 firms, which will expand to the full index in 2021.

In its 2019 post-season review, the EY Center for Board Matters reported that votes against nominating/governance committee chairs at all-male S&P 1500 boards have tripled since 2016, averaging 24% in 2019. Similarly, votes against all of the nominating/governance committee members on male-only S&P 1500 boards reached an average of 18% last year. Typically, director opposition votes only average 4%-5%.

Proxy Advisory Firm and Exchange Response to Gender Diversity

GLASS LEWIS

Glass Lewis recommends voting against nominating committee chairs at S&P 1500 and Russell 3000 firms with no female directors, absent certain mitigating factors.

Glass Lewis generally opposes requests to disclose global median gender pay gaps, if the company has provided sufficient information about its diversity initiatives and how it is ensuring that men and women are paid equally for equal work.

ISS

In 2020, ISS will join Glass Lewis in recommending against nominating committee with no female directors, absent certain mitigating factors.

ISS generally supports requests to disclose global median gender pay gaps.

NYSE

In June 2019, the NYSE launched an advisory council to assist boards in recruiting diverse director candidates through leveraging the personal networks for 15 founding member CEOs by introducing qualified candidates to NYSE-listed companies. Participating CEOs include those at The Container Store, Coca-Cola, Delta, Hertz, Johnson & Johnson, Procter & Gamble, State Street, among others

Director Racial/Ethnic Diversity

The trend for increasing racial and ethnic diversity on boards has been slower than increases in gender diversity

— 23% of new S&P 500 directors and 15% of new Russel 300 directors are ethnic minorities

Investors have historically placed less of a focus on racial and ethnic diversity increases, but the trend is beginning to accelerate and more investors are paying attention

The 30% Coalition, which has championed for female director representation, launched a campaign to address issues of female ethnic minority representation on boards

— The coalition sent letters to S&P 1500 companies outlining why representation on the board by women of color is important and offered opportunities to meet qualified candidates in targeted regional meetings this fall

Sources: ISS Analytics and 2019 Spencer Stuart Board Index unless otherwise indicated

Investors Drive Movement on Racial Diversity: NYC Comptroller's Efforts

On July 1, 2020, the NYCRS sent letters to the CEOs of 67 S&P 100 companies (including for example Amazon, Coca-Cola, Disney and Pfizer) calling on them to match their recent statements, affirming their commitments to racial equality and diversity and inclusion, with concrete action by publicly disclosing their annual EEO-1 Report (which provides employee numbers for each employment category, rather than a simple percentage representation)

The letters ask companies to provide a written commitment by August 30, 2020 to publicly disclose their EEO-1 Report effective upon its next submission to the U.S. Equal Employment Opportunity Commission (EEOC) in 2021 or risk potential submission of shareholder proposals or opposition to the election of director nominees standing for re-election at the next annual shareholder meeting.

Source: Georgeson

Diversity in Senior Management

Shareholder proposal diversity campaigns have been expanding to incorporate diversity at the senior management level, where female and minority representation has not increased as much as representation on boards

TRILLIUM ASSET MANAGEMENT

For a second year, Trillium Asset Management has filed a half dozen resolutions asking how companies plan to increase the diversity of their management teams in terms of gender, race and ethnicity. In 2019, all of the resolutions were withdrawn except at Newell Brands where it received majority support.

ISS

ISS released a study finding that diverse leadership teams perform better than non-diverse leadership teams, regardless of CEO gender

Goldman Sachs

Goldman Sachs recently committed to a Rooney Rule-like workplace diversity initiative that requires at least two diverse candidates to be interviewed for all open positions and expanded its goals related to incoming analysts to include lateral hires and establishing targets for Black and Latinx candidates

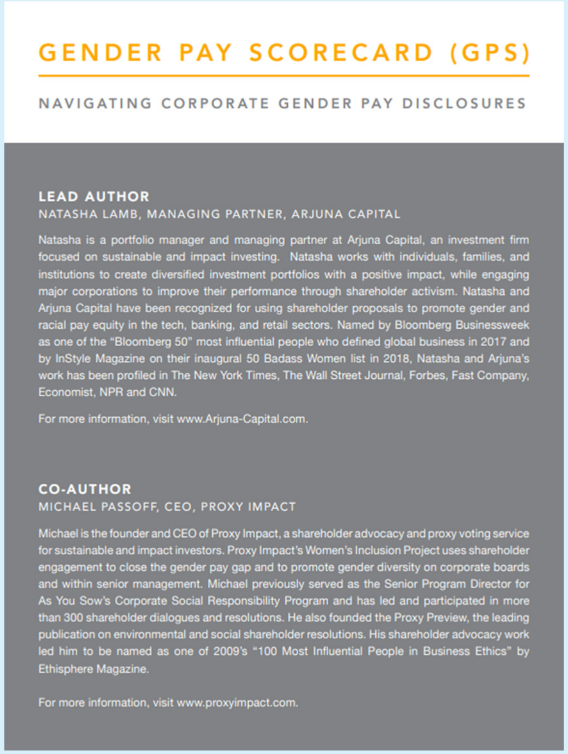
Gender Pay Equity and Workplace Diversity

Beginning in 2015, Arjuna Capital has been pushing for companies to share pay equity data and close gaps; Since then, 22 technology, financial and retail firms have committed to disclosing and reducing gender pay gaps on an adjusted equal-pay-for-equal-work basis.

In the 2019, Arjuna made a new request for unadjusted median pay gap data based on gender and race. These figures purportedly show the "promotion gap"—namely, the extent that women and minorities are underrepresented in higher paying jobs. Companies, however, argue that the figure is misleading because it does not account for differences in pay practices across different geographic locations, such as the cost of living, job functions and labor force participation rates.

TARGETS INCLUDE

Adobe, amazon, Alphabet, J.P.Morgan, AMERICAN EXPRESS, Bank of America, facebook, intel, citigroup, mastercard, WELLS FARGO, CHASE


GENDER PAY SCORECARD (GPS)

NAVIGATING CORPORATE GENDER PAY DISCLOSURES

LEAD AUTHOR
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Natasha is a portfolio manager and managing partner at Arjuna Capital, an investment firm focused on sustainable and impact investing. Natasha works with individuals, families, and institutions to create diversified investment portfolios with a positive impact, while engaging major corporations to improve their performance through shareholder activism. Natasha and Arjuna Capital have been recognized for using shareholder proposals to promote gender and racial pay equity in the tech, banking, and retail sectors. Named by Bloomberg Businessweek as one of the "Bloomberg 50" most influential people who defined global business in 2017 and by InStyle Magazine on their inaugural 50 Badass Women list in 2018, Natasha and Arjuna's work has been profiled in The New York Times, The Wall Street Journal, Forbes, Fast Company, Economist, NPR and CNN.

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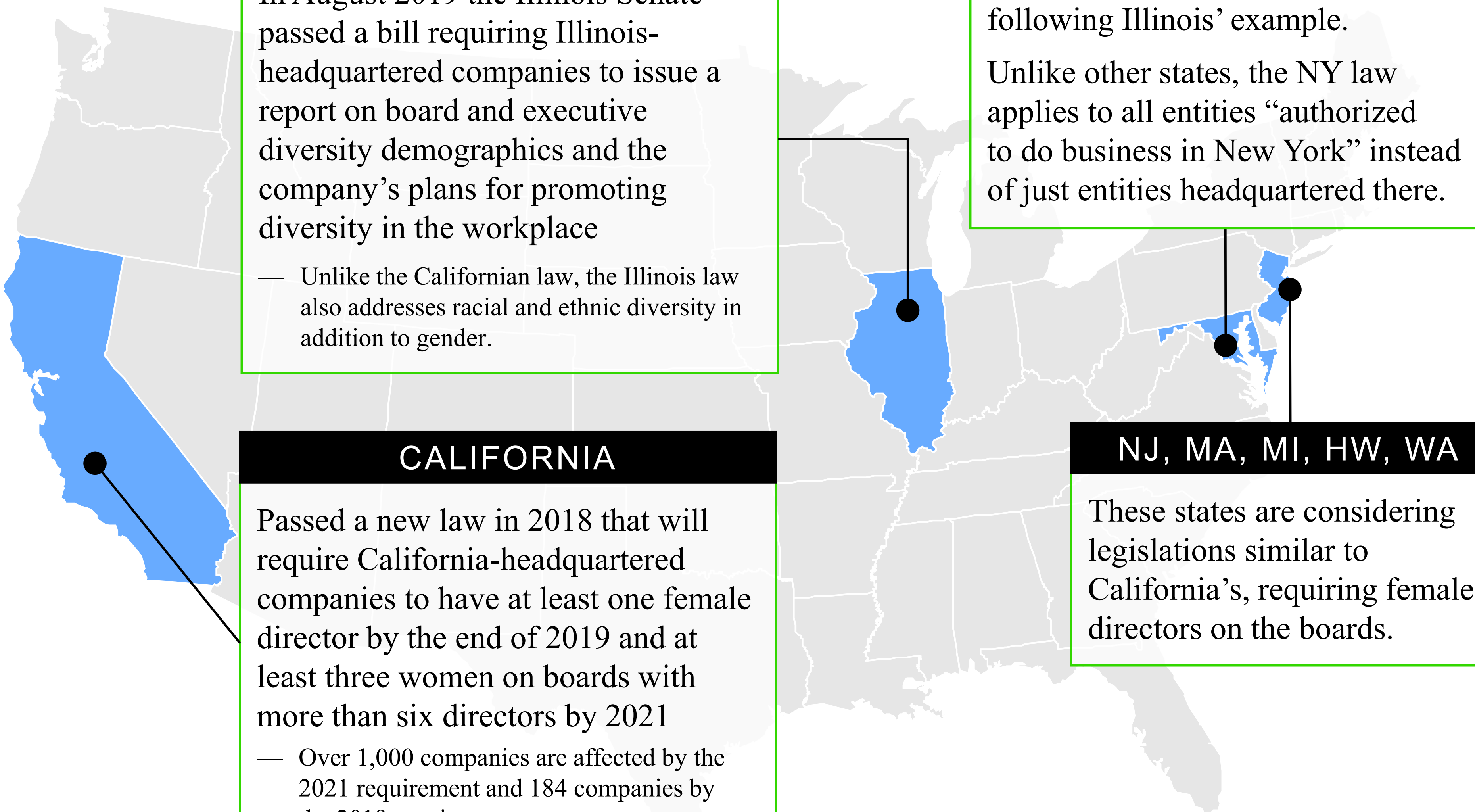
For more information, visit www.proxyimpact.com.

WORKPLACE DIVERSITY	— Trillium Asset Management and As You Sow have continued to ask for workplace diversity reports that break down a company's workforce by race, gender and broad job category — 8 proposals have been submitted in 2019 compared to 23 in 2018, but the 2019 proposals have an expanded scope • For instance, proponents have requested a more robust report based on SASB's industry-specific material risk metrics
NON-DISCRIMINATION POLICIES	— The New York State Comptroller reportedly sent letters to 47 Fortune 500 companies calling for inclusion of sexual orientation and/or gender identity and gender expression in their non-discrimination policies and suggested that failure to comply would adversely affect investments

State Laws on Board Diversity



ILLINOIS

In August 2019 the Illinois Senate passed a bill requiring Illinois-headquartered companies to issue a report on board and executive diversity demographics and the company's plans for promoting diversity in the workplace

— Unlike the Californian law, the Illinois law also addresses racial and ethnic diversity in addition to gender.

CALIFORNIA

Passed a new law in 2018 that will require California-headquartered companies to have at least one female director by the end of 2019 and at least three women on boards with more than six directors by 2021

— Over 1,000 companies are affected by the 2021 requirement and 184 companies by the 2019 requirement

NEW YORK AND MARYLAND

Introduced legislations for board diversity reporting requirements, following Illinois' example.

Unlike other states, the NY law applies to all entities "authorized to do business in New York" instead of just entities headquartered there.

NJ, MA, MI, HW, WA

These states are considering legislations similar to California's, requiring female directors on the boards.

Source: https://corpgov.law.harvard.edu/2020/05/12/states-are-leading-the-charge-to-corporate-boards-diversify

Reading Diversity into Regulation S-K Requirements

Item 401(e) of Regulation S-K requires companies to discuss the background of their directors and Item 407(c)(2)(vi) of Regulation S-K requires a company to discuss the nominating committee's process for identifying and evaluating director nominees, including a discussion regarding any director diversity policy and the manner in which its effectiveness is assessed

In February 2019, the SEC released two new C&DIs addressing instances in which a director has self-identified diversity characteristics, including race, gender, ethnicity, religion, nationality, disability, sexual orientation and cultural background

To the extent the nominating committee has considered self-identified diversity characteristics referred to above and the director has consented to the disclosure of such characteristics, the SEC expects that the company will include a discussion of such characteristics and how the committee considered them in the director background section in its proxy statement

The SEC also notes that it expects a discussion regarding how the nominating committee considers the director self-identified diversity characteristics and how the committee and policy take into account other diversity factors, such as work experiences, socio-economic background, military experience and demographic characteristics

VI. Other Social Issues: Human Rights, Human Capital and More

Human Rights

Technology companies pose a unique set of concerns for activists, ranging from content governance to data privacy and surveillance. As such, Amazon.com, Alphabet and Facebook are among the top recipients of this year's shareholder proposals, almost half of which are related to human rights.

An early standout of the season was a new proposal at Apple by Harrington Investments and SumOfUs to report on its policies on freedom of expression and access to information, specifically its compliance with the Chinese government's censorship demands. Apple has come under fire for removing hundreds of apps from its Chinese App Store—including Western news services, virtual private networks and, most recently, a crowdsourced map used by Hong Kong protesters to monitor police activity—at the behest of Beijing. The resolution scored a remarkable 40.5% support.

At Alphabet, a similar proposal regarding censorship from Azzad Asset Management gained majority support. The proponent wants the company to annually disclose government-mandated content removal requests, including delisted, censored, downgraded or blacklisted terms, queries or sites.

Employee Board Representation

The concept of employee representation on boards—known as "co-determination"—is popular in Europe and featured in the presidential platforms of Senators Bernie Sanders and Elizabeth Warren. Shareholder resolutions on the topic averaged only 2.5% support last year, but the proponents clearly want to keep the issue alive in the run-up to the 2020 elections.

This year's proposals are also more varied in form and rationale than in the past. NorthStar Asset Management's resolutions—to report on opportunities to encourage the inclusion of non-management employees on the board—reference the BRT's recent commitment to stakeholders.

A repeat proposal at Alphabet to nominate a non-executive employee to the board by 2021 reflects a demand made by employees who staged mass protests and walkouts over the company's handling of sexual harassment allegations, climate change and contracts with the Pentagon and U.S. immigration authorities. And once again, Walmart employees seeking higher wages want the company to adopt a policy to include hourly associates in the initial list of board candidates.

Human Capital Management Disclosure Trends

2019

2020

AUGUST 2019

SEC proposed principles-based disclosure, focused on human capital management

AUGUST 2019

Business Roundtable released new Statement on the Purpose of a Corporation

— Provided a new emphasis on, and commitment to, all "stakeholders"

MAY 2020

CII letter called for the SEC to push for further COVID-19-related disclosure, including on human capital management, customer safety and business continuity

MAY 2020

Members of the SEC's Investor Advisory Committee (IAC) urged the SEC to provide more guidance for companies; called for more detailed disclosures about hiring and layoffs, safety measures, PPE, training and even plans for contact tracing and paid sick leave

JUNE 2020

A large group of investors asked the SEC to require public companies to provide comprehensive disclosure requirements on the impact of COVID-19

— Urged the SEC to require companies to provide consistent, reliable data to investors about the economic impact of the pandemic on their business, human capital management practices and supply chain risks

What Kind of Human Capital Disclosure is Appropriate?

Workforce health and safety are strong indicators of a company's ability to function

Procedures and processes around safety are key to workforce feeling safe about return to work:

— Returning to work means something different across job functions and industries
— Some companies (particularly tech) may not "return" to work, but pivot to a fully virtual or hybrid workplace
— Other companies never ceased operations during the crisis, and may even have increased output

SPECIFIC DISCLOSURE AREAS

— Workforce reduction plans, including layoffs, furloughs, reductions in hours, etc.
— Changes in compensation and benefits
— Sick leave and other health policies
— Training, especially with regard to health and safety preparedness

WORKFORCE SAFETY DISCLOSURE

— Identification of workforce safety hazards and levels of risk
— Identification of infected employees, isolation and contact tracing
— Policies and controls that address risks, such as air filters, spatial barriers, cleaning practices, varying/alternating work schedules
— Protective equipment, such as masks and gloves
— Training measures, including how to understand cost and success

Human Capital Management Considerations

Over the past few years, human capital management has culminated into a significant ESG topic on which investors, employees and other stakeholders expect companies and boards to be focused and make progress

— Recent attention to gender inequality concerns, pay disparities, employment practices and the #MeToo movement have all been attributed to human capital management considerations

Increasingly, compensation and employee retention issues, as well as corporate culture considerations are linked to human capital management

The SEC has also been invested in reviewing human capital management disclosure considerations

— The SEC's Investor Advisory Subcommittee on Human Capital Management Disclosure has been focused on disclosure issues related to human capital management

- The Subcommittee recommended that the SEC incorporate human capital management disclosure in its current undertaking to modernize corporate reporting and disclosure, particularly in the requirements for Regulation S-K Item 101 and in the proxy statement
- This is also an area in which lawmakers and Chairman Clayton have also indicated interest

Human Capital Management Considerations (cont'd)

INVESTORS ALSO FOCUS ON THESE ISSUES

Morrow Sodali's 2019 survey of 46 global institutions revealed 83% of investors want more HCM disclosure and 67% of investors want a better understanding of corporate culture, tone at the top and the board's role in oversight of these issues

BlackRock's annual letters to CEOs have been increasingly focused on the responsibilities companies have to their workers, including the responsibility to navigate retirement and assistance in training and education related to technological change

— BlackRock designated HCM as one of its top 2019 engagement priorities

SSGA has a framework to assist boards and management align corporate culture with long-term strategy

— For instance, SSGA has been vocal that behavioral biases that undermine female contributions are, in part, one of the obstacles to increased female director diversity

The California pension funds launched an investor coalition with a set of principles aimed at guiding engagements with portfolio companies on managing and mitigating HCM-related risks

NYC pension funds and CtW filed shareholder proposals at seven companies to adopt a policy not to engage in any "inequitable employment practices" that keep workplace misconduct in the shadows

— CtW also engaged 31 companies over what it considered to be anti-competitive employment practices and included the companies on its website on a 'name and shame' list

The Workforce Disclosure Initiative, which has 125 institutional investor signatories, has targeted hundreds of companies to enhance workforce disclosure.

Election Year Issues

Election year themes are undergirding some shareholder campaigns, ranging from stakeholder capitalism and worker representation on boards to revivals on opioid abuse, prescription drug pricing and gun control, which have been solid vote-getters in the past. Several new efforts on abortion rights, slavery reparations and employee civic engagement were short-lived due to productive dialogues and omissions.

VII. Other Governance Topics

Overboarding

STATE STREET GLOBAL ADVISORS

Following the trend of the past two years, institutional investors are adopting or revising their policies on directors' outside board commitments. Beginning in 2020, SSGA will vote against named executive officers (NEOs) of public companies who sit on more than two total public company boards (down from three), board chairs and lead directors who sit on more than three public company boards, and other directors who sit on more than four public company boards (down from six). T. Rowe Price has similarly reduced its acceptable number of board seats for public company CEOS from a total of three to two, but is maintaining its five-board limit for other directors.

AB ALLIANCEBERNSTEIN

AllianceBernstein has adopted a formal board capacity policy which restricts CEOs to two total board seats and other directors to three total board seats. Boston Partners Global Investors has bifurcated its prior policy to oppose any director who served on more than three public company boards. Going forward, its three-board limit will apply only to CEOs and a more liberal four-board limit will apply to other directors.

Overboarding (cont'd)

Stricter overboarding policies by major investors such as BlackRock, Vanguard and LGIM have been contributing to higher director opposition votes. In the first half of 2019, 57% of non-CEO Russell 3000 directors who served on more than five boards received less than 80% support, up from 36% of such directors in 2018, according to ISS. Similarly, 36% of Russell 3000 CEOs who served on more than three boards received less than 80% support, up from 32% in 2018.

As investors tighten their parameters on excessive board service, ISS and Glass Lewis may become more disposed to altering their voting policies in the future. Currently, ISS restricts CEOs to three public company board seats and Glass Lewis restricts all NEOs to two public company board seats. Both proxy advisors have established a five-board limit for other directors.

Source: ISS, August 2019

Chevedden's 2020 Season

Chevedden & Co (John Chevedden, James McRitchie, Myra Young and Kenneth Steiner) continue to be active with their proxy season mainstays—special meeting and written consent rights, the elimination of supermajority voting and proxy access "fix-it" proposals—but have scaled back their requests for independent board chairs. Last year, they accounted for two-thirds of all independent chair resolutions filed, compared to a little over half this year.

In addition to their usual favorites, Chevedden & Co are branching out this season with some new variations of governance resolutions. One proposal submitted at over a dozen firms would require a shareholder advisory vote on all bylaw amendments adopted by the board—whether substantive or non-substantive—other than those already subject to a binding shareholder vote. To date, none of the targeted companies have been successful in arguing for exclusion other than on technical grounds. Initial votes on the bylaw proposal came up weak at Hewlett Packard Enterprise (1.9%) and Goodyear Tire & Rubber (3.8%) and were opposed by ISS and Glass Lewis.

Chevedden's 2020 Season (cont'd)

Chevedden & Co are also thinking through the practical effect of companies' written consent and special meeting rights. In a number of cases, they want to ease procedural hurdles such as one-year shareholder periods or, in the case of written consent, ownership requirements to request a record date. They are additionally asking a number of non-Delaware companies to take steps to permit shareholder removal of directors with or without cause. Because shareholders typically call special meetings to remove and replace directors, "for cause only" removal provisions can render this right useless. So far, the targeted firms have been amenable to complying with the request through bylaw amendments or upcoming management proposals

A longstanding pursuit of James McRitchie may be gaining adherents despite being excluded from ballots. Echoing his 2019 SEC rulemaking petition, McRitchie filed proposals at Legg Mason, Northern Trust and T. Rowe Price Group to report on the feasibility of announcing their proxy votes in advance of annual meetings to allow for easy comparison of funds' voting records. In early April, Neuberger Berman became the first major asset manager to provide advance proxy vote disclosure, which will initially cover 25 key annual meetings.

Board declassification got a brief uplift this year by long-time activist Herbert Denton (Pro Cap NYC llc) who submitted a dozen proposals at small- and mid-cap firms. While all were scuttled for missing filing deadlines, they could be a harbinger of more to come next year.

VIII. Executive and Director Compensation Updates

Compensation and COVID-19

In the wake of the COVID-19 pandemic and corresponding market downturn, many companies announced adjustments to executive and director pay*

Salary reductions were the most common compensation change

— For Russell 3000 companies, the median CEO salary reduction was 40%, while reductions for NEOs and other members of senior management was approximately 20%
— For S&P companies, the average CEO salary reduction was 50% for large- and mid-cap companies, and 40% for small-cap companies, with other executives receiving cuts of 20-25%
— Consumer discretionary and industrials sectors have the highest percentage of announcements on pay reductions

The median reduction for director cash retainers was 50% for both Russell 3000 and most S&P companies, but large and mid-cap companies in the S&P have been less likely to reduce director pay

Approximately 22% of S&P 500 companies have announced other broad-based employment actions (e.g., furloughs, reduced pay, suspension of bonuses, etc.)

* Semler Brossy, *2020 Say on Pay & Proxy Results* (June 4, 2020); Compensation Advisory Partners, *Corporate Compensation and Human Capital Actions in Response to COVID-19* (June 19, 2020)

Proxy Advisory Firms: COVID-19 Compensation Policy Updates

In April 2020, ISS published additional guidance on the application of its benchmark voting policies in light of the pandemic

Changes in Compensation Plan Metrics, Goals and Targets

ISS acknowledged that many boards may be considering material changes to performance metrics, goals or targets used in short-term compensation plans, and encouraged boards to provide contemporaneous disclosure to shareholders regarding the rationale for any such changes

— ISS is generally not supportive of midstream or in-flight awards under long-term compensation plans, and will review such changes on a case-by-case basis to determine whether directors exercised appropriate discretion and adequately explained such changes to shareholders

— ISS will also assess future structural changes for long-term plans under its existing policy framework

Option Repricing

If boards reprice options without seeking shareholder approval or ratification, such actions will remain subject to scrutiny under ISS' board accountability provisions

— If boards seek shareholder approval/ratification at 2020 meetings, ISS will apply its existing case-by-case approach, and will examine whether: (i) the design is shareholder value neutral (i.e., a value-for-value exchange); (ii) surrendered options are not added back to the plan reserve, (iii) replacement awards do not vest immediately; and (iv) executive officers and directors are excluded.

Proxy Advisory Firms: COVID-19 Compensation Policy Updates (cont'd)

In March 2020, Glass Lewis indicated that it expects the pandemic to impact most proxy proposals, and that it would exercise its discretion and pragmatism in assessing such proposals, but did not provide specific policy guidance

However

Glass Lewis acknowledged that changes to compensation programs are likely given the current market environment, but cautioned against attempts to make executives whole at the expense of shareholders and other employees

Say on Pay

Support remains high in 2020, currently averaging approximately **91%** at Russell 3000 companies*

Support rates are highest in the utilities GICS sector

APPROXIMATE AVERAGE
94.5%

Support rates are lowest in information technology, health care and energy sectors

APPROXIMATE AVERAGE
89%

2.3%
Approximate failure rates
(roughly equal to 2019)

As in 2019, most common reasons for failed say on pay votes were pay for performance disconnects and problematic pay practices

Proxy advisory firms continue to have a significant impact on vote results

Approximately
30%
lower

Average support level at companies where ISS recommended "against" compared to companies that received a favorable vote recommendation
(historical average range of 24-32% lower support if ISS recommended "against")

* Semler Brossy, *2020 Say on Pay & Proxy Results* (June 4, 2020)

Pay Ratio

2020 marks the third year for pay ratio disclosures

— The pay ratio rule requires companies to disclose: (i) the median of the annual total compensation of all employees except the CEO; (ii) the annual total compensation of the CEO; and (iii) the ratio of these two amounts

TRENDS*

— There continues to be variation in pay ratio across industries

- For S&P 500 companies, the highest pay ratios were reported in the consumer discretionary sector (median ratio of 395:1), and lowest were reported in utilities (median ratio of 92:1)

— Large changes in pay ratio year-over-year are typically driven by volatility in CEO pay

— However, median employee pay is the main driver of fluctuations in pay ratio across industries

- Median employee pay varies by a factor of 5.6x across sectors for S&P 500 companies, while CEO pay varies by a factor of 2.6x

— Companies with low levels of say on pay support generally tend to have higher median pay ratios than companies with higher say on pay support levels, but the data is inconclusive

* Farient Advisors, *CEO Pay Ratio Tracker Update* (May 29, 2020); Equilar, *Say on Pay and the Effects of the CEO Pay Ratio: Key Findings From the 2020 Proxy Season* (Harvard Law School Forum on Corporate Governance, June 24, 2020)

Shareholder Proposals

In 2020, shareholder proponents continued to focus on gender pay disparities and linking environmental and social factors to executive pay*

GENDER PAY GAPS	LINKING ESG FACTORS WITH EXECUTIVE COMPENSATION
— Arjuna Capital has continued to request that companies publish disclosure on wage gaps between male and female employees, submitting proposals at 17 companies during the 2020 proxy season. • Mastercard and Starbucks made the requested disclosure.	— Shareholder pay proposals continued to focus on linking ESG factors with executive pay, including at Apple, Marathon Petroleum and Verizon. • Support for such proposals averaged 19.1% (down from 21.6% in 2019), but increased at companies that had repeat proposals on this topic year over year. • At Verizon, a shareholder proposal to report on linking CEO pay to enhanced data privacy and cybersecurity achieved 31% support, up from 12.4% on a similar proposal in 2019.

There has also been an emerging shareholder focus on sexual harassment issues. Some of these proposals have been excluded on ordinary business grounds.

— After receiving a proposal from Clean Yield Asset Management, Wells Fargo agreed to end mandatory arbitration for workplace sexual harassment.

* Alliance Advisors, *2020 Proxy Season Preview* (April 2020); ISS, *Key Highlights from the 2020 U.S. Proxy Season* (June 19, 2020)

Equity Plan Proposals

More companies may have equity plan proposals on the ballot in 2021

— Companies may need to request additional shares as a result of dilution from equity grants made during the COVID-19 pandemic

90.7%

Average support for equity plan proposals remains |high in 2020 at 90.7% for Russell 3000 companies*

— Two proposals have received vote support below 50% in 2020 thus far

*Semler Brossy, *2020 Say on Pay & Proxy Results* (June 4, 2020)

Director Compensation: *Investors Bancorp*

Delaware courts have found that decisions regarding non-employee director compensation may not be protected by the business judgment rule on the basis that directors have an interest in their own pay

— Shareholder approval of an equity plan that lacks "meaningful limits" on director awards will not constitute ratification of director pay

In a 2017 case, *In re Investors Bancorp, Inc. Stockholder Litigation*, the Delaware Supreme Court, reversing a Court of Chancery decision, found that even if an equity plan includes a shareholder-approved limit on director awards, review under the "entire fairness" standard may be warranted if:

— directors have discretion to determine their own awards within the limit, and

— a plaintiff can allege facts sufficient to show a possible breach of fiduciary duties

The equity plan in *Investors Bancorp* provided that the maximum number of shares that could be issued or delivered to non-employee directors pursuant to the exercise of stock options or grant of restricted stock or RSUs would be equal to 30% of all option or restricted stock shares available for awards during any calendar year

— 30,881,289 shares were reserved for awards under the plan

— Awards to each non-employee director averaged approximately $2.1 million

Director Compensation: *Investors Bancorp* (cont'd)

The parties to the *Investors Bancorp* litigation reached a settlement agreement, under which awards to the Investors Bancorp CEO and COO were rescinded, and awards to non-employee directors were substantially reduced (by between 34% to 44%)

— Proposed settlement agreement was filed with the Court in March 2019

— In April 2019, Investors Bancorp filed its proxy statement, which indicated that the board intended to consider issuing new awards to the CEO and COO

— The Court approved the settlement in June 2019, and replacement awards were granted in July 2019

- Replacement awards were similar in scope to the rescinded awards, and the company did not file supplemental disclosure reflecting the board's approval of the replacement awards
  - The replacement awards replenished all of the RSUs that the executives forfeited under the settlement agreement, and approximately 40% of their rescinded stock options; vesting schedules were identical to those of the forfeited RSU awards, and the exercise price and expiration date of the options matched those of the original awards

Following the grant of replacement awards, Robert Elburn, one of the shareholder plaintiffs in the *Investors Bancorp* suit, filed a new lawsuit against the company

— The plaintiff's new complaint alleged that the Investors Bancorp board breached its fiduciary duties by issuing replacement awards to the CEO and COO

Director Compensation: *Investors Bancorp* (cont'd)

The plaintiff argued that there was a quid pro quo between the directors and the executives	— Plaintiff alleges that in order to settle the *Investors Bancorp* lawsuit, the CEO and COO agreed to forfeit their awards so non-employee directors could keep a portion of their compensation, provided that the board issued replacement awards to the executives following court approval of the settlement agreement
The Delaware Court of Chancery denied the motion to dismiss, finding that the alleged breach of fiduciary duty flowing from the *quid pro quo* was pled with sufficient particularity to raise a reasonable doubt that the board could act impartially in response to a litigation demand.	— However, the Court found that the disclosure was not materially misleading, denying the plaintiff's motion for partial summary judgment related to Investors Bancorp's failure to supplement its proxy statement

Director Compensation: *Stein v. Blankfein*

Last year, the Delaware Court of Chancery denied Goldman Sachs' motion to dismiss a shareholder suit alleging that Goldman's non-employee directors breached their fiduciary duties by paying themselves excessive compensation

— In March 2018, Goldman filed a proposed settlement agreement to resolve the shareholder's claims, which was rejected by the Delaware Court of Chancery in October 2018

- The court took issue with the settlement on the basis that the plaintiff had brought direct and derivative claims against the directors, and the release of the derivative claims was not fair to the company because such a release would preclude any monetary recovery by the company

The court found that the compensation plan at issue "manifestly" failed the *Investors Bancorp* test, which shifts "the standard of review to business judgment only where stockholders approve a compensation plan that does not involve future director discretion in setting the amount of self-payment"

— The plaintiff's complaint alleged that the Goldman equity plans did not set a limit on director compensation and permitted directors to use their discretion to set their own compensation, such that shareholders were not informed about the specifics of the director compensation package

Director Compensation: *Stein v. Blankfein* (cont'd)

- The plaintiff claimed that Goldman directors' annual compensation was, on average, $605,000, which was more than twice that of peers

- The Court determined that the entire fairness standard should apply and noted that setting salaries above a peer average is not evidence of excessive compensation, but found that the plaintiff nonetheless met the "low pleading burden" regarding the director compensation claims

- The Court also dismissed two of the shareholder's claims alleging that the directors breached their fiduciary duties by providing inadequate disclosure regarding Goldman's equity incentive plans and certain cash-based incentive awards on the basis that such claims were "stale"

Director Compensation: *Stein v. Blankfein* (cont'd)

Goldman recently filed a new proposed settlement agreement with the Court, pursuant to which it agreed to take several remedial actions, including:

— Imposing caps on annual director compensation ($475,000 for committee chairs, and $450,000 for directors who do not serve as committee chairs)

— Imposing limits on director compensation in its 2021 equity plan, for which it will seek shareholder approval

— Implementing certain practices and procedures, such as annual reviews of director compensation, engaging an independent compensation consultant and including disclosure about the director compensation process and program in its annual proxy statement

— In the event Goldman seeks shareholder approval of an equity plan, it will continue to include disclosures identifying each class of persons eligible to participate in the plan and indicating the approximate number of participants who are directors, officers, employees, consultants and other service providers

Director Compensation: Trends

2019	Companies that have adopted limits*	Large-cap	Mid-cap	Small-cap
		77%	72%	55%

- — Equity-only limits continue to be more common, but limits on total pay have increased (from 34% to 39% in 2019)
- — Some companies will alter the limit in special cases (*e.g.*, for a director's first year of service or if a director serves as a board chair or lead director)
  - These type of exceptions are observed at approximately 17% of companies with other director limits in place
- — Median limits on total pay range from $400,000 (for small-cap companies) to $750,000 (large cap companies) and generally equate to a multiple of approximately 2.5x – 3.5x total pay.

* FW Cook, *2019 Director Compensation Report* (November 2019)

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EDUCATION

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Francesca Odell's practice focuses on corporate transactions, particularly capital markets, and a range of corporate governance matters. She also has deep experience with transactions in Latin America, particularly in Brazil, including capital markets, mergers and acquisitions, restructurings, private equity transactions and project finance.

Francesca regularly advises boards of directors and management on a variety of topics, including disclosure and compliance matters; stock exchange listing requirements; board composition and director independence; shareholder engagement and activism; shareholder proposals and proxy season trends; management and director succession planning; and environmental, social and governance (ESG) issues.

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Chambers Latin America

Leading Capital Markets Lawyer
Chambers Global, Chambers Latin America, The Legal 500 Latin America

Leading Corporate/M&A Lawyer
Chambers Global, Chambers Latin America, The Legal 500 Latin America, Latin Lawyer 250

Leading Lawyer for Latin American Investment
Chambers USA

NOTABLE EXPERIENCE

— Regularly advises companies on general corporate governance matters and with advice on meeting SEC reporting requirements, including 20-F filings by: Bed Bath & Beyond, Copa Airlines, Copel, Mercado Libre, Nexa Resources, and Petrobras

— Regularly advises Petrobras on a variety of matters, including its SEC reporting, corporate governance, litigation, enforcement and financing matters in connection with "Operation Carwash;" in 2019, new debt offerings in the amount of approximately $7 billion, a $1.9 billion equity offering and liability management transactions repurchasing approximately $19.5 billion of outstanding debt securities; in 2018, bond offerings totaling over $23 billion; in 2016, $9.75 billion in SEC-registered bond offerings; its $2.5 billion SEC-registered century bond offering, the largest century bond offering at the time and the first by a Brazilian issuer; its $67 billion SEC-registered global equity offering, the largest-ever equity offering; and its US$11 billion SEC-registered multi-tranche notes offering, the largest-ever debt offering by an emerging markets company

— Selected M&A experience includes advising Cable Onda in its $1.46 billion sale to Millicom; a private equity investment firm in its acquisition of a significant minority stake in Resultados Digitais and together with Gávea Investimentos in their acquisition of an interest in Rumo Logística; Newbridge Latin America in the $73 million sale of the Bristol Group and separately, in the ownership restructuring and sale of Tropigas to a PDVSA subsidiary; a Brazilian bank in its R$2.77 billion acquisition of Citigroup's Brazilian consumer finance business; DIRECTV Latin America in numerous JV agreements and M&A transactions; Abbott Laboratories on the non-U.S. aspects of its $4.3 billion sale of its ophthalmology division to a multinational manufacturer and marketer of branded consumer foods in its acquisition of Yoki Alimentos and sale of its Venezuelan business; and Compass Minerals in its purchase of a 35% interest in Produquímica Industria e Comercio

— Has advised on debt and equity offerings by numerous Latin American issuers, including Açucar Guarani, Banco Cruziero do Sul, Bancolombia, BIC Banco, Brasil Pharma, Brookfield Incorporações, Camil Alimentos, Centro de Imagem Diagnósticos – Alliar, Construtora Tenda, Copa Holdings, GP Investments, Iguatemi Empresa de Shopping Centers, Le Lis Blanc Deux Comércio e Confecções de Roupas, Multiplus, Movida, Netshoes, Oi, PDG Realty, Redecard, Ser Educacional, Suzano Papel e Celulose, TAM Airlines and Technos, among others

— Selected restructuring experience includes advising an ad hoc group of creditors as lenders and equity owners of San Antonio Oil & Gas in the restructuring of over $300 million in debt and the $105 million sale of its subsidiaries in numerous Latin American and other jurisdictions; an ad hoc committee of bank creditors of Independência in the restructuring of $1.1 billion of bank and bond indebtedness; Acon Funds Management in the restructuring of the debt and capital structure of Milagro Holdings; and the ad hoc creditors committee of Aracruz Celulose in over $3 billion of derivative and bilateral bank debt

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EDUCATION

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Helena K. Grannis’ practice focuses on corporate and financial transactions, particularly capital market transactions, disclosure and corporate advisory and governance.

Her work spans numerous industries, including airlines, aviation and aerospace; automotive; consumer products and retail; banking and financial institutions; and pharmaceuticals and biotechnology.

Leading Capital Markets Lawyer

The Legal 500 U.S. and IFLR 1000: The Guide to the World's Leading Financial Law Firms

NOTABLE EXPERIENCE

— Regularly advises clients on corporate governance and disclosure matters, including for Honeywell, Allergan, Post Holdings, and HSBC USA

— Honeywell in connection with the spin-off of its home automation solutions business, over $7.5 billion of notes offerings and a concurrent abbreviated cash tender offer, and in over €7 billion Eurobond offerings

— Cushman & Wakefield and its principal shareholders in the company’s $765 million initial public offering and multiple follow-on offerings and its inaugural secured notes offering

— TPG Specialty Lending in its $112 million initial public offering and concurrent $50 million private placement, in an approximately $74 million follow-on offering, and in over $300 million of senior and convertible notes offerings

— The carve-out and sale of Surgical Care Affiliates of HealthSouth to a leading private investment firm, and in its subsequent $270 million initial public offering

— Copa Holdings, S.A. in a $350 million offering of convertible senior notes in a private offering to qualified institutional buyers

— Biomet in its proposed initial public offering and Biomet, Blackstone, Goldman Sachs PIA, KKR and TPG in the $13.35 billion sale of Biomet to Zimmer Holdings; and subsequent secondary sales by the consortium

— Hellman & Friedman as stockholders in the SEC-registered IPO of Artisan Partners Asset Management and SEC-registered secondary offerings

— HSBC in several SEC-registered notes offerings, totaling more than $8 billion

— Allergan in its $30 billion three-part offering in connection with its $70.5 billion acquisition of a pharmaceutical company; in the company’s structured accelerated share repurchase of $10 billion of outstanding shares; in its concurrent bond offering and tender offer; and in multiple bond offerings

— The Hartford on multiple high-profile matters, including the $2.5 billion capital investment by Allianz and the $3.3 billion capital raise to repay TARP funds. She also advised on securities regulatory, disclosure and corporate governance matters

— The underwriters, structuring agents and dealer managers in a series of capital markets transactions by AIG totaling over $10 billion

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