CLEARY GOTTLIEB

2020 Post-Proxy Season Review and Governance Trends

August 2020

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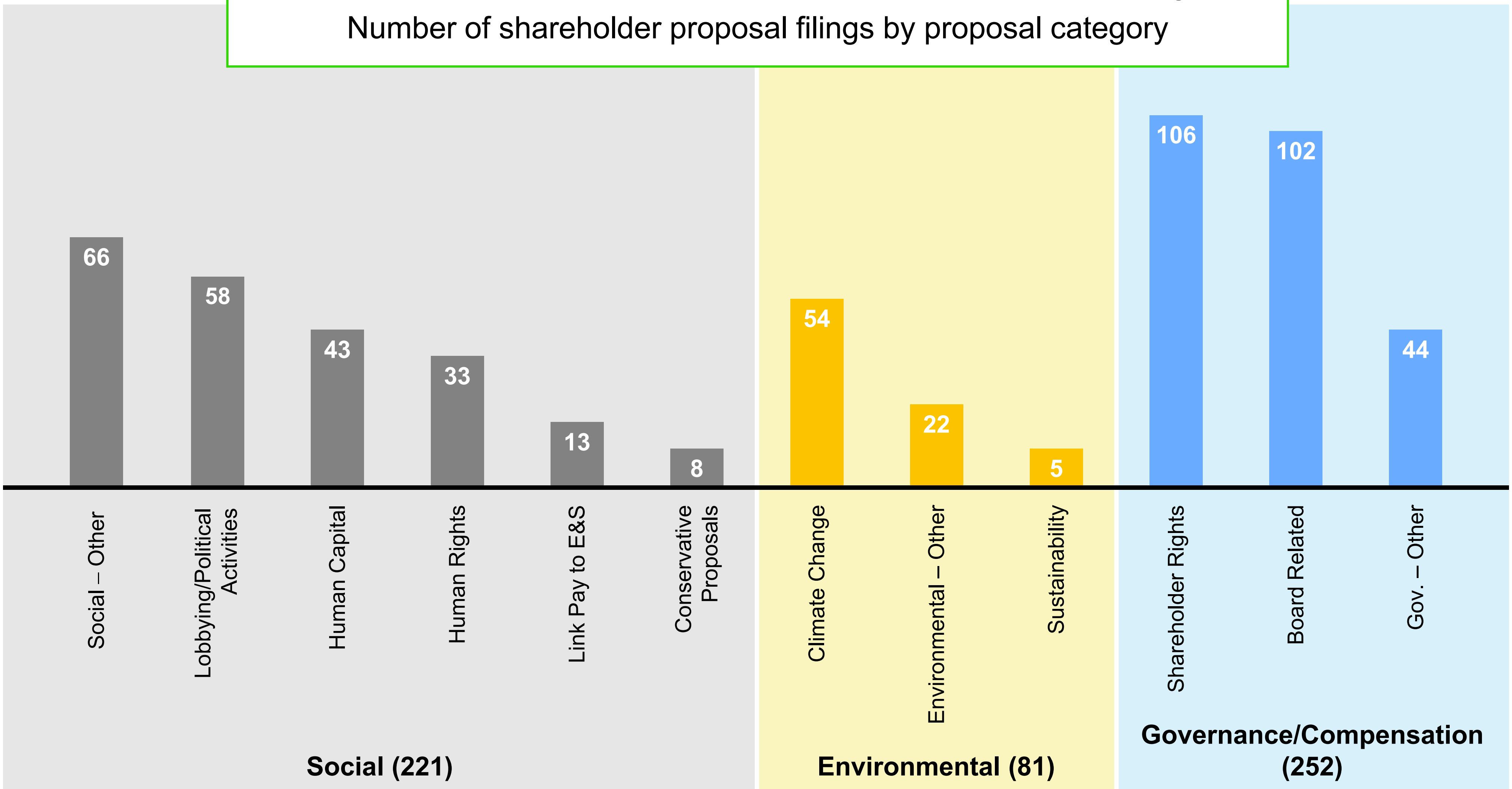
I. 2020 Proxy Season Overview

Shareholder Proposals in Early 2020

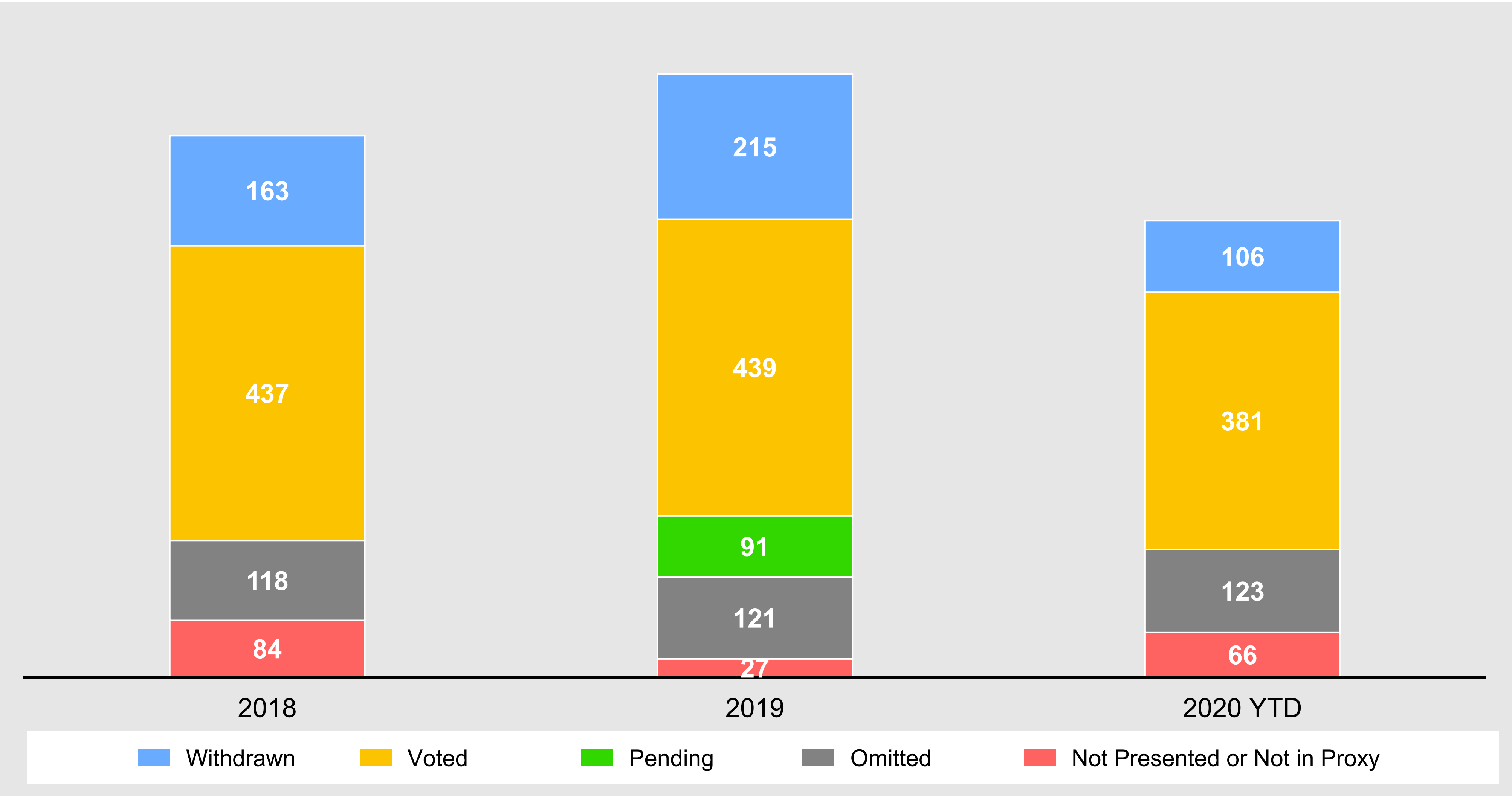
Total E&S proposals continue to outnumber G proposals in early 2020

Number of shareholder proposal filings by proposal category



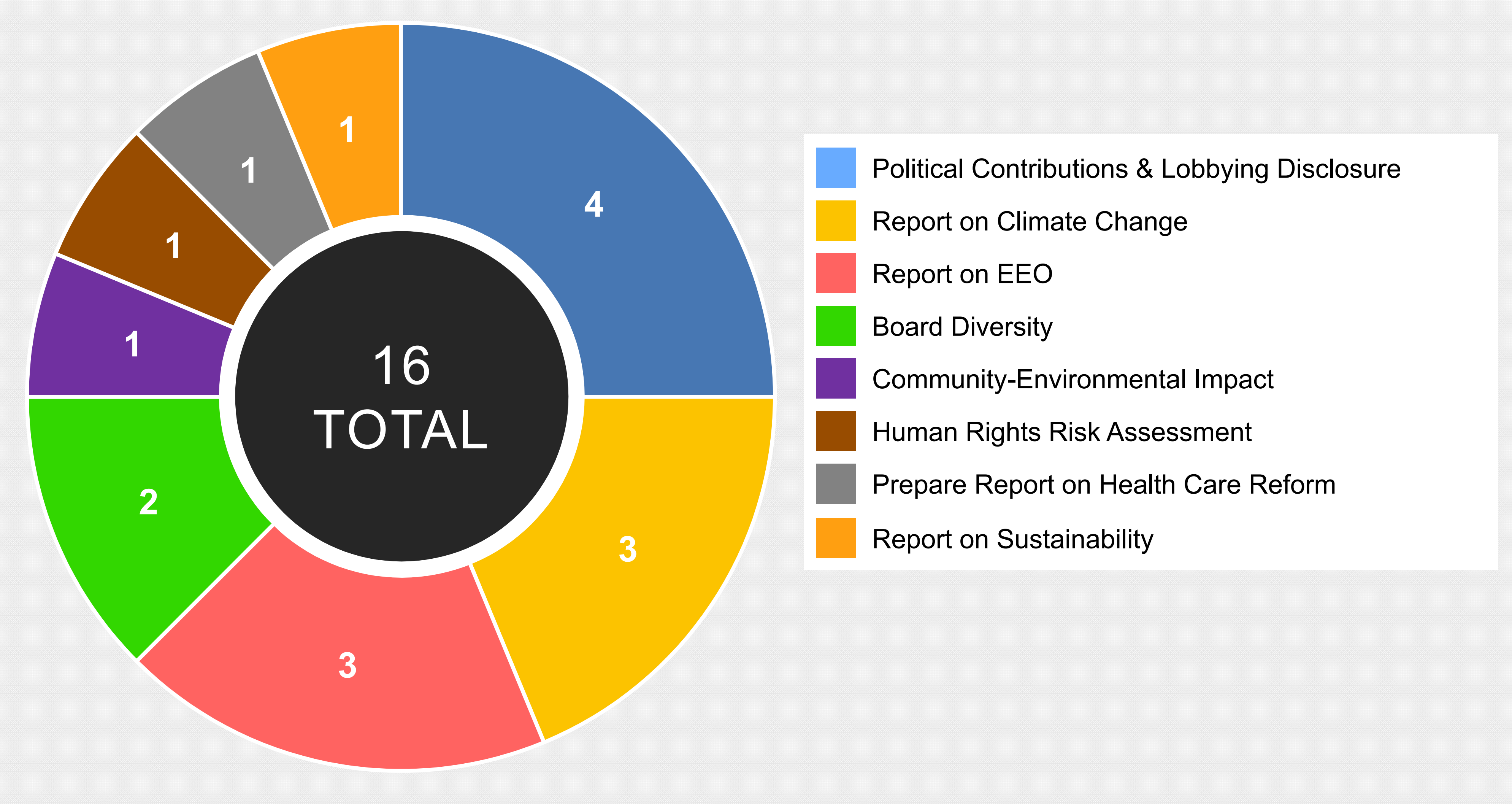
Source: ISS Analytics as of June 9, 2020

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.

— BlackRock voted against the re-election of the chair of the audit committee at **National Fuel Gas Company**'s annual meeting, citing "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 the 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

- Mandatory arbitration clauses for employees came under attack by New York City's comptroller, whose proposal asking **Chipotle** to disclose any such claims won majority support.
- New York state's proposal demanding board diversity was also successful at **National Healthcare**.

Increasing breadth and depths of social proposals

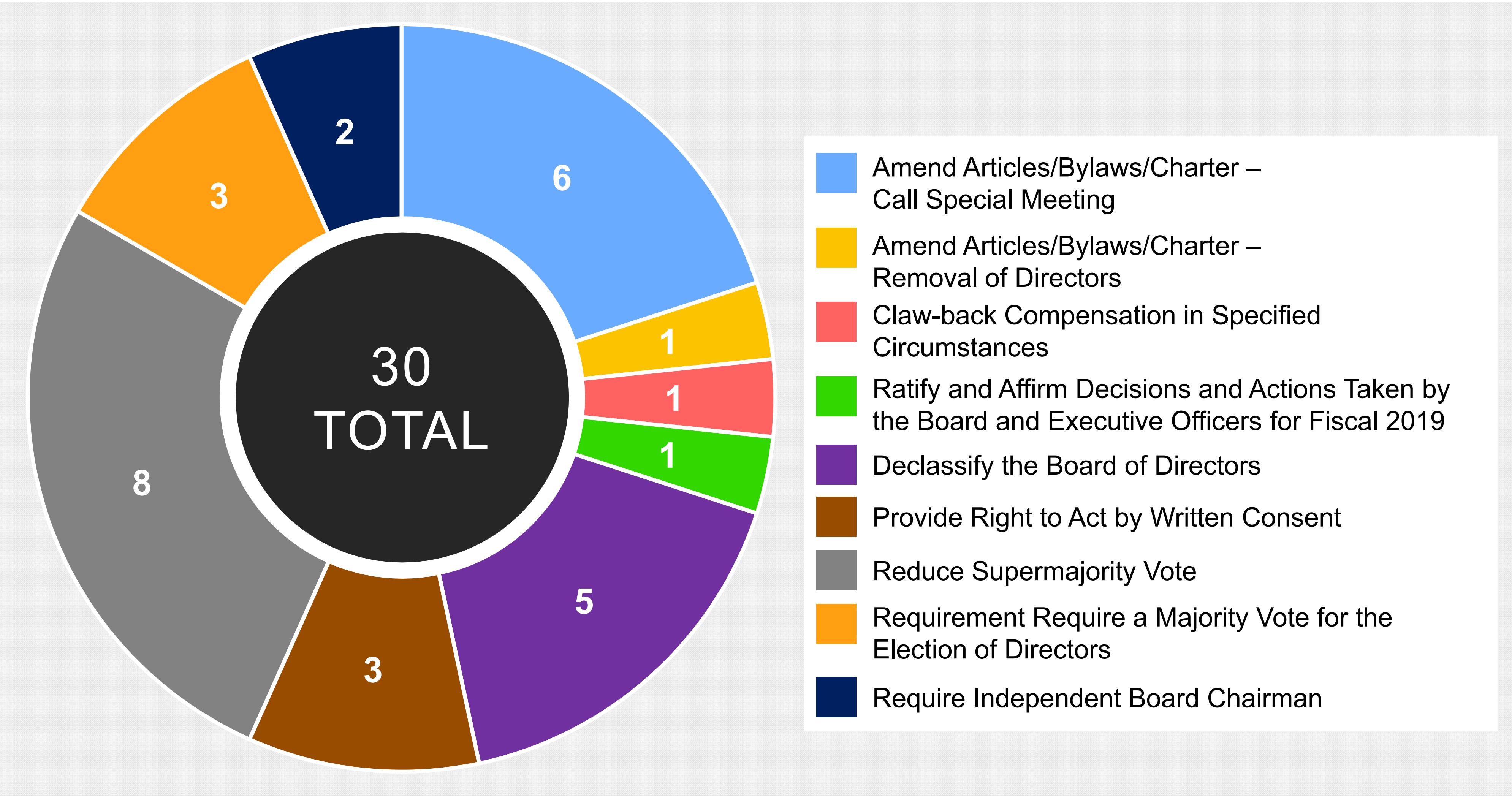
- Similar to proposals regarding climate change, proponents starting to look at lobbying spending – whether it's consistent with the company's statements on diversity.
- Diversity is expanding to cover not just gender but also race/ethnicity.
- Rooney rule requirement is expanding to cover not just board, 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

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

— Say on pay proposals continued to receive strong support, averaging 91%.

— That said, a significant number of companies (195 in total) still experienced waning support for say on pay proposals, slipping below thresholds where proxy advisory firms start focusing increased attention on whether companies are adequately responding to shareholder concerns.
  - Glass Lewis views the “red zone” threshold at anything below 80% support
  - ISS reviews proposals with additional scrutiny when they receive less than 70% support

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

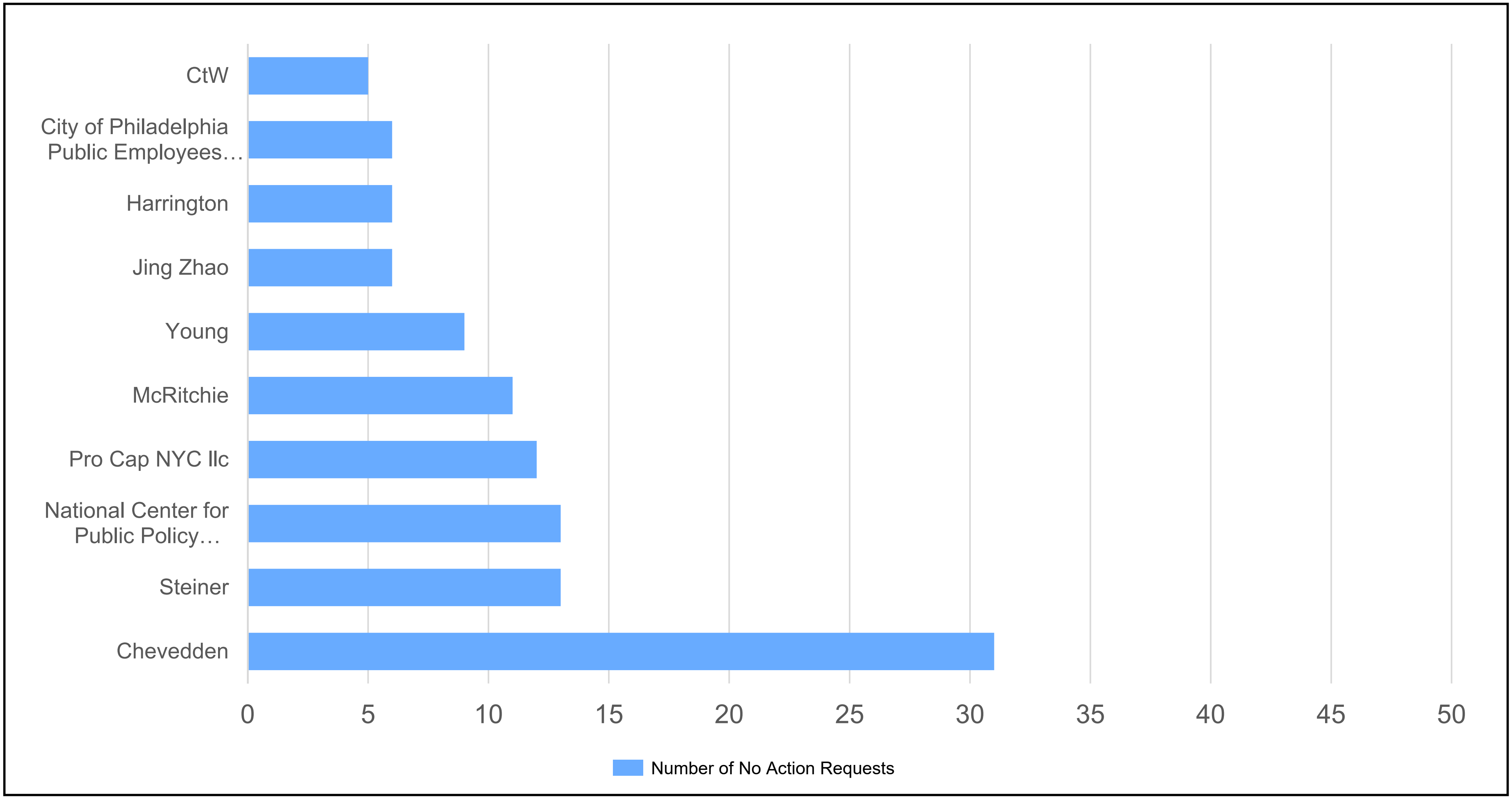
Exclusions are almost never granted on the basis of a violation of proxy rules, including the proponent making materially false or misleading statements (14a-8(i)(3))

More than

40%

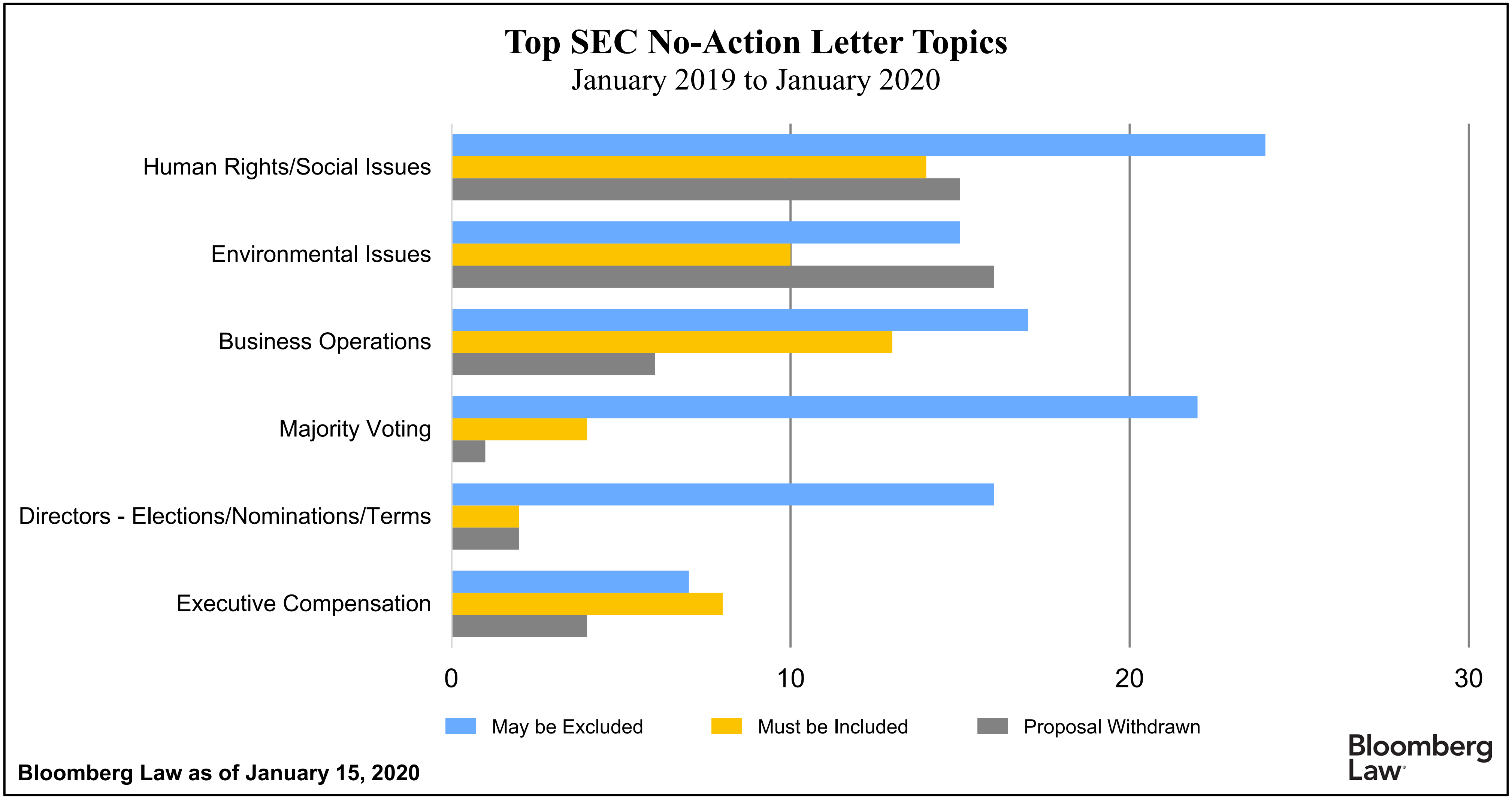
of environmental-related proposal no-action requests were granted on the basis of the ordinary business exception since 2016

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.

The SEC is expected to finalize updated rules on the shareholder proposal process, but the timing is uncertain.

— Eligibility requirements for submitting and resubmitting shareholder proposals would be tightened.
— The proposal was generally welcomed by registrants in response to increasing numbers of shareholder proposals from small or short term investors.
— However, the shareholder community was loudly opposed to the measures especially those providing political spending, environmental and human rights based proposals.
— Democrats in Congress recently proposed a block on the SEC's authority to issue new regulations.

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 2021.

ISS litigation over whether proxy voting guidance is proxy solicitation under the proxy rules, originally held in abeyance, is now likely to move forward.

Source: Alliance Advisors Newsletter April 2020

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.

- Service operates separately from the process for companies reporting *factual* errors or omissions.
- Participants must purchase the report—which by some estimates is $6,000 for an S&P 500 report. After receiving the report, the company or shareholder has up to 7 days to submit an RFS (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.

- Glass Lewis will republish the report with the RFS included (without editing and without further response) and subscribers to the original report will be notified.
- RFS material is likely to be additional soliciting material to be filed with the SEC.
- RFS is available in proxy contests and M&A related special meetings as well as annual meetings.

Source: Glass Lewis; Alliance Advisors Newsletter April 2020

Looking Forward to Fall 2020

Virtual meetings will continue to receive a great deal of scrutiny in the 2021 proxy season.

COVID-19 related issues will continue to have prominence.

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 states (including Delaware and New York) have provided guidance and relief to facilitate virtual shareholder meetings. State legislatures, when they meet, may make these changes permanent.

Most issuers are moving their annual meetings completely online. ISS counted close to 4,000 U.S. companies that switched to virtual-only formats by mid-May.

A number of organizations that ordinarily oppose (or are skeptical of) virtual only meetings such as ISS, Glass Lewis and NYCRS, issued statements that they will not take voting action against board members upon disclosure of switch due to the coronavirus outbreak. Some organizations asked issuers to 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 Newsletter April 2020
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

Pressure on businesses to prioritize workforce health and safety has been significant. A group of long-term institutional investors representing over $5 trillion in assets issued an open letter in March urging management and boards to focus on their human capital for the benefit of their stakeholders.

- Focus on employee retention and the importance of emergency paid leave.
- Scope of support being recommended is also expanding to include additional benefits, including additional insurance and childcare assistance.
- Also emphasized the importance of reinforcing support for the supply chain.

Capital allocation is coming under intense scrutiny:

ISS has indicated that dividend policies may need to be revisited, depending on the use of cash retained by companies and whether they will invest it in human capital.

Stock buybacks in particular have been criticized, as well as the failure to revisit executive compensation under the circumstances, particularly where companies are engaging in workforce reductions.

Source: Alliance Advisors Newsletter April 2020;
Investor Statement on Coronavirus Response (https://www.iccr.org/investor-statement-coronavirus-response)

Defensive Measures in Response to the Crisis

Turbulent markets and uncertainty typically lead to increased adoption of poison pills, in an attempt by companies to protect themselves from opportunistic or hostile actors in crisis situations.

Activist Insight reported that 55 pills have been adopted in the first half of 2020, more than in the previous three years combined. The majority of these pills have low triggers between 4.9% and 15% for passive investors.

ISS has indicated some level of understanding that there will be increased adoption of poison pills in the current environment, and have indicated that they will focus on the following in their analysis of pill adoption:

— Disclosure of the rationale for adoption of the pill

— Appropriate terms and thresholds

— Intent of the company to seek shareholder approval for the pill

Source: Alliance Advisors Newsletter April 2020

IV. Environmental and Sustainability Issues

Climate Change

A 2020 Morrow Sodali survey found that 91% of institutional investors surveyed consider climate change to be the most important engagement topic, compared to 85% in 2019 and 54% 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

A Ceres report found that 131 climate-linked resolutions have been filed in 2020, significantly more than 2019.

Fewer withdrawals of proposals in 2020 may indicate proponents gaining traction with investors

BlackRock. Vanguard Fidelity INVESTMENTS STATE STREET GLOBAL ADVISORS

Alliance Advisors noted that BlackRock's heightened attention to climate risk disclosure follows harsh public criticism and protests over its investments in fossil fuels and proxy voting on climate-related shareholder proposals.

In a 2020 letter to clients, noting the critical importance of climate change measures and sustainability to long term value, BlackRock announced that it will improve transparency around its company engagements and will provide more information on its voting decisions.

In March 2020, ISS introduced a new custom climate voting policy to allow clients to integrate climate-related factors into its voting decisions. It's 2020 interest survey shows ISS's continued focus on climate change as a factor in its voting decisions.

Criticism of voting records by asset managers and lobby and other spending by issuers that do not match climate or other social issue disclosures is a new and developing area of shareholder focus.

Source: Morrow Sodali (https://morrowsodali.com/uploads/insights/attachments/83713c2789adc52b596dda1ae1a79fc2.pdf), Ceres (https://www.ceres.org/sites/default/files/reports/2020-04/Proxy%20Voting%20Guidebook%202020.pdf), ISS, BlackRock, Alliance Advisors Newsletter April 2020

Climate Change – Notable Proposals

Climate change proposals focusing on the Paris Climate Accord passed at Chevron, Phillips 66, JB Hunt Transport Services and Ovintiv.

Phillips 66 / Chevron

- Climate Action 100+ investor initiative focused on over 16 companies, including Phillips 66 and Chevron.
- Consist with its annual letter and other statements, BlackRock became a Climate Action 100+ signatory in January 2020.

BlackRock

- BlackRock's annual letter, stewardship reports and actions during the season demonstrate the stronger stance it is taking on climate change.
- BlackRock voted in favor of the climate change proposal at Chevron's annual meeting in May, noting that stakeholders 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 supported the proposal at Ovintiv, although it voted against the proposal at J.B. Hunt.

Source: Georgeson

Climate Change – Notable Proposals (cont'd)

In conjunction with the Climate Majority Project, NYCRS, CalPERS and other investors representing $1.8 trillion in global assets called on the 20 largest U.S. publicly traded electric utilities to achieve 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).

— Alliance Advisors notes that "although many utilities have established ambitious carbon reduction goals—including net-zero targets in some cases—a sticking point for the [NYCRS] proponent has been their shift from coal generation to increased reliance on lower carbon natural gas, another fossil fuel."

Continuing it's push for net-zero emissions, NYCRS called on three of 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 on net-zero emissions after making proposals on net-zero emissions and reporting on the 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.

Source: Alliance Advisors Newsletter April 2020

Climate Change – Defunding and Divestment Proposals

Coalitions like ShareAction and As You Sow have become increasingly vocal in the climate debate, and are focusing on financial institutions, and the role that financing places in climate change, in their proposals.

— Barclays—the largest provider of financing of fossil fuels in Europe received a resolution from ShareAction, demanding it abandon its fossil fuel financing activities. In response, Barclays has proposed a competing plan, which focuses on bringing its financing activities in line with certain aspects of the Paris accord, but not abandoning financing activities entirely.

— A number of major U.S. banks have also received proposals from As You Sow. In an attempt to gain broader support than in past seasons, the proposals focus on reporting requests, with a specific focus on carbon emissions reductions associated with lending activities.

— Banks have been fairly successful in negotiating on climate change proposals by providing commitments not to fund certain heavy impact activities, such as investments in coal and other carbon heavy activities.

Source: Alliance Advisors Newsletter April 2020

Sustainability – Institutional Investors

In their 2020 annual letters to portfolio companies, **BlackRock** and **State Street Global Advisors** put CEOs and boards on notice that climate change and sustainability are a defining factor in issuers' long-term prospects and they expect companies to produce transparent and robust sustainability disclosures.

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

Key Notes:

- Asset managers have been increasingly voting in favor of shareholder proposals for climate change/sustainability reporting and have signaled votes against boards that do not make progress on managing climate risks and reporting.
- Off-season engagement will be important for issuers to discuss their sustainability and climate related efforts and disclosure with these asset managers.

State Street announced it will evaluate companies' ESG disclosure and performance using its proprietary R-Factor scoring system.

- Issuers are able to request their R-Factor score
- 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.

Source: Alliance Advisors Newsletter April 2020; BlackRock, State Street

Sustainability Ratings – Competing Standards

Sustainability ratings have yet to converge. Almost all companies cite and follow multiple standards, in an effort to speak to a broad variety of stakeholders.

According to the G&A Institute, 90% of S&P 500 published corporate sustainability reports in 2019, with 65% of the reports using either GRI or SASB frameworks.

BlackRock relies on SASB and TFCD guidelines, which has had a substantial impact on trends by companies to more heavily rely on these standards.

Vanguard also utilizes TCFD recommendations as a standard for analyzing sufficiency of disclosure on sustainability-related issues.

According to Morrow Sodali's 2020 survey, 81% of investors recommend SASB and 77% of investors recommend TCFD as best standards to communicate their ESG information. This will likely result in increased reporting conformity around these voting frameworks over time.

Source: Morrow Sodali; Alliance Advisors Newsletter April 2020

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

STATE STREET GLOBAL ADVISORS

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

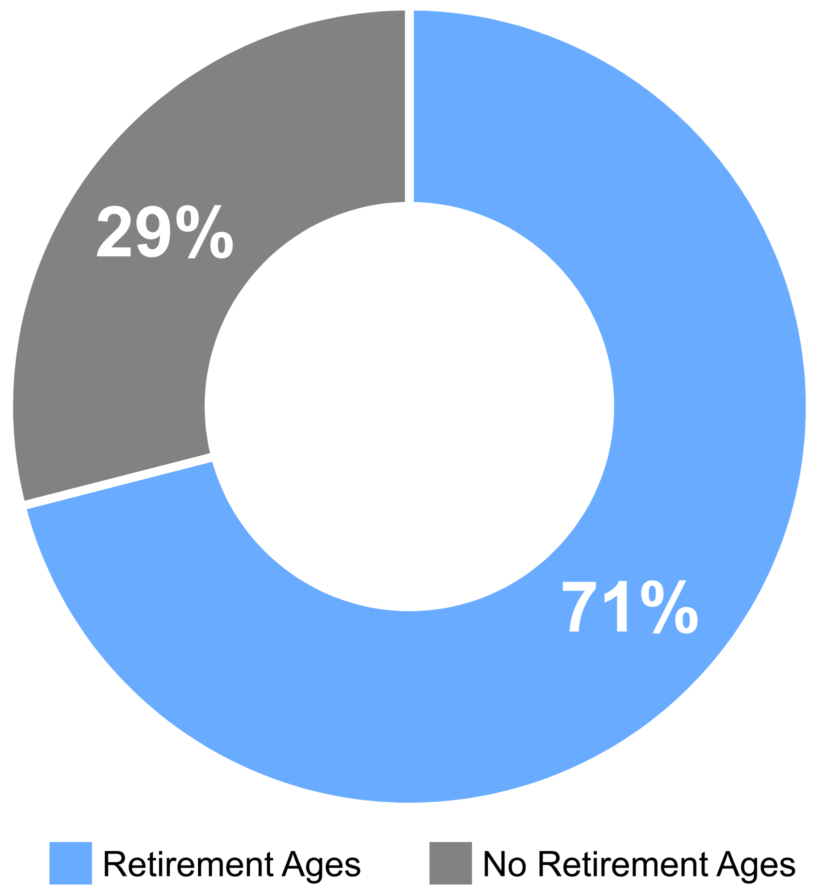
— **59%** bring experiences from the private equity/investment management, consumer and information technology sectors

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

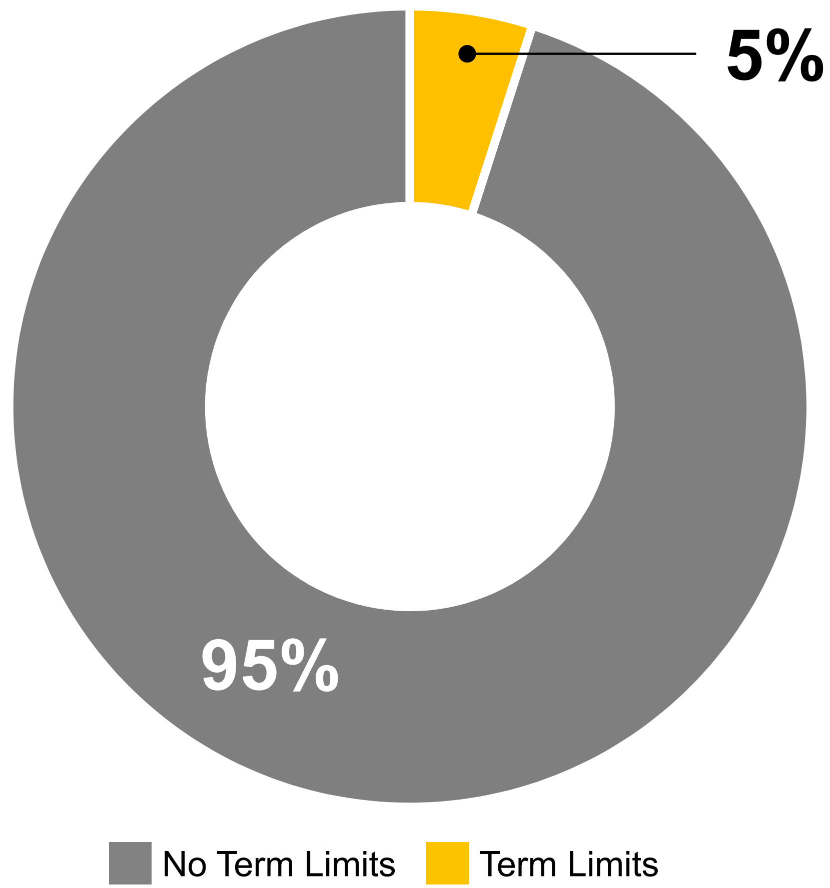
Source: 2019 Spencer Stuart Board Index

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	Alaska Air Group
General Motors	Amazon
American Water Works	Best Buy
Omnicom Group	Autodesk
CBS	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.

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

Director Gender Diversity (cont'd)

Boards are increasingly placing women into committee leadership roles

— Women now chair 24% of board committees overall
  - 24% of audit committees are chaired by women (versus 20% in 2019)
  - 24% of compensation committee chairs are women (versus 19% in 2019)
  - 25% of nominating and governance committee chairs are women (versus 24% in 2019)

— However, women still lag behind on board chair (only 5%, a decrease from 7% last year) and lead independent director roles (representing only 10% of all board leadership positions, which remained flat from last year)

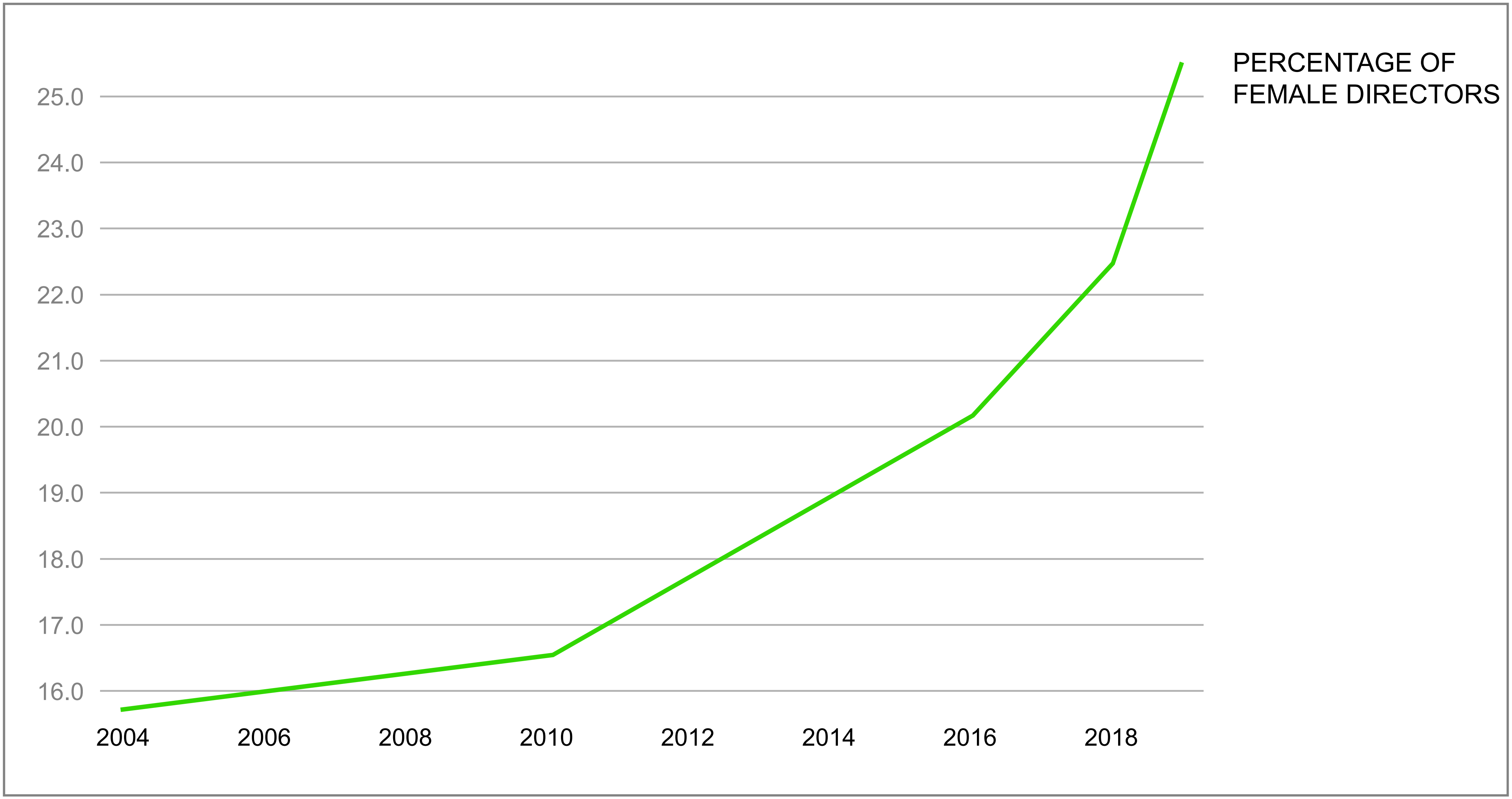
Women director backgrounds tend to differ from men

— Women less frequently have C-suite experience

— But women are more likely to be functional leaders and financial executives from the technology and telecommunications sectors

Source: 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

Starting in 2014 NYCRS launched its trailblazing Boardroom Accountability Project advocating for governance transparency and reforms.

In Fall 2019, Boardroom Accountability Project 3.0 was launched with NYCRS asking 56 S&P 500 companies to adopt "Rooney Rule" policies to consider women and people of color for all board and CEO appointments, regardless of current diversity of their board or CEO and notified companies that it would file shareholder proposals at companies that lack apparent diversity "at the highest levels."

- NYCRS noted it as "the first time a large institutional investor has called for the 'Rooney Rule' to be used in CEO searches."

According to Alliance Advisors:

- 13 out of 17 companies implemented "Rooney Rules" after receiving NYCRS shareholder proposals. According to Alliance Advisors:
  - One proposal received majority support, one did not
  - Two issuers implemented policies at least partially addressing the diversity concerns
- NYCRS has also advocated for healthcare and insurance companies to address gender pay disparities.

Source: NYC Comptroller, Georgeson; Alliance Advisors Newsletter April 2020

Investors Drive Movement on Director Gender Diversity

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

STATE STREET GLOBAL ADVISORS

— 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

Goldman Sachs received a lot of press when it announced that it will no longer 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."

Goldman has also announced plans to increase the threshold to two directors in 2021.

Canada's RBC Global Asset Management (RBC GAM) has announced that it will not vote in favor of nominating/governance committee members on boards that are less than 25% female.

The U.K.'s Legal & General Investment Management (LGIM) has voiced a similar policy for the largest 100 S&P 500 firms. They too have indicated they will expand this policy in 2021.

In its 2019 post-season review, the EY Center for Board Matters reported that

- votes against all of the nominating/governance committee members on male-only S&P 1500 boards reached an average of 18% in 2019.
- votes against nominating/governance committee chairs in this scenario have tripled since 2016, averaging 24% in 2019.

Source: Alliance Advisors Newsletter April 2020

Proxy Advisory Firm and Exchange Response to Gender Diversity

GLASS LEWIS

Glass Lewis will recommend against the nominating committee chair or board at Russell 3000 or S&P 500 companies that have no female members and may recommend against other nominating committee members, absent mitigating factors (i.e., a firm commitment to appoint).

Glass Lewis will review proposals to disclose global median gender pay gaps on a case by case basis; generally will recommend against proposals where the company has provided sufficient information concerning their diversity initiatives as well as information concerning how they are ensuring that women and men are paid equally for equal work.

ISS

In 2019 ISS revised it's policy to similarly, recommend against or withhold from the chair (and possibly other directors) on the nominating committee at Russell 3000 or S&P 500 companies where there are no women on the board, absent mitigating factors (including a firm commitment to appoint).

ISS will review proposals to disclose global median gender pay gaps on a case by case basis.

NYSE

In May 2019, the NYSE launched an advisory council to proactively address the need for inclusive leadership by assisting boards in connecting with diverse candidates.

Currently, the council has 22 member CEOs, including those from some of the worlds largest and most well-established brands in finance, airlines, consumer goods and more.

Source: NYSE, Glass Lewis, ISS, Alliance Advisors Newsletter April 2020

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

Source: 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: NYC Comptrollers Letter July 1, 2020

Diversity in Senior Management

While board diversity was previously the main focus, shareholder proposals are now focusing more on diversity at the senior management level, where change in terms of female and minority representation has been slower to catch on

TRILLIUM ASSET MANAGEMENT

Trillium Asset Management continues to submit proposals insisting that companies describe their plans to diversify their management ranks, not only from a gender perspective, but also in terms of race and ethnicity. Its proposal at Newell Brands received majority support, despite the withdrawal of proposals at the other companies, following negotiation.

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 previously 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

Source: Alliance Advisors Newsletter April 2020

Gender Pay Equity and Workplace Diversity

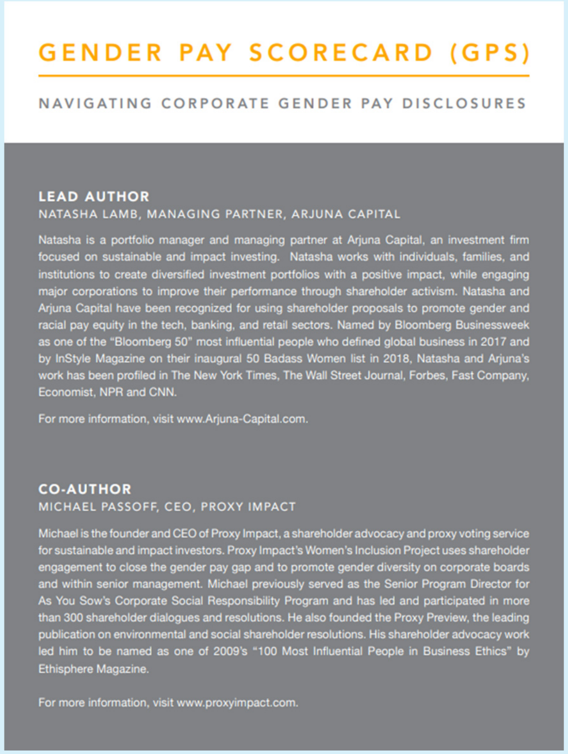
Starting in 2015, Arjuna Capital has spearheaded gender pay equity disclosure shareholder proposals. Companies in the financial, technology, consumer retail and healthcare sectors have been targeted in their campaign, and in the past few years at least 22 companies have agreed to publicly provide such disclosure.

In the 2019 proxy season, Arjuna Capital turned its focus on the disclosure of global *median* gender pay gap information, which is designed to shed light on the "leadership gap" – i.e., the underrepresentation of women in the highest paying jobs. Citibank was the first to agree to report their median gender pay gap data following a proposal submitted by Arjuna Capital, which resulted in the proposal being withdrawn.

To kick off the 2020 proxy season, Arjuna Capital targeted Starbucks and Microsoft, among others with median gender/racial pay equity proposals. A number of companies have agreed to disclosure, elsewhere, where the proposal is put to a vote, support levels are increasing.
Opposition continues to focus on concern that the figure is misleading as it does not account for difference is practice in different locations.

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

NATASHA LAMB, MANAGING PARTNER, ARJUNA CAPITAL

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.

For more information, visit www.Arjuna-Capital.com.

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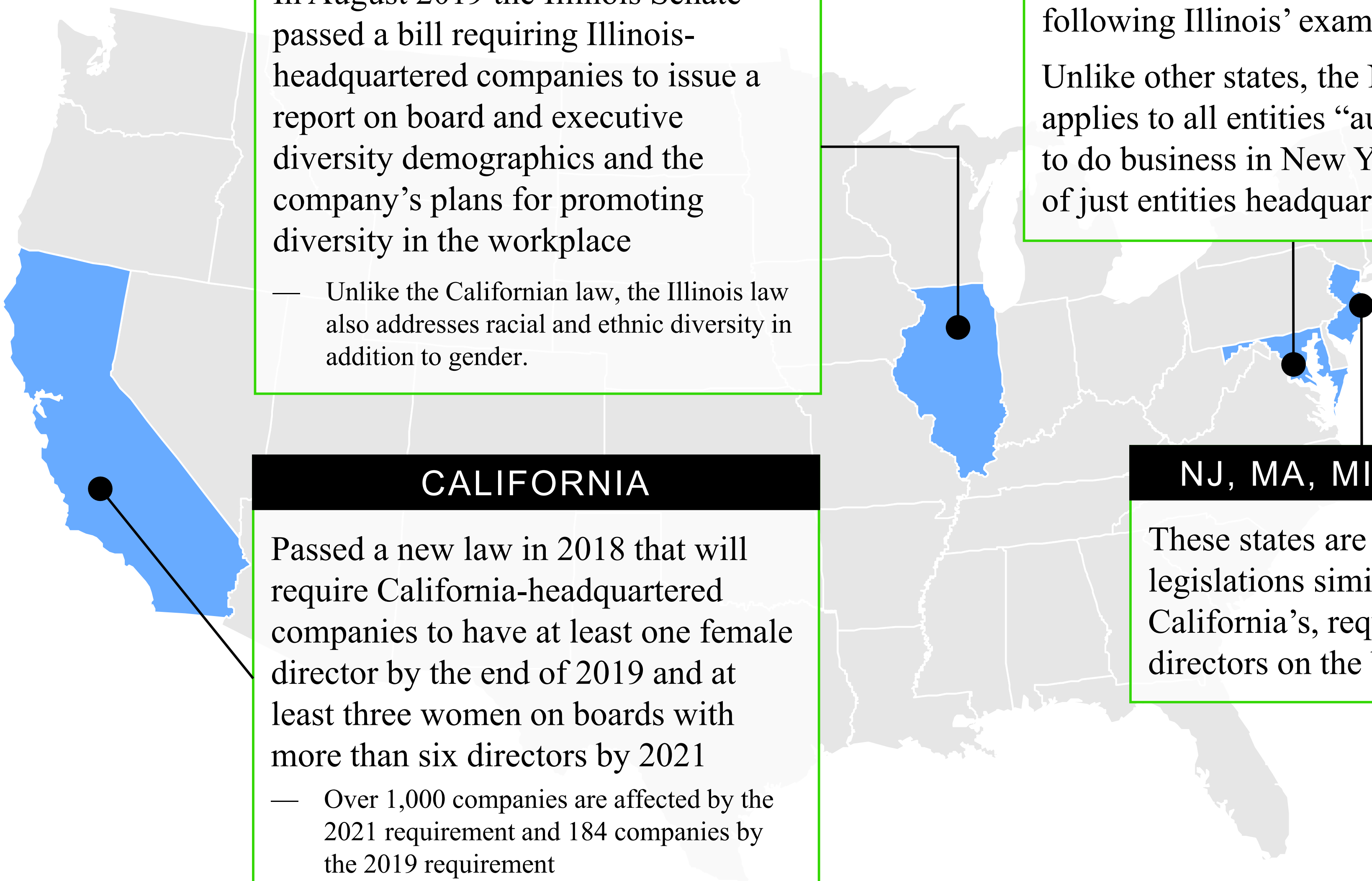
For more information, visit www.proxyimpact.com.

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
  - Trillium Asset Management submitted 8 workforce diversity proposals in 2020
  - As You Sow submitted 7 proposals with two receiving majority support at Fastenal Company and Genuine Parts Company

Source: Alliance Advisors Newsletter April 2020; ISS Analytics

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 were a focus when it came to shareholder proposals relating to human rights. Activists submitted a number of proposals at companies such as Amazon.com, Alphabet and Facebook, all of which historically are the subject of a number of proposals on issues relating to data privacy and content.

Harrington Investments and SumOfUs submitted a proposal, requesting that Apple report on its policies on "freedom of expression and access to information, specifically its compliance with the Chinese government's censorship demands." The proposal received 40.5% support.

Apple has received criticism for removing content (including Western news services and other apps from its Chinese App Store), purportedly at the request of the Chinese government.

Azzad Asset Management's proposal at Alphabet, received majority support this season. The Azzad proposal demanded disclosure of content removal requests from governments, "including delisted, censored, downgraded or blacklisted terms, queries or sites" on an annual basis.

Source: Alliance Advisors Newsletter April 2020

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. Similar to the Business Roundtables statement on Corporate Purpose, co-determination stems from the idea that businesses should serve employee stakeholders as well as shareholders and are often brought by employee groups.

According to Alliance Advisors, shareholder proposals on employee representation remain unpopular with shareholders, averaging only 2.5% support last year. It remains to be seen if proponents will continue to keep the issue alive after the 2020 election.

Notable proposals include, one at NorthStar Asset Management's, referencing the Business Roundtable letter and asking for a report on opportunities to encourage the inclusion of non-management employees on the board. Walmart employees seeking to "promote significant representation of employees in corporate decision making" submitted a proposal to include hourly associates in the initial list of board candidates.

While not repeated for the 2020 annual meeting, Alphabet had a repeat proposal in prior years to nominate a non-executive employee to the board by 2021, following demands from highly visible employee walk outs and protests over the company's polices on harassment, climate change, immigration and other concerns.

Source: Alliance Advisors Newsletter April 2020; SEC filings

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 2020 survey of institutional investors reported that last year a total of 83% of respondents indicated a need for improvement in HCM disclosure. This year, the prime topics for disclosure improvements included board involvement in setting the culture (95%) and health and safety indicators (71%).

BlackRock’s annual letters to CEOs have been increasingly focused on the responsibilities companies have to their workers, and has raised it as a key topic in COVID-19 related engagements.

- BlackRock again designated HCM as one of its top 2020 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 Change to Win (CtW) continued their campaign on “inequitable employment practices” that keep workplace misconduct in the shadows with a focus on mandatory arbitration.

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

Source: Morrow Sodali

Election Year Issues

Election year themes have been the basis for some shareholder campaigns.

- As abortion rights has taken the stage at the Supreme Court level, a group of 36 investors managing $236 billion in assets asked nearly 30 companies to "discuss their positions related to sexual and reproductive health care, including contraception and abortion."
- Other issues such as stakeholder capitalism and worker representation on boards have also been of interest, as have social issues like opioid abuse, prescription drug pricing and gun control.
- Most of these proposals got withdrawn as a result of shareholder engagement by companies and negotiation, as well as decisions by companies to omit the proposals.

Source: Roll Call (https://www.rollcall.com/2020/02/12/investors-push-companies-to-make-business-case-on-abortion/)

VII. Other Governance Topics

Overboarding

State Street has articulated that it will vote against named executive officers (NEOs) of public companies who sit on more than two total public company boards, a change from their prior policy of three public company boards. Their overboarding policy with respect to board chairs and lead directors, however, remains at more than three public company boards. Their general overboarding policy remains fairly flexible for other directors, although they have reduced it from more than six public company boards to more than four.

AllianceBernstein limits CEOs to two total board seats and other directors to three total board seats. T. Rowe Price has maintained its five board limit for directors, but has similarly limited CEOs to two total board seats. Boston Partners Global Investors also has two different policies: a three-board limit for CEOs and a four-board limit for other directors.

Source: Alliance Advisors Newsletter April 2020

Overboarding (cont'd)

BlackRock may vote against CEOs on more than one public company board besides their own and outside directors on more than four public company boards.

In April 2019, Vanguard announced that it would generally vote against named executive officers serving on more than one outside public company board (for a total of two public company boards), except at the company at which he or she is an executive officer.

— Many board service policies permit directors to serve on more boards than allowed under Vanguard and BlackRock's policies
  - > 60% of the 113 S&P 500 companies with limits on their CEO's outside board service set the limit at two or more outside boards
  - 52% of the 317 S&P 500 boards with limits for all independent directors set a four total board seats limit; 5% set the limit at more than four boards

ISS and Glass Lewis have less strict policies

— ISS will generally recommend against CEOs who sit on more than three public company boards and other directors who sit on more than five public company boards

— Glass Lewis will generally recommend against executive officers who sit on more than two public company boards and other directors who sit on more than five public company boards

Source: Alliance Advisors Newsletter April 2020

Chevedden's 2020 Season

Chevedden & Co (John Chevedden, James McRitchie and Kenneth Steiner) continued to be active (but generally not successful), mostly with proposals on written consent, proxy access and elimination of supermajority voting proposals.

Another favorite, independent board chair proposals were generally down this year and they appear to have scaled back their requests in this area. Last year, they accounted for two-thirds of all independent chair resolutions filed, compared to a little over half this year.

This season, Chevedden & Co also submitted a new variation of governance resolutions. One proposal submitted at over a dozen issuers 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. Issuers were not generally successful in excluding the provisions, with state law arguments but the proposals were not widely supported by shareholders, ISS or Glass Lewis.

Source: Alliance Advisors Newsletter April 2020

Chevedden's 2020 Season (cont'd)

The Chevedden & Co proposals also focused on procedural matters and thresholds of written consent and special meeting rights. Chevedden submitted proposals at some non-Delaware companies to permit shareholder removal of directors with or without cause. Alliance reports that "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."

Additionally, Alliance Advisors notes James McRitchie may be gaining traction in his drive to have investors announce their votes in advance of annual meetings to allow for comparison of funds' voting records (again, echoing concerns of investors that voting records are not matching disclosure of priorities). In early April, Neuberger Berman announced its "**NB25+**" initiative to publicly disclose and explain the firm's voting rationale and intentions at more than 25 key annual shareholder meetings.

Board declassification had a moment of popularity and appears it may be on the docket again next year, from long-time activist Herbert Denton (Pro Cap NYC llc). While a dozen proposals were submitted, issuers requested exclusion on the basis of missing filings deadlines, at which time Pro Cap explained they intended as suggestions for the issuers, not shareholder proposals.

Source: Alliance Advisors Newsletter April 2020; SEC No Action Letters

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.

"She is a total professional and is completely considerate of our needs. She is very responsive and attentive."
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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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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