2020-21 Proxy Season Review: Part 1

OCTOBER 14, 2020

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Computershare | Georgeson PJT Camberview

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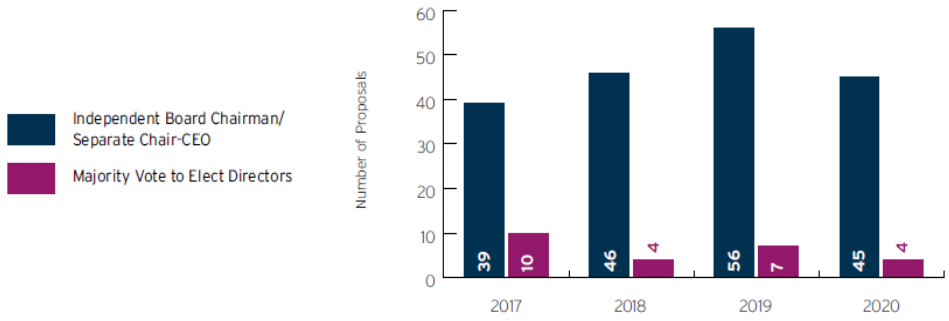
Governance Developments

Corporate Governance – Increasing Focus on Separation of the Roles of Chair and CEO

Proposals Voted Upon Relating to Board Issues, 2017-2020



Average % of Shareholder Support

	2017	2018	2019	2020
Independent Board Chairman / Separate Chair-CEO	30%	32%	29%	34%
Majority Vote to Elect Directors	54%	62%	57%	22%

Investors such as Wellington and Capital Group are reframing their views on board leadership, asking "**why wouldn't you separate these roles**"?

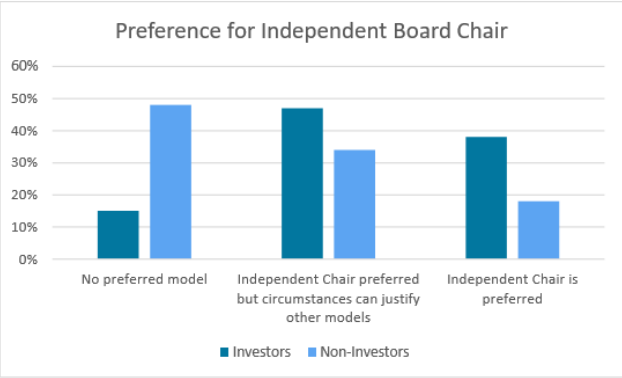


Chart 1 source: Georgeson Annual Corporate Governance Review
Chart 2 source: ISS policy survey

Corporate Governance – Mixed Results on Shareholder Rights Proposals

Right to call a special meeting

Number of proposals reaching a vote (40) increased after a dip in 2019

Chevedden Group was responsible for at least 33 of the 40 that went to a vote

Continued high average support (42% in 2020)

Of the six that received majority support this season, three sought to reduce the threshold required from 25% ownership to 10%

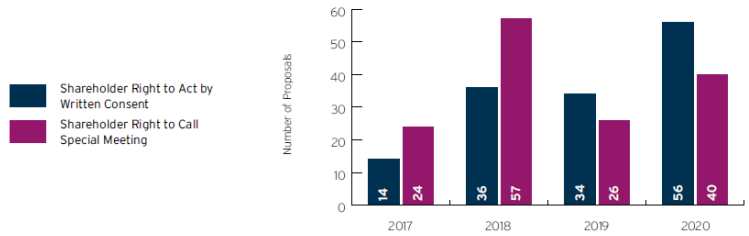
Right to act by written consent

Acceleration in the frequency of proposals of these proposals – 56 went to a vote in 2020, compared to 34 in 2019 – with 2 passing

Average continued its downward trend from the high of 45% in 2017 to 35% for 2020

A new twist on this proposal in 2020 were those that sought to lower the ownership percentage required to commence this process – these received low support, contributing to the noted decline in average support

Proposals Voted Upon Relating to Shareholder Rights, 2017-2020



Average % of Shareholder Support

	2017	2018	2019	2020
Shareholder Right to Act by Written Consent	45%	42%	39%	35%
Shareholder Right to Call Special Meeting	42%	40%	43%	42%

Chart source: Georgeson Annual Corporate Governance Review

Environmental & Social Update

Shareholder Proposals: Persuasive Tool for ESG Action

A record number of E&S shareholder proposals passed in 2020, making them even more effective tools in driving dialogue and change

E&S shareholder proposals continued to capture the largest share of proposals submitted – and 20 proposals received majority support[1]

- **7** — **Political contributions and lobbying** proposals – including one relating to climate-related lobbying
- **4** — **Climate reporting** proposals compared to none in 2019
- **4** — Proposals requesting **human capital and workforce diversity disclosure**, with average support relatively high at around ~69%
- **3** — Proposals passed on additional topics including **employment-related arbitration, governance of opioid risk, and general sustainability reporting**
- **2** — Proposals on **board diversity**, including one from the NYC Comptroller's "Rooney Rule" campaign which also seeks management diversity

Certain topics are more perennially targeted and most categories continue to enjoy high rates of withdrawal or omissions

Five most frequent proposal types | **2020** vs. 2019

Proposal Category	Number Submitted	Avg. Support (# voted)	Number Passed
Lobbying/Political Disclosure	**68** 99	**35.8% (53)** 34.2% (62)	**6** 4
Climate-Related	**64** 62	**37.7% (17)** 32.1% (11)	**5** 0
Human Rights	**31** 38	**22.5% (15)** 29.5% (15)	**0** 2
Workforce Diversity	**31** 15	**33.6% (11)** 38.6% (7)	**3** 2
Pay Gap	**13** 31	**12.6% (13)** 23.3% (17)	**0** 0

ISS Voting Analytics; data represents proposals voted on at Russell 3000 annual meetings held through June 30, 2020. Vote results reflect For/(For+Against).

Spotlight on the "E" of ESG – Climate Change

Investors are being more assertive on their expectations for companies to address climate-related risk - and companies are increasingly making meaningful commitments on climate change

Climate change remains at the top of the engagement agenda

BlackRock

Environmental Risks and Opportunities, including climate risk, is named as a key engagement priority

"*Climate change has become a defining factor in companies' long-term prospects… Climate risk is investment risk.*"

Larry Fink's Letter to CEOs, Jan. 2020

Vanguard

Expectations published June 2020 on climate include climate competence on boards, effective oversight, and clear disclosure

"We will continue to raise our voice on climate risk through our voting and engagement activities, and we will raise our expectations for the companies that our funds invest in."

Update on the 2020 Proxy Season, Apr. 2020

STATE STREET GLOBAL ADVISORS

Has stated that ESG is "no Longer an Option for Long-Term Strategy" and called on boards to more clearly appreciate that issues like climate change pose risks to their businesses

Climate Action 100+

2020 joiners include BlackRock, JP Morgan, Wellington, Nuveen, and Invesco. Members commit to engaging and working with companies to take action on climate change risk

In September 2020, called on 161 target companies to implement net-zero strategies by 205-

Companies Take Action

2020 has already seen a number of high-profile climate commitments from companies

Net carbon negative

Microsoft, Starbucks Coffee

Net-zero emissions / carbon neutral

Shell, bp, Total, Southern Company, Barclays, Delta, Repsol

Limiting financing for carbon-intensive industries and projects

Goldman Sachs, J.P.Morgan, citi

Sources: public filings, investor, company and organization websites.

Spotlight on the "S" of ESG

Human capital and social topics have come to the forefront of the investor agenda, and the COVID-19 pandemic and recent racial justice events have brought even greater focus and clarity on investor expectations

Key Social Topics

Employee Health, Safety and Wellbeing

How are companies protecting the health and safety of employees and ensuring wellbeing in times of crisis?

Diversity & Inclusion (D&I)

How is gender, racial, and ethnic diversity of the board, executives, and workforce ensured? What data is disclosed?

Talent Recruitment and Development

What initiatives are in place to recruit, retain, and develop employees?

Human Rights and Labor Issues

What commitments has the company made on human rights and how is the company acting on them?

INVESTOR FOCUS AREAS

More robust quantitative data enables investors to evaluate a company's positioning and progress on board and workforce diversity, talent and human capital management, pay equity and other metrics

Enhanced qualitative disclosure provides insight into a company's approach on these topics and key initiatives in place to make progress against goals

Board oversight signals how embedded relevant social topics are into the board and management's strategic considerations and oversight function

INVESTOR TOOLS AND APPROACHES

Engagement: A growing number of investors are making clear their intent to engage with issuers on human capital management and social topics, including D&I, talent development, health & safety, and corporate culture

Campaigns: Individual investors and coalitions have launched campaigns to compel company action on human capital topics such as workforce diversity

Proxy voting policy updates: Investors and proxy advisors are expected to update voting policies to reflect new expectations on social topics

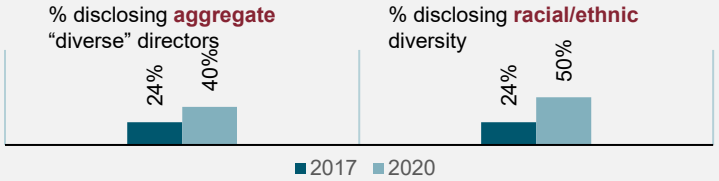
Shareholder proposals and annual meeting votes: A surge of socially-focused proposals is expected for 2021, and pressure will be on investors to vote in alignment with their stated priorities

State of Disclosure and Go-Forward Expectations

Companies are expected to enhance disclosures around the diversity of boards, management teams and the broader workforce, as well as communicate strategies to improve diversity

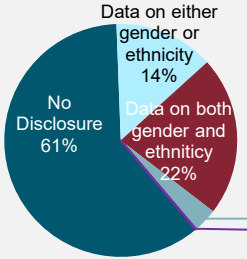
More companies are disclosing the gender, race and ethnic diversity of their boards

Percentage of Fortune 100 companies[1]



However, most companies do not disclose workforce diversity data

Of 922 companies reviewed[2]



Only **3%** of companies provide EEO-1-type disclosure

Only **1** company reported EEO-1 Component 2 pay data

Push for EEO-1 Component 2 likely to gain momentum as more companies disclose Component 1

Effective disclosure will go beyond data

While data is viewed as important, **investors will also look for narrative around the strategies and goals companies will use to drive and measure progress**

BlackRock

*"We encourage **disclosure by the board of its thinking, actions, and progress (backed by relevant data)**…Investors and others can then assess whether they believe the approach taken by a company is appropriate …"*

STATE STREET GLOBAL ADVISORS

*"it is critical for boards and investors to have more robust information and data regarding the racial and ethnic workforce diversity of companies…and to **understand the steps they are taking to achieve relevant goals**."*

BlackRock discloses own commitment to advancing diversity

BlackRock's publication "Enhancing Diversity Disclosures"[3] describes its strategy around the recruitment, development and retention of diverse talent, approach to transparency and accountability, and clearly defined goals to drive progress

Data contextualized within a broader HCM narrative:

EEO-1

Disclosed 2 years of EEO-1 data…

+

Strategy, metrics, goals

…along with a strategy to improve diversity including identifying metrics to measure progress and drive accountability

(1) EY, "Four ESG Highlights from the 2020 Proxy Season" (28-Jul-2020)
(2) JUST Capital, "Diversity & Inclusion in Corporate America: A Collection of JUST Capital Insights & Analysis" (04-Jun-2020).
(3) BlackRock, "Enhancing Diversity Disclosures" (Jul-2020)

Board Composition

Continued Focus on Board Diversity

Focus on Diversity Shifting to Racial and Ethnic Diversity

- In response to proposals received from the NYC Comptroller's office for inclusion in their 2020 proxy statements, approximately 12 companies adopted Rooney Rule policies with respect to directors and the CEO position
- In July, a group of NYC retirement systems sent letters to 67 S&P 100 companies that had issued public statements supportive of racial equality requesting that the companies commit by August 30 to publicly disclose their EEO-1 Report starting in 2021
- In August, State Street sent a letter to board chairs asking for expanded disclosure of their "risks, goals and strategy as related to racial and ethnic diversity"
- At the end of September the Governor of California signed a bill passed by the state legislature requiring public companies based in the state to have at least one racially, ethnically or otherwise diverse director by 2021

Overboarding

Represents a Continuing Challenge, With Many Institutional Investors Adopting Stricter Standards

- State Street revised its policy to match the four total board seat limit previously embraced by BlackRock and Vanguard for non-employee directors, and took the further step of reducing its limit to three for board chairs and LIDs
- COVID-19 has reinforced investor belief that the time demands on directors require service on fewer boards
- An increase in negative votes based on stricter overboarding policies contributed to the decrease in directors receiving 95%+ support and an increase in directors receiving 80% to 95% support

Compensation

Compensation – 2020 Say on Pay Support Levels

Average support across S&P 1500 companies was comparable year-over-year at 91%

Within the S&P 500, support decreased in 2020: 74% of companies received support 90% or higher compared to approximately 79% of companies in 2019

“Red zone” results (those receiving between 70% and 50% support) improved within both the S&P 500 and 1500 year over year, decreasing from 5.5% to 5.2% and from 6.2% to 4.4%, respectively

While ISS against recommendations increased year over year within the S&P 500 (from 10.7% to 11.5% of SoP proposals), within the S&P 1500 they decreased to 8.3% in 2020, compared to 10.4% in 2019

The failure rate for S&P 1500 companies improved slightly to 1.7% (26 companies) in 2020 compared to 2.1% (30 companies) in 2019. Common reasons for failure include:

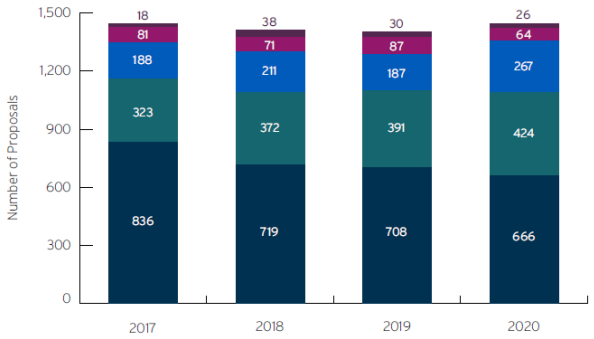
- CEO pay for performance misalignment, often due to insufficiently rigorous goals or the broad use of discretion to accelerate or adjust payments without a mitigating rationale
- “One-time” factors like special awards or severance payments for departures disclosed as voluntary
- Pay magnitude concerns

Support among top 25 investors

Biggest increase: Legal & General Investment Management, which voted in favor of 57% of proposals in 2020 compared to 47% in 2019

Biggest decrease: by Natixis Global Asset Management, which voted in favor of 42% fewer proposals in 2020. Its support dropped from 91% in 2019 to 49% in 2020

Support among BlackRock, Vanguard and State Street largely unchanged year-over-year



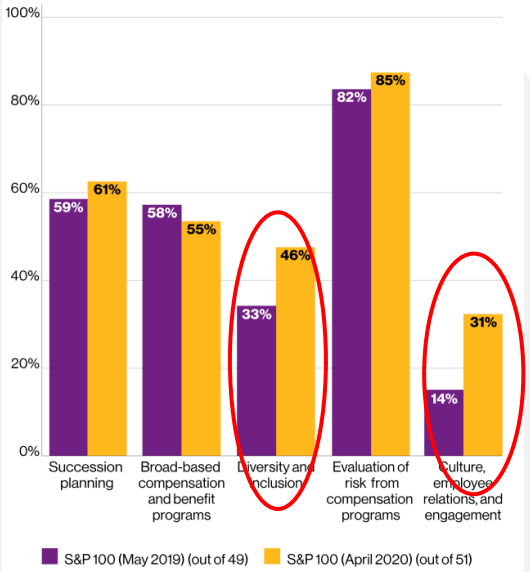
	2017	2018	2019	2020
Average Shareholder Support*	91.8%	90.5%	90.6%	90.7%
Total Voted	1446	1411	1403	1447
Total Below 50% Support*	18	38	30	26
Total Failed	18	35***	30	25**

*Vote calculations count abstentions as AGAINST votes
**GameStop passed with over 50% support as voting requirement did not include abstentions as AGAINST votes
***Customers Bancorp, PetMed Express and Jefferies Financial passed with over 50% support as voting requirement did not include abstentions as AGAINST votes

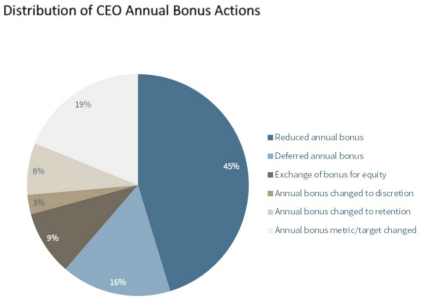
Chart source: Georgeson Annual Corporate Governance Review

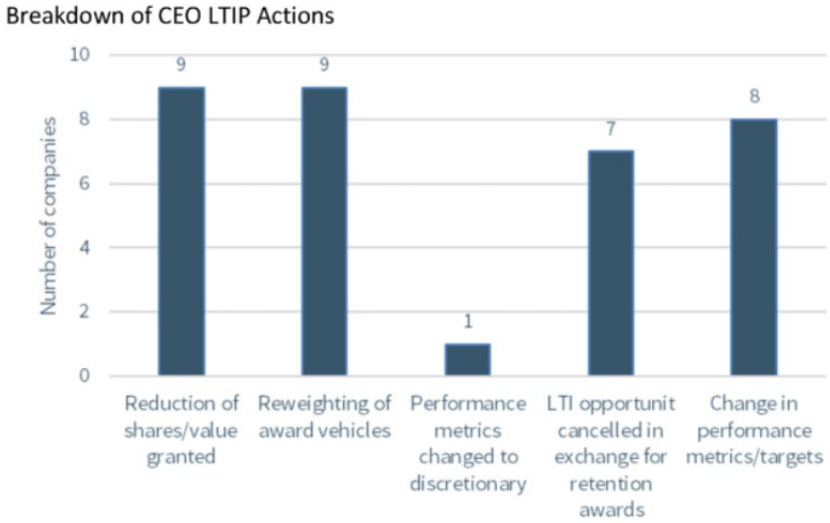
Compensation – Recent Developments

Compensation Committees' are formalizing their expanded focus on human capital management issues



In the first half of 2020
92 companies made adjustments to short-term comp and 33 adjusted long-term comp





HCM source: Willis Towers Watson https://www.willistowerswatson.com/en-us/Insights/2020/09/What-are-directors-saying-about-ESG-and-human-capital-governance
STIP and LTIP source: https://corpgov.law.harvard.edu/2020/09/27/sharing-the-pain-how-did-boards-adjust-ceo-pay-in-response-to-covid-19/

Compensation – COVID-19 Considerations

We expect investors will be carefully scrutinizing 2020 pay decisions, do not expect a “pandemic pass”

Start CD&A drafting early!

- Any adjustments to annual or in-flight long-term performance metrics, or use of discretion, will need to be clearly disclosed
- Disclose how performance is tracking with respect to in-flight long term incentive plans
- Provide clear rationale for any new performance goals
- Companies reaching maximum payouts due temporary, COVID-related performance spikes may draw investor ire
- Consider adding disclosure to address executive compensation decisions as compared to the broader employee population

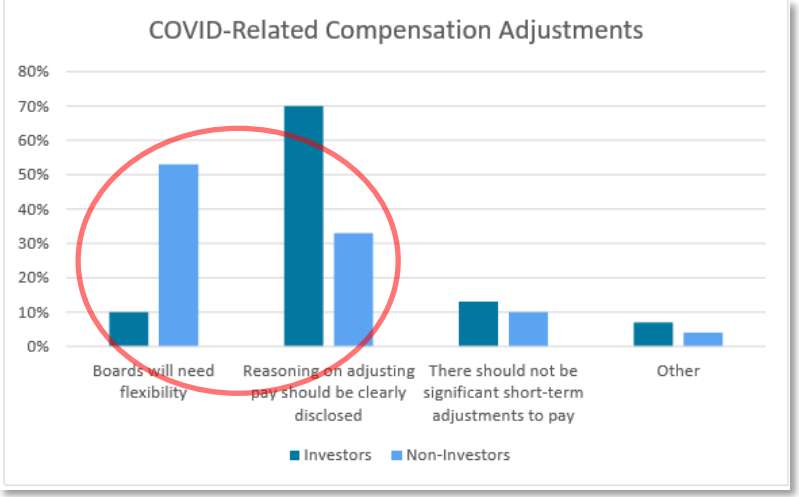


Chart source: ISS https://www.issgovernance.com/wp-content/uploads/publications/2020-iss-policy-survey-results-report-1.pdf

Regulatory Developments

Modernization of Rule 14a-8

- On September 23, 2020, the Securities and Exchange Commission (SEC) adopted amendments to the shareholder proposal rule – Exchange Act Rule 14a-8
- The amendments reflect the first substantive update to the rule since 1998 when the submission eligibility thresholds were last changed
- The rule changes largely track the November 2019 proposals though, as always, there were some changes between proposal and adoption
- As expected, the Commission vote was split 3-2 along party lines
- The rule changes are effective 60 days after publication in the Federal Register and apply to proposals submitted for annual or special meetings to be held on or after January 1, 2022, subject to a special transition period for the initial submission threshold

Rule 14a-8 – Submission Threshold

- Consistent with the proposal, the rule changes amend Rule 14a-8(b) to replace the current requirement to hold at least $2,000 or 1% of a company's securities continuously for at least one year with three alternative thresholds that will require a shareholder to demonstrate continuous ownership of at least:
  - $2,000 of the company's securities for at least three years;
  - $15,000 of the company's securities for at least two years; or
  - $25,000 of the company's securities for at least one year.
- However, shareholders meeting the current threshold will be able to continue to rely on the more permissive threshold for proposals submitted for annual or special meetings to be held prior to January 1, 2023
- Shareholders will no longer be able to aggregate holdings to meet the threshold

Rule 14a-8 – Resubmission Threshold

- Consistent with the proposal, the SEC amended Rule 14a-8(i)(12) to replace the levels of shareholder support a proposal must receive to be eligible for resubmission at the same company's future shareholder meetings ***from 3%, 6% and 10%*** for matters previously voted on once, twice or three or more times in the last five years, respectively, with thresholds of ***5%, 15% and 25%***, respectively
- The SEC did not adopt the proposed "***momentum***" provision that would have permitted exclusion of a proposal dealing with substantially the same subject matter as proposals previously voted on by shareholders three or more times in the preceding five calendar years where support has waned over time

Rule 14a-8 – Use of Representatives

- As amended, Rule 14a-8(b) provides that shareholders that use a representative to submit a proposal must provide documentation making clear that the representative is authorized to act on the shareholder's behalf and to provide meaningful assurance as to the shareholder's identity, role and interest in the proposal
- More significantly, the SEC amended Rule 14a-8(c), the one proposal rule, to provide that the one-proposal limit applies to "each person" rather than "each shareholder" who submits a proposal
  - A shareholder proponent will not be permitted to submit one proposal in his or her own name and simultaneously serve as a representative to submit a different proposal on behalf of another shareholder for consideration at the same meeting
  - Similarly, a person will not be permitted to submit more than one proposal to be considered at the same meeting on behalf of different shareholders

Rule 14a-8 – Engagement

- Consistent with the proposal, Rule 14a-8(b) will now require shareholder proponents to:
  - State that he or she is able to meet with the company, either in person or via teleconference, no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal
  - Provide specific business days and times the shareholder is available
  - Provide contact information

Proxy Advisory Firms

On July 22, 2020, the SEC adopted a modified version of its proxy advisory firm proposals by a 3-1 vote

- The rule changes are intended to address proxy voting advice by proxy advisory firms such as ISS and Glass Lewis
- The rules codify the SEC's view that proxy voting advice is subject to the proxy solicitation rules and condition exemptions from those rules on disclosure of conflicts of interest and adoption of principles-based policies to make proxy voting advice available to the subject companies and to notify clients of company responses
  - The rules provide non-exclusive safe harbors that satisfy the conditions to the exemptions

Proxy Advisory Firms

- Proxy advisors will not be required to engage with companies in a review-and-feedback process—a piece of the proposal that was viewed by many as core to the proposal
  - The new rule “does not dictate the manner or specific timing” for proxy advisors to interact with companies, instead leaving it to the discretion of the proxy advisor how to implement its own policies and procedures”
  - Proxy advisors will not be required to allow companies to review proxy voting advice in advance of dissemination to the proxy advisor’s clients
- Most of the substantive aspects of the rule changes will be first effective for the 2022 proxy season, though the codification of the SEC’s views regarding the application of the proxy rules, including Rule 14a-9, will be effective for the 2021 proxy season

Virtual Shareholder Meetings

1,900+ Companies in the Russell 3000 Held VSMs According to ISS

After the 2020 proxy season, Computershare surveyed virtual AGM clients. Here's what we found:

Over 1,400

VSMs managed by Computershare globally in the first half of 2020

32,361 attendees

participated in the 460 US meetings. Guest attendance, which may include beneficial holders, was high.*

Meeting size

- 3 with > 1,000 attendees
- 9 with > 500
- 54 with > 100
- Average for 100 meetings sampled, 42

More access

- Almost 5,000 attendees at AT&T
- > 3,200 attendees at M&T Bank
- Dual-listed Teva enabled US (ADS) holders and Israel based (Ordinary share) investors to attend the same meeting

Duration

The average meeting time was down to 24 minutes compared to 35 minutes in 2019

Q&A

- Highest number, 144 questions
- 4% (of 460) had 10 or more
- Average for 100 meetings sampled, 1.3 questions down from 2.4 in 2019

*Guests outnumbered shareholders 5:1 (5,403 shareholders and 26,958 guests).

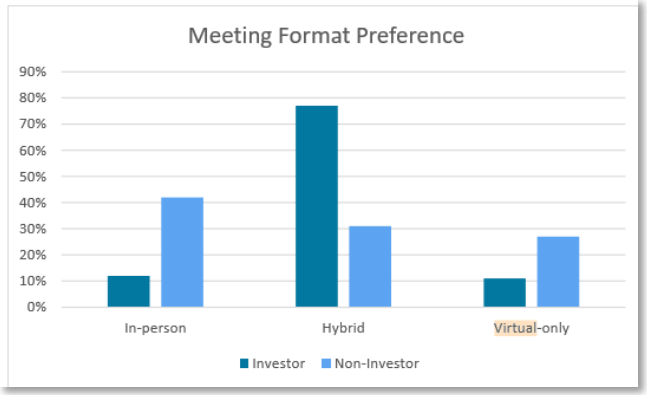
Virtual Shareholder Meetings

Investor Expectations and Preferences

90.5% of investors surveyed* expect to see increased future use of virtual meeting technology, and 64.3% expect to see more hybrid meetings once COVID-19 subsides

58.4% of investors surveyed said that they support the use of virtual meetings; if appropriate shareholder rights protections are in place, that number climbs to 82.2%, exceeding the number that reported supporting future use of a hybrid model (81%).

The results of ISS's recent policy survey, focused on post-COVID preferences, found 77% of investors favor a hybrid model



Considerations for 2021

Begin planning now – shareholders will have higher expectations in 2021

Work is ongoing on providers' end around the authentication of beneficial holders to participate in virtual meetings

Focus on your Q&A format – shareholders are seeking meaningful transparency

Consider video to the extent health and safety considerations permit

Tesla serves as an innovative model for those looking to enhance 2021 VSMs

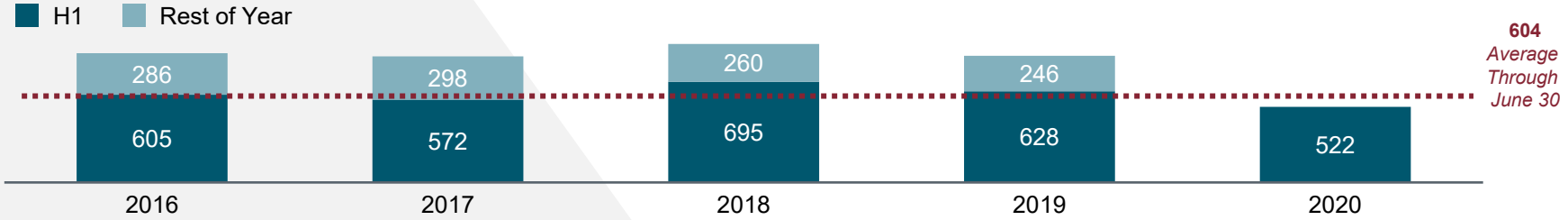
* June 2020 investor survey conducted by Proxy Insight
Chart source: ISS Policy Survey

Activism Update

Public Activism Campaigns Declined During the Pandemic

Many activists paused or abandoned 2020 annual meeting campaigns while actively positioning themselves for future disruption

The number of global companies publicly targeted by activists was lower through June 30 as compared to the previous four years



Reduction in Public Activism During the 2020 Proxy Season Driven By:

1. Activists waiting for volatility and valuations to settle into the "new normal"
2. Concerns that aggressive campaigns could damage activists' carefully-curated "constructivist" brands
3. The pandemic's impact on the prevalence of event-driven opportunities for activism, including M&A
4. Institutional investors' focus on companies' support for stakeholders, including employees, complicating typical activist campaign theses, including cost-cutting

Major Activists Took Divergent Tactics During the Pandemic

STARBOARD VALUE	▪ **Remained Uniquely Aggressive and Active:** Gained 22 seats through campaigns this spring
THIRD POINT	▪ **Shifted Portfolio to Credit:** Reduced net equity exposure
Pershing Square Capital Management	▪ **Engaged in Opportunistic Buying and Selling:** Several new and increased holdings including Lowe's, Starbucks and Hilton Worldwide ▪ **Raising Funds via SPAC:** "Pershing Square Holdings Tontine" raised $4B in its offering, making it the largest SPAC ever

Sources: Activist Insight; FactSet; Third Point 2020 Q1 Investor Letter; 13F and other public filings.

Activism Shifting Back Into Gear for 2H 2020

Activists' increasing comfort with initiating public campaigns is evident in today's heightened cadence and more forceful campaign messaging

Campaigns Launched In 2h 2020 Indicate Resurgence Of Activist Activity

Jun. 2020 → Oct. 2020

SENATOR / CANNAE HOLDINGS, INC. / CoreLogic	Pursuing unsolicited takeover offer and proxy fight
ELLIOTT / LAND and BUILDINGS / CROWN CASTLE	Pushing for operational and capital allocation improvements and a strategic review
ENGAGED CAPITAL / evolent HEALTH	Pushing company to evaluate strategic alternatives, including possible break-up or sale
ELLIOTT / noble energy	Opposed sale to Chevron under belief that Company is better positioned for recovery independently
TRIAN PARTNERS / COMCAST	Recently disclosed top-3 position; holding discussions with management
TRIAN PARTNERS / Invesco / Janus Henderson INVESTORS	Reported 9.9% stake in each asset manager as part of portfolio to help consolidation in the industry

Spacs Present New Means Of Activist Fundraising And New Targets For Potential Activist Scrutiny

GLENVIEW CAPITAL MANAGEMENT	HUDSON EXECUTIVE CAPITAL	Pershing Square Capital Management	SARISSA CAPITAL MANAGEMENT LP	STARBOARD VALUE	THIRD POINT
$360M	$414M	$4B	$175M(1)	$360M	$400M

- **Pershing Square had the largest and highest-profile activist SPAC launch**, raising $4B in its offering. Building on ESG momentum, co-managers were exclusively diverse investment banks, headed by minorities, women and veterans
- The growth of SPACs as potential acquirers, along with consolidation in certain sectors due to market disruption in 2020, may lead to an **increase in M&A-focused activism**
- While it has historically been extremely rare for SPACs to acquire public companies, **activists may agitate for divestitures and use SPAC funds to purchase certain public company assets**

NIKOLA MOTOR COMPANY — HINDENBURG RESEARCH

- Only a few months after going public via merger with SPAC VectoIQ, Nikola's stock dropped amid Hindenburg Research short campaign alleging the business was an "intricate fraud"
- Short-seller activists may target future SPAC merger candidates as SPACs come under heightened scrutiny from investors

(1) Not yet raised as of 05-Oct-2020; filed on 30-Sep-2020 offering 17.5 million units at $10 each in IPO.

Questions

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