

2014 PROXY SEASON WRAP-UP

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Overview

The 2014 annual meeting season continued to reflect the robust engagement efforts between issuers and investors that have been underway in recent years. Although the volume of shareholder resolutions appearing in corporate proxies, as well as the number receiving majority support, was closely in line with the first half of 2013, shareholder advocacy for traditional governance reforms increasingly moved off ballot (see Tables 1 and 2). Direct outreach has also proven to be an effective conduit for investors to register concerns over executive pay, resulting in a diminished number of compensation-related shareholder proposals and high levels of support for say on pay (SOP) in 2014.

The following are some of the highlights from this year's proxy season.

Executive compensation: SOP votes were consistent with last year in terms of average support, the proportion of failed votes, and the percentage that were rejected by proxy advisors Institutional Shareholder Services (ISS) and Glass Lewis & Co. Compensation issues also factored into many of this season's vote "no" campaigns and proxy access proposals. In a new milestone, four shareholder proposals to curtail the automatic vesting of equity awards following a change in control broke through the majority support level for the first time.

Proxy access: Corporate adoptions of proxy access were on the rise this season as a result of settlements with proponents and responses to past shareholder proposals. Activists also fine-tuned the structure and targeting of their resolutions: 75% of their submissions called for a 3%/3-year access regime, and two-thirds of those that proceeded to a vote received majority support. The successes primarily occurred at companies with a history of failed SOP votes, signaling that many

investors still regard proxy access as a last resort to improve board accountability.

Governance measures: Governance reform efforts increasingly filtered down to mid- and small-cap companies. This was most pronounced on board declassification where there are a dwindling number of large-cap targets: over half of this year's shareholder-sponsored resolutions and over 75% of management resolutions were at companies outside of the S&P 500 Index. This trend is also being accelerated by mainstream institutional investors who promote reforms through direct outreach with issuers rather than filing shareholder proposals.

Board tenure: While not a pivotal issue this season, there were indications that a number of investors are paying closer attention to director tenure in their evaluations of board composition, independence, and accountability.

Proxy voting mechanics: Several new proposals dealing with companies' vote counting practices and confidential running vote tallies received remarkably high shareholder support. As a result, proponents can be expected to reprise these initiatives next year.

Operational activism: Arsenals of cash and an increasingly crowded field of players emboldened activist hedge funds to agitate for stock buybacks, divestitures, and management shakeups. In addition to proxy fights, hedge funds deployed unconventional tactics to effect strategic and operational changes, such as holding shareholder referenda to promote their agendas and, in a new precedent, teaming up with a strategic buyer on a hostile takeover bid.

Corporate bylaws: Under pressure from ISS, over two dozen companies pulled or toned down their bylaws prohibiting special compensation arrangements between dissident shareholders and their board

nominees. Proxy advisor criticism, however, did not stem the flow of corporate adoptions of exclusive forum provisions, which many investors favor.

Environmental and social (E&S) issues: Submissions of E&S proposals reached an all-time high this year, driven by a record number of proposals on climate change and campaign finance, which accounted for one-third of all shareholder resolutions filed. As in the past, E&S constituents often used the shareholder proposal process to simply draw corporate and public attention to their issues. About 30% of all E&S proposals were withdrawn following constructive dialogues with companies, while those that went to a vote received only moderate levels of shareholder support.

Regulatory reforms: The U.S. Securities and Exchange Commission (SEC) expects to move forward this year with still-outstanding rulemaking mandated by the Dodd-Frank Wall Street Reform and Protection Act (“Dodd-Frank Act”). Its agenda for October includes finalizing a rule on CEO/worker pay ratios and proposing rules on clawbacks, employee and director hedging, and pay-for-performance disclosure. In the interim, the Commission made headway on a proxy plumbing matter, releasing guidance in June on investment advisors’ use of proxy advisory firms.

This article examines some of the key developments and trends from this year’s proxy season and explores issues that may lie ahead for 2015.

Executive Compensation

SOP votes trended closely in line with last year’s results, notwithstanding the additional volume of companies with triennial frequencies (2014 is the third anniversary of mandatory SOP). Across all companies, average support held steady at 92%, while the proportion of failures and those receiving less than 70% support remained constant at 2% and 7%, respectively.

Shareholder engagement is also paying off. Most companies that failed their SOP votes in 2013 cleaned up their compensation programs and saw a marked improvement in their 2014 results: over half received over 70% approval, and one-third received over 90%

approval (see Table 3). The rejection rate among S&P 500 companies also declined this year: five in total, compared to eight during the first half of 2013 (see Table 4). However, the incidence of repeat failures remained largely unchanged (0.4% of all SOP votes), and in some cases translated into opposition to compensation committee members and even proxy access proposals (discussed below).

ISS rejected executive pay programs at roughly the same rate as in 2013 (11%), with pay-for-performance disconnects cited as the most common reason for a negative recommendation. (Glass Lewis’ rate of SOP opposition was also reportedly in line with last year’s 17%.) However, as observed by Meridian Compensation Partners, the impact of an adverse ISS opinion appears to be diminishing. This year, a negative ISS recommendation depressed median voting support by 25.9% at S&P 500 companies and by 27.6% at Russell 3000 companies, compared to 32.5% and 28.8%, respectively, over the prior three proxy seasons.¹

Shareholder proposals on compensation continued to center around two topics: change-in-control (CIC) payouts and executive stock retention. For the first time in their five-year history, labor-sponsored resolutions to curb the automatic vesting of equity awards in a merger attained majority support at four companies (Boston Properties, Dean Foods, Gannett, and Valero Energy). The results may spell a shift in investor attitudes that unearned and potentially windfall CIC benefits are a “problematic” pay practice, akin to tax gross-ups, single-trigger CIC provisions, and supplemental executive retirement plans.²

The other popular compensation proposal—a requirement that executives retain a significant portion

¹ See Meridian Compensation Partners’ report at http://www.meridiancp.com/images/uploads/2014_Proxy_Season_Vote_Analysis_as_of_060214.pdf.

² The proponents cite a growing list of companies—including Apple, Chevron, ExxonMobil, International Business Machines, Intel, Microsoft, and Occidental Petroleum—that limit CIC benefits to executive officers. Unearned equity awards either vest pro rata or are forfeited following a CIC. According to ISS, auto-accelerated vesting of equity has become a minority practice at S&P 500 companies (28%) and Russell 3000 companies (43%).

of stock from equity incentive programs until retirement—has seen stagnating support levels, which averaged around 23% this year. Because many of the targeted companies already have stock ownership and holding guidelines—in some cases more rigorous than those advocated by the proponents (50%-75% of net after-tax shares)—shareholders often regard these proposals as overly prescriptive.

Compensation also underpinned many of this year's "vote no" campaigns. Couched as "human capital management" (read: CEO/worker wage gaps), union umbrella organization Change-to-Win (CtW) Investment Group tried to rally shareholders against pay plans and compensation committee members at Wal-Mart Stores and five fast-food chains (Burger King, Chipotle Mexican Grill, Domino's Pizza, McDonald's, and Wendy's). While only one campaign was successful—Chipotle Mexican Grill, where shareholders sharply rebuked SOP with only 23.2% support—unions and other activists will find other headline grabbers once companies are required to disclose CEO/worker pay ratios. The SEC plans to finalize a CEO pay ratio rule in October, as well as propose rules on other outstanding compensation matters mandated by the Dodd-Frank Act.

Proxy Access

This year, institutional proponents doubled their filings of proposals seeking proxy access rights for holders of at least 3% of the shares for three years, often tying their targeting to past failed SOP votes. Six resolutions received majority support, though other votes were close (see Table 5).

Repeat targets Walt Disney and Nabors Industries tried to steer clear of proxy access showdowns by making various governance reforms. Disney reached an 11th hour agreement with the California State Teachers' Retirement System (CalSTRS) and its co-sponsors to withdraw their resolution in exchange for a commitment to stronger board leadership—either an independent board chairman or an independent lead director.

Nabors implemented a series of shareholder-friendly reforms, including a commitment to adopt a proxy access policy in 2014, applicable to holders of 5% of the shares for three years but subject to a three-year review.³ Still, these measures were not enough to appease disgruntled shareholders who opposed management on virtually every front. Three shareholder resolutions, including a 3%/3-year proxy access proposal, were backed by a majority of the votes cast "for" and "against," while an extension of Nabors' poison pill and SOP were summarily defeated—the latter for the fourth consecutive year. A majority of shareholders also opposed the re-election of the compensation committee members. Although the three directors tendered their resignations per the company's resignation policy, the board rejected them in favor of reconstituting the compensation panel.

Other targeted companies simply yielded on proxy access in view of the likelihood of investor and proxy advisor support for the shareholder resolution. McKesson, Kilroy Realty, and SLM all agreed to take steps to adopt access rights by 2015, though SLM predicated it on the elimination of cumulative voting (which was approved despite ISS opposition).⁴ Enterprise Financial Solutions, which was not a target of an access resolution, offered its shareholders a similar trade-off of proxy access and a director resignation policy in exchange for repealing cumulative voting.⁵

³ Nabors' reforms included expanding the lead director's duties, separating the Chairman/CEO roles when the tenure of its current Chairman/CEO ends, limiting severance to 2.99 times salary and bonus, including gender in its board diversity considerations, and disclosing the board's reasoning for not accepting any director resignations.

⁴ Based on its recommendations this year, ISS will only support the elimination of cumulative voting when it is tied to the adoption of other board accountability measures, such as declassification, majority voting, or proxy access. Glass Lewis favors the repeal of cumulative voting at companies that have majority voting because it regards the two standards as incompatible.

⁵ Access rights at McKesson, SLM, and Enterprise Financial Solutions will mirror the conventional 3%/3-year ownership parameters of the defunct SEC rule. Kilroy Realty is following Nabors' 5%/3-year eligibility requirement. However, as evidenced at Nabors' annual meeting, ISS and many shareholders feel that that threshold is too high.

Three companies—CenturyLink, Chesapeake Energy, and Verizon Communications—followed up on past majority votes with management resolutions to adopt 3%/3-year access rights. All of the proposals passed, bringing the ranks of large-cap companies with proxy access to six, including Hewlett-Packard, Nabors Industries, and Western Union.⁶

Retail proponents only lightly pushed out their own version of proxy access, which is tailored to small shareholders owning \$2,000 of stock individually and 1%-5% of stock in aggregate. As in the past, these resolutions received negligible support and even diminishing support at companies where resubmitted (Bank of America and Goldman Sachs Group).

Board Declassification

Companies are showing less resistance to declassifying their boards with management proposals (81) far outpacing shareholder resolutions appearing on ballots (15). Shareholder-sponsored submissions were at their lowest level in 10 years, and of the 15 that went to a vote, only one was voted down (26.2% at Skechers U.S.A., which has high insider ownership). In seven cases, the boards chose not to oppose the shareholder resolutions, which bolstered average support to 84%.

Apart from the four-year-old effort by the Harvard Law School Shareholder Rights Project (SRP)⁷—which

reached accords with 24 of the 31 companies it targeted this year—mainstream institutional investors are driving the shift to annually elected boards through outreach to their portfolio companies.⁸ Companies are also recognizing that annual director elections are unlikely to expose them to more boardroom coups since shareholders have shown reluctance over the years to awarding dissidents a majority of board seats.

As a result, by the end of June, the number of classified boards dropped from 12% to 10% among S&P 500 firms and fell from 17% to 13% among publicly-traded Fortune 500 firms. However, further progress on this issue, at least within the large-cap universe, will likely be hindered by the prevalence of supermajority requirements for approving charter amendments. Over half of this year's management resolutions required supermajority approval and nearly half of them failed, in some cases after repeated attempts (ModusLink Global Solutions adjourned its annual meeting four times, but still could not muster enough votes to pass its declassification resolution). Other companies simply do not subscribe to the "common wisdom" that classified boards are necessarily bad for shareholders. In advance of its August annual meeting, Airgas reminded shareholders of the utility of its classified board in a 2011 hostile takeover attempt.⁹ Other holdouts, such as Vornado Realty Trust and Netflix, have been able to stand down multiple years of majority-voted shareholder proposals without incident because their directors are elected by a plurality vote.

Proponents are already adjusting to this reality by increasingly reaching down to mid- and small-cap firms rather than retargeting companies where management proposals have failed to receive supermajority approval.¹⁰ This year, over half of the shareholder-

⁶ If proxy access is adopted by McKesson, SLM, and Kilroy Realty next year, 11 companies will have proxy access rights. This includes American Railcar Industries, CenturyLink, Chesapeake Energy, Enterprise Financial Solutions, Hewlett-Packard, Nabors Industries, Verizon Communications, and Western Union.

American Railcar Industries, which had been controlled by Carl Icahn, reincorporated in 2009 in North Dakota, which has statutory proxy access rights for holders of 5% of the shares for two years.

⁷ The SRP is a clinical program at Harvard Law School which works on behalf of public pension funds and charitable organizations seeking to improve corporate governance at U.S. public companies. Participating institutional investors include the Florida State Board of Administration (SBA), the Illinois State Board of Investment (ISBI), the Los Angeles County Employees Retirement Association (LACERA), the Massachusetts Pension Reserves Investment Management Board (PRIM), the North Carolina Department of State Treasurer (NCDST), the Ohio Public Employees Retirement System (OPERS), the School Employees Retirement System of Ohio (SERS), and the Nathan Cummings Foundation (NCF).

⁸ Last year, Vanguard sent letters to 350 of its portfolio companies asking them to consider declassifying their boards, adopting a majority vote standard for the election of directors, and providing the right for 25% of the shares to call special meetings.

⁹ See Airgas' letter to shareholders at <http://www.sec.gov/Archives/edgar/data/804212/000119312514237406/d741530ddefa14a.htm>.

¹⁰ CalSTRS has been reaching out to Russell 2000 firms each year to de-stagger their boards and implement majority voting. This year, it sent letters to 100 companies to adopt these measures.

sponsored declassification proposals were submitted at mid- and small-cap firms, compared to only one-third in 2013.

Other Governance Measures

Apart from declassification resolutions, the volume and results of other governance-related shareholder proposals were largely unchanged from 2013 (see Table 2). On some issues, such as majority voting, independent board chairs, and written consent, average support declined year-over-year, exemplifying the divergence in views among mainstream investors, activists, and proxy advisors.

Progress on majority voting has been incremental because many investors consider a director resignation policy (“plurality plus”) to be an acceptable alternative. This has been particularly apparent in the large-cap universe. Of the S&P 500 companies that adjusted their director election standards between June 2013 and June 2014, most (75%) simply moved up the ladder from plurality to plurality plus, or from plurality plus to majority voting. In contrast, small- and mid-cap firms, which are receiving greater attention from shareholder activists, have been more inclined to make the leap from plurality to majority voting. Forty-eight Russell 2000 firms made the full switch between June 2013 and June 2014, while 34 took the step-up approach.

Shareholders have shown only moderate interest in proposals to separate the Chairman/CEO roles since many companies have independent lead directors. This year, only four such proposals were supported by a majority of votes cast “for” and “against”, and it was primarily due to shareholder frustration over other matters: Allergan resisted a hostile takeover bid, Staples failed its SOP vote, and Vornado Realty Trust and Healthcare Services Group refused to implement majority-supported shareholder resolutions, including ones calling for independent board chairs. The proxy advisors are also split on this issue. Glass Lewis universally endorses independent chairs, whereas ISS will accept a robust lead director instead, and thus only supported about half of the shareholder ballot initiatives.

Support for John Chevedden’s written consent resolutions also continues to trend down. Although he and his retail affiliates presented an equal number of proposals as in 2013, none received majority support this year.¹¹ All of the targeted companies provided shareholders with special meeting rights, which investors clearly prefer over written consent rights.

Issuers were largely responsive to last year’s majority-supported shareholder proposals, though not always to the satisfaction of ISS, which implemented a stricter “withhold” policy this year. Hatteras Financial and ITC Holdings, for example, responded to majority voting resolutions by adopting director resignation policies. Although ISS opposed their boards, only a minority of shares (18%-33%) followed suit. On other issues, ISS showed more flexibility towards board actions. In response to an independent chairman proposal, Freeport McMoRan Copper & Gold beefed up its board oversight by appointing a lead director along with four new independent directors. Kohl’s and Nabors Industries responded by committing to appointing an independent chairman, whenever possible, after the current chair/CEO steps down.

Only a handful of companies resisted taking any action on the prior year’s majority votes. Where it occurred across multiple shareholder proposals or multiple years (Netflix, Vornado Realty Trust, and Healthcare Services Group), opposition to directors reached as high as 75%.

Boards have also been attentive to other shareholder concerns, which is reflected in the overall reduction in directors receiving a majority of withhold votes: 58 directors this season, compared to 84 in the first half of 2013. At the handful of companies requiring the directors to step down, only two boards chose not to accept the resignations: Nabors Industries, which instead reconstituted the compensation committee, and Shutterfly, where the director’s mid-year appointment had resulted in scheduling conflicts and poor attendance.

¹¹ Retail investors who work closely with Chevedden include Kenneth and William Steiner, James McRitchie, and Myra Young.

Board Tenure and Diversity

Board tenure is still a nascent issue, but there are indications that it is attracting greater attention from investors who feel that lengthy board service may compromise a director's independence. SSgA Funds Management, Inc. (SSgA) surprised issuers this year by incorporating board refreshment into its voting policies using three screens: average board tenure in excess of the market average (8.6 years in the U.S.), a preponderance of long-tenured directors (over one-third of the board), and a classified board structure.¹² SSgA advised portfolio companies meeting these criteria that it might vote against either the chair of the nominating/governance committee or long-tenured directors serving on key committees, or both if the board were classified.

Currently, the proxy advisors do not penalize boards with long-serving directors, and even shirk from supporting proposals mandating director term limits or retirement ages.¹³ However, that could change next year if more institutional investors adopt policies along the lines of SSgA's. The California Public Employees' Retirement System (CalPERS) has already announced that it may amend its corporate governance principles to take into account years of service in determining a director's independence.

Shareholder advocates also blame low board turnover for hindering progress on board diversity. This year, proponents pressed over two dozen companies to improve the gender and ethnic makeup of their boards. As in the past, most proposals were withdrawn following company commitments to add a diversity policy to their nominating committee charters.

¹² See SSgA's policy at: http://ssga.co.nz/library/povw/733339_Addressing_the_Need_for_Board_Refreshment...in_Investee_Companies_1_CCRI1399281503.pdf.

¹³ ISS backed off adopting a policy this year whereby it would have classified long-tenured directors as non-independent or recommended against members of the nominating committee if average board tenure exceeded a certain level. However, it incorporated director terms into its QuickScore governance ratings, with over nine years constituting excessive tenure. According to the QuickScore data, 30% of S&P 500 companies and 36% of Russell 3000 companies have a majority of directors whose service exceeds this threshold.

But not all companies follow through on their promises. Skechers U.S.A. back-peddled on a 2011 agreement with CalSTRS to adopt a formal diversity policy, and this year it was hit by a "vote no" campaign by CtW Investment Group over the "problematic" composition of its board. Although the campaign fell flat—the Skechers directors were re-elected with over 94% support due to high insider ownership—it may signal that activists are ratcheting up this issue beyond shareholder resolutions.¹⁴

Monster Beverage reached a similar agreement with CalSTRS and Calvert Investments in 2009. Despite adding diversity to the factors it would consider in director nominations, it still has an all-male board. The energy drink maker was one of three companies where a shareholder-sponsored diversity proposal went to a vote this year. Not surprising, it received the highest level of support (40.2%), even higher than at Urban Outfitters which addressed its diversity shortfall by unabashedly appointing the CEO's wife to the board.

Proxy Voting Mechanics

As a new project this year, Chevedden's group of retail investors asked over 20 companies to adopt an "enhanced" confidential voting policy whereby running vote tallies on uncontested matters would not be available to management or the board to solicit votes prior to annual meetings. The concept arose from JPMorgan Chase's 2013 annual meeting when Broadridge Financial Solutions suddenly reversed its longstanding practice of providing vote status information to shareholders engaged in exempt solicitations.¹⁵

¹⁴ A number of social investment funds already take into account board diversity when voting on director elections. This year, Trillium Asset Management gained notoriety for voting against the entire Berkshire Hathaway board—including Chairman/CEO Warren Buffett—for its lack of minority representation. In an effort to move the needle on gender diversity, Pax World Investments wrote letters to 165 mutual funds, pension funds, colleges and universities in 2010 urging them to adopt policies to withhold support from director slates that do not include women directors.

¹⁵ The Council of Institutional Investors (CII) has asked the SEC to take steps to ensure impartial disclosure of interim voting information. See

Although most of the Chevedden resolutions were omitted as vague and indefinite, the five that went to a vote received a respectable 36.3% average support, as well as the backing of ISS. (Glass Lewis took the opposing view that communications between issuers and shareholders prior to annual meetings can be beneficial.) Clearly encouraged by this, Chevedden has reframed his upcoming resolutions at FedEx and NetApp to prohibit management from receiving preliminary vote results prior to shareholder meetings unless the board determines there is a compelling reason to obtain them.

Separately, various institutional investors are taking issue with how companies calculate votes for determining the outcome of proxy proposals. According to a study by GMI Ratings, roughly half of the companies in the S&P 500 and Russell 1000 Indices count abstentions in the denominator of their vote calculations and 4% include broker non-votes.¹⁶

In an attempt to simplify matters, Investor Voice, SPC asked some 20 companies to adopt a uniform voting calculus for determining approval of management and shareholder proposals, based purely on a count of “for” and “against” votes. Although its filings were deemed excludable, the proponent obtained commitments from Intel and McDonald’s to review their voting practices. J.M. Smucker is going so far as to propose an amendment to its code of regulations in line with Investor Voice’s suggested voting standard at its August annual meeting.

The treatment of broker non-votes has drawn even more controversy. Last year, two shareholder resolutions were narrowly defeated at Nabors Industries’ annual meeting because the company registers unexercised shares as opposition votes on all non-discretionary voting items. In response, CalPERS teed up a resolution this year asking Nabors to discontinue this practice and only count “for,” “against,” and “abstain” votes on all matters other than

director elections. While the intent was clearly to facilitate the approval of shareholder proposals (Nabors failed to see the utility of replacing one neutral procedure for another), a majority of shareholders agreed with CalPERS.¹⁷ Because the vote was advisory, the pension fund stated that it is prepared to resubmit the resolution next year as a bylaw amendment if Nabors fails to act on it.

Disputes of this sort underscore the need for issuers to be transparent about their voting practices or risk potentially dire consequences. Cheniere Energy was forced to delay its annual meeting in the face of a shareholder lawsuit demanding the disgorgement of over \$1 billion in executive stock awards. The plaintiff claims that the awards had not been approved by shareholders because the company failed to count abstentions as votes against the 2011 equity plan, as required by Delaware law.

Operational Activism

Proxy fights have been on the upswing this year as investors continued to pour more money into activist hedge funds generating above-market returns. In early March, FactSet Research reported that 49 board contests had been announced—the highest number in five years—and in January and February alone, dissidents obtained board seats at 16 companies through proxy fight votes or settlements. According to Activist Insight, insurgents were at least partially successful in achieving their objectives in 66% of their campaigns during the first half of the year.

Several new trends emerged as well. While there has been no shortage of high-profile, large-cap targets—Abercrombie & Fitch, Bob Evans Farms, eBay, and Sotheby’s to name a few—activists turned more attention to nano-caps this year. As reported by Activist Insight, nano-caps comprised 11% of activist targets in the first half of 2014, up from 6% in 2013,

http://www.cii.org/files/issues_and_advocacy/correspondence/2014/05_22_14_letter_to_SEC.pdf.

¹⁶ See the GMI Ratings study at <http://www.calpers-governance.org/docs-sof/proxyvoting/calpers-russell-1000-vote-calculation-methodology-final-v2.pdf>.

¹⁷ Walden Asset Management also raised concerns with Occidental Petroleum’s “questionable governance practice” of including broker non-votes in its voting calculus. To alleviate any shareholder confusion, the company did a proposal-by-proposal break-out of the required approval thresholds, including the impact of abstentions and non-votes, in its 2014 proxy statement.

while large-caps comprised 9% of their targets, down from 11% in 2013. There has also been a growing shift away from balance sheet themes to mergers and acquisitions (M&A). A March survey by FTI Consulting found that 89% of activist hedge funds expect M&A activism to be on the rise this year, and 45% expect it to show the largest increase among all forms of activism.

Hedge funds are also deploying new tactics for pursuing strategic changes at companies. At large targets in particular, activists are increasingly bringing their ideas directly to shareholders through a non-binding vote before resorting to a full-fledged proxy fight. In some cases, this low-risk maneuver has proven effective. In the face of dissent from proxy advisors and major investors, Carl Icahn scuttled his aggressive share buyback and spin-off proposals at Apple and eBay, but he still scored partial victories: Apple boosted the size of its capital return program, and eBay added a mutually agreed-upon independent director to its board.

In other cases, insurgents are being outmaneuvered by their targets. Starboard Value tried to head off Darden Restaurants' planned spin-off of its Red Lobster chain by calling for a referendum vote on the transaction. Although shareholders overwhelmingly backed the special meeting request, Darden preemptively sold the unit to a private equity firm, leaving Starboard with the more challenging pursuit of unseating the board at the September annual meeting.¹⁸

Pershing Square Capital Management set a new precedent by teaming up with Valeant Pharmaceuticals on a \$53 billion hostile bid for rival drug maker Allergan, deviating from the traditional activist playbook of acquiring a stake in a company then pushing it to find a buyer. To exert pressure on Allergan, the duo contemplated another unorthodox

move: staging a shareholder referendum outside of standard proxy procedures to gather support for the parties to engage in merger negotiations. Protests from California lawmakers forced the insurgents to abandon the shadow vote in favor of the riskier option of calling a special meeting to replace the Allergan board without triggering the company's poison pill.¹⁹ If ultimately successful, the tag-team endeavor could encourage other deep-pocketed activist funds to partner with strategic buyers, further fueling the recent wave of hostile M&A activity.

High investor demand for event-driven funds will continue to buoy hedge fund activism, as well as attract new entrants to the market, in some cases seeded by institutions. Building on last year's success at Timken with Relational Investors, CalSTRS recently unveiled a joint campaign at Perry Ellis International with newcomer Legion Partners Asset Management, in which CalSTRS took a 30% stake in May. The pair is pressing the apparel maker to consider strategic alternatives to boost performance as well as adopt a host of governance reforms.

Corporate Bylaws

The rise in proxy fight activity and merger-related litigation has prompted a number of boards to adopt bylaws limiting multi-jurisdictional lawsuits and conflicts-of-interest among director nominees.²⁰ Investor reaction to these has been mixed—and sometimes at odds with proxy advisor opinions—signaling that issuers should exercise caution when adopting such provisions.

To prevent differential director pay arrangements (“golden leash” payments), which drew controversy at last year's proxy fights at Hess and Agrium, some 37 companies adopted bylaws that disqualify director nominees who stand to receive third-party

¹⁸ Spin-off interventions are not limited to hedge funds. In late June, UNITE HERE began summoning investor support to call a special meeting at Ashford Hospitality Trust to allow a shareholder vote on the separation of its advisor unit along with the reinstatement of various shareholder rights. The hotel employees union has been active in the REIT sector this year with shareholder proposals calling for board declassification, the adoption of majority voting, and opting out of Maryland's Unsolicited Takeover Act.

¹⁹ In June, Pershing Square settled its dispute over Allergan's poison pill out of court. Allergan agreed that the pill would not be tripped by Pershing Square's collaboration with other shareholders to call a special meeting.

²⁰ According to Morrison & Foerster LLP, 40 public companies incorporated in Delaware adopted exclusive forum provisions in the first quarter of 2014, and 75% of Delaware companies going public had these provisions.

compensation in connection with their candidacy or service on the board. ISS and Glass Lewis object to such bylaws—and will oppose boards or governance committee members that unilaterally adopt them—because they are inclusive of fees paid in conjunction with a nominee’s candidacy, which could hinder the ability of dissidents to attract qualified director candidates.

To avoid potential blowback from shareholders and proxy advisors, 25 companies repealed their director qualification bylaws ahead of their annual meetings. Those that retained them received director opposition votes ranging from 15% to 45%, including Rockwell Automation which promised shareholder ratification in 2015. Companies that submitted their bylaws to a shareholder advisory vote still drew negative recommendations from the proxy advisors, but experienced differing reactions from their investors. Shareholders rejected the bylaw at Wynn Resorts (which was subsequently rescinded), but supported that of First Reliance Bancshares, even though the companies’ provisions were substantially similar (both included carve-outs for indemnification, expense reimbursement, and pre-existing employment agreements).²¹

In view of these results, issuers are gravitating towards more narrowly structure provisions. Helmerich & Payne, for example, adopted a bylaw in June that only disqualifies shareholder-nominated directors if they receive third-party compensation in connection with their service—but not candidacy—as directors. Other companies, such as C.R. Bard and CST Brands, toned down their bylaws in line with the more widely accepted view that dissident nominators should at least be required to disclose any compensation agreements with their nominees.²²

²¹ First Reliance Bancshares’ bylaw contains some additional—and more stringent—disqualifying factors, including if a director nominee is or becomes a holder of 5% or more of the voting securities of a competitor (as determined by the board) or of an entity that has a material interest in a competitor.

²² In March, CII asked the SEC to issue interpretive guidance or amendments to the proxy rules regarding disclosure of third-party compensation arrangements with dissident nominees. See

Shareholders and proxy advisors also diverge in their opinions of bylaws that designate a specific forum for litigating intra-company disputes. While these provisions can greatly reduce the corporate costs of defending suits in multiple courts, some investors object to any restrictions on the venue for shareholder claims. With this in mind, the proxy advisors prefer that forum selection bylaws be ratified by shareholders and, in the absence of this, Glass Lewis will go so far as to recommend against governance committee chairs. To avoid such backlash, 13 companies sought shareholder approval of their exclusive forum provisions this season.²³ Although ISS opposed every one of the proposals—notwithstanding its purported case-by-case policy—all of them passed, albeit by slim margins in some cases, demonstrating that many investors are far less concerned about exclusive forum bylaws than the proxy advisory firms.

More recently, a Delaware Supreme Court ruling (*ATP Tour, Inc. v. Deutscher Tennis Fund*) is generating debate over “fee-shifting” bylaws that would require the losing party in litigation to pay the winner’s legal fees.²⁴ The Delaware State Bar Association has proposed a bill that would prohibit the ruling from extending to stock corporations, which the state legislature plans to take up in early 2015. Business groups, such as the U.S. Chamber of Commerce, are pushing back, arguing that loser-pay bylaws could reduce the amount of unnecessary litigation that accompanies corporate mergers.²⁵ It remains to be seen

http://www.cii.org/files/issues_and_advocacy/correspondence/2014/03_31_14_CII_letter_to_SEC.pdf.

²³ A number of companies, including Medifast, Pier 1 Imports, Principal Financial Group, and Spectra Energy, adopted exclusive forum bylaws on the day of their 2014 annual meetings. Although they escaped repercussions this year, Glass Lewis uses a one-year look-back in applying its “withhold” recommendations to governance committee chairs that unilaterally adopt forum selection bylaws.

²⁴ *Reuters* reported in July that six companies have adopted loser-pay bylaws: Biolase, Echo Therapeutics, LGL Group, Westlake Chemical Partners, Townsquare Media, and Viper Energy Partners. The latter three firms are planning or have recently completed initial public offerings.

²⁵ According to Cornerstone Research, investors challenged 94% of mergers in 2013, compared to 44% in 2007. Most were settled by companies agreeing to provide shareholders with more information about the deal and pay the plaintiffs’ attorney’s fees, which averaged \$500,000 last year.

how proxy advisors and investors would react to such bylaws since they could potentially deter meritorious shareholder litigation along with frivolous suits.

Climate Change

This was a record-breaking year for submissions of E&S proposals, which were up 12% from 2013 and accounted for half of all shareholder resolutions filed. Much of the increased activity was due to collective campaigns on climate change—including greenhouse gas (GHG) emissions, energy efficiency, and sustainability—which accounted for 40% of all E&S initiatives.

In a first-ever coordinated effort, a coalition of 70 investors asked leading fossil fuel companies to assess how global efforts to control climate change would impact their business strategies, including the risk that potential caps or taxes on emissions would result in stranded hydrocarbon assets.²⁶ Environmental activists scored a major breakthrough when Exxon Mobil agreed to publish a carbon asset risk report—the first major oil and gas producer to do so. The euphoria, however, was short-lived. By Exxon’s projections, none of its proven reserves will become stranded. Given the worldwide growth in population, living standards, and energy demand, Exxon considers any future legislation that would greatly increase energy prices or limit demand for energy to be “highly unlikely.” Royal Dutch Shell made a similar assessment in a May 2014 letter to its investors.²⁷

²⁶ A recent report by the Intergovernmental Panel on Climate Change (IPCC) suggests that to limit global warming to 2 degrees Celsius by the end of the century, the world will need to live within a low carbon budget and a significant portion of proven global fossil fuel reserves will need to be left in the ground. See “Climate Change 2014: Mitigation of Climate Change” at <http://mitigation2014.org/>. The Obama Administration has set a goal of reducing GHG emissions in the U.S. by 80% by 2050.

²⁷ See Exxon’s carbon asset risk report at <http://cdn.exxonmobil.com/~media/Files/Other/2014/Report%20-%20Energy%20and%20Carbon%20-%20Managing%20the%20Risks.pdf>. See Shell’s letter to shareholders at <http://s02.static-shell.com/content/dam/shell-new/local/corporate/corporate/downloads/pdf/investor/presentations/2014/sri-web-response-climate-change-may14.pdf>.

Activists also pressed energy companies to address climate change by setting goals to reduce GHG emissions, particularly emissions of methane, a more potent GHG than carbon dioxide resulting from natural gas production. Out of over 40 proposals filed, nearly half were withdrawn after companies agreed to enhance reporting on their emission reduction measures. In addition to stand-alone proposals, companies in a variety of industries were asked to include GHG emissions goals in their sustainability reports or to ensure that palm oil development did not result in deforestation, which accounts for 15% of worldwide carbon emissions. These proposals similarly saw high rates of withdrawal. Of the climate-related resolutions that went to a vote, most received higher average support than in 2013, though shareholder approval still generally remained in the mid-20% range.

Political Spending

For a third year, corporate political activity represented the second largest category of shareholder ballot initiatives (after environmental proposals) with over 140 filed and over 80 voted on through June. Lobbying resolutions again outpaced standard political spending disclosure proposals crafted by the Center for Political Accountability (CPA) due to a coordinated campaign by Walden Asset Management and the American Federation of State, County, and Municipal Employees (AFSCME). Corporate ties to the American Legislative Exchange Council (ALEC) featured prominently in over half of the lobbying resolutions because of the organization’s stance on climate change, immigration, and voter identification.

Despite the concerted efforts of activists, average support on campaign finance proposals didn’t budge much from 2013 levels and even receded somewhat on the CPA-style proposals, which received less backing this year from ISS. Four resolutions won plurality support—three on grassroots lobbying (Lorillard, SLM and Valero Energy) and one on political contributions (Dean Foods)—but were not technically approved when counting abstentions.

Proponents withdrew over a dozen political disclosure resolutions based on a variety of work-outs with companies. Accenture, Amgen, and Hess, for example, agreed to annually disclose their memberships in trade associations and the amount of their dues used for lobbying and other political activities. United Technologies pledged to ask the non-profits it supports to discontinue using its donations for political purposes. Visa cut its ties to ALEC, while Microsoft retained its affiliation but publicly asserted that it did not endorse or fund ALEC's work on renewable energy policy.

Conservative groups, such as the National Center for Public Policy Research (NCPPr), also ratcheted up their annual meeting activity this year to counter left-wing pressure on companies to support environmental and social causes. Some results were striking. After a six-year effort, NCPPr persuaded General Electric to codify in its Corporate Social Responsibility Policy that it would only undertake green energy projects that were economically viable and not solely to address the issue of climate change. In contrast, NCPPr's campaign spending proposal at Apple elicited a smackdown from CEO Tim Cook, who famously asserted, "We do a lot of things for reasons besides profit motives," and investors who disagreed with that approach "should get out of the stock."

In other cases, NCPPr simply mirrored the liberal version of E&S resolutions but with a conservative spin. Borrowing from NorthStar Asset Management, NCPPr questioned the congruency between corporate values and political contributions at Kraft Foods, which had made donations to California State Democrats who favored a "sin tax" on sugary beverages, including some of Kraft's products. Although the proposal netted a mere 4.4% support, it was higher than NorthStar's resolutions at EMC (4%) and Facebook (0.6%), which criticized the companies' PAC contributions to politicians who opposed gay marriage. NCPPr also filed six resolutions at drug makers and retailers to adopt market-based healthcare reform principles. The SEC allowed exclusion of every one of them on the grounds that they advocated specific legislative actions related to the companies' ordinary business operations. Yet for six years, the Commission has denied exclusion

of progressive versions of the proposal promoting the adoption of universal healthcare coverage.

Evolving Issues

Looking ahead, several areas of growing concern among both shareholder activists and public policymakers are human rights, cybersecurity, and corporate tax strategies.

Human Rights

Abusive labor practices were a focal point this year for unions and social investment funds who asked 16 companies to conduct human rights risk assessments of their supply chains. Only half of the resolutions went to a vote, but average support (29.1%) wasn't nearly as strong as in 2013 (37.1%) since many of the targeted companies had vendor/supplier codes of conduct.

Meanwhile, U.S. House lawmakers introduced a bipartisan bill in mid-June (H.R. 4842, the Business Supply Chain Transparency on Trafficking and Slavery Act of 2014) that would require public companies with worldwide global receipts in excess of \$100 million to disclose any measures they have in place to identify and address conditions of forced labor, slavery, human trafficking, and child labor within their supply chains. The legislation, which was patterned after the California Transparency in Supply Chains Act, was originally proposed in 2011. While welcomed by social and faith-based investor groups, the bill is not expected to engender enough support to become law.

Cybersecurity

Public outcry over high-profile cyber attacks and government surveillance of online communications has sparked investor demands for stronger corporate measures to protect consumer information. This year, Arjuna Capital and other social investment funds asked leading telecommunications carriers, credit card issuers, and healthcare companies to publish transparency reports on privacy, data security, and government requests for customer information. Most companies agreed to the disclosure or to at least ensure board oversight of these matters.

ISS also put companies on alert to treat cyber risks more seriously when it opposed the re-election of seven Target board members for the company's reactive approach to its massive data breach. Although cybersecurity is receiving more boardroom attention, SEC Commissioner Luis Aguilar recently observed that there is still a gap between the magnitude of exposure to cyber threats and the steps boards have taken to proactively address them. According to a 2012 Corporate Board Member/FTI Consulting survey, 77% of directors believed their company was prepared to detect a cyber breach, but only 42% indicated that their company had a formal, written crisis management plan for dealing with it. Congress is revisiting the issue with the Cyber Information Sharing Act of 2014, which would help businesses and government agencies thwart cyber intrusions through voluntary sharing of threat indicators. The bill is expected to go to a vote of the full Senate this summer, but is facing opposition from some lawmakers and civil liberties groups for lacking adequate privacy protections.

Tax Reduction Strategies

While not a significant factor in this year's proxy season, shareholder activists are becoming more vocal about corporate tax avoidance. According to a June 2014 report by Citizens for Tax Justice and the U.S. PIRG Education Fund, 70% of Fortune 500 firms operate subsidiaries in tax havens, allowing them to avoid \$90 billion in federal income taxes each year.²⁸ Companies are also showing increased interest in re-domiciling in low-tax jurisdictions through cross-border acquisitions. Inversions not only allow multinationals to lower their corporate tax rate, but also to access cash they hold offshore, now estimated at \$2 trillion.

Investors are divided when it comes to corporate tax minimization. Social and union activists argue that lost

revenue from corporate taxes puts a burden on society at large and forces smaller taxpayers to make up the shortfall. This year, Domini Social Investments asked Google to adopt ethical tax principles—akin to those of Johnson & Johnson and Vodafone—that would include a pledge to pay its fair share of taxes. The proposal, however, only garnered 1% support.

Meanwhile, Walgreen has come under fire from unions and consumer advocacy groups over a possible inversion in its acquisition of Swiss-based Alliance Boots. Several large hedge fund investors have been pressing the company to expatriate in order to reduce its tax burden, but activists protest the move, given the billions of dollars in sales Walgreen generates from taxpayer-funded Medicare and Medicaid programs and the lower shareholder protections offered in Switzerland.

Critics of inversions also point out that shareholders of inverting companies may themselves face adverse tax consequences. Not only are they saddled with their own tax bill (capital gains taxes when their stock is exchanged in the transaction), but often that of executives as well. As reported by *Bloomberg News*, a number of inverters have shielded executives from paying a 15% excise tax on the value of their stock options and restricted stock by making gross-up payments (Eaton, Endo Health Solutions, Medtronic, and Perrigo) or by accelerating the vesting of executive equity awards (Actavis, Applied Materials, Argonaut Group, and Jazz Pharmaceuticals).

A recent spate of inversion announcements by pharmaceutical and medical device companies has prompted Congress to act.²⁹ In June, House and Senate Democrats introduced companion bills (H.R. 4679 and S.2360, "Stop Corporate Inversions Act of 2014") that would restrict inversions if more than 25% of the company's sales, assets, or employees remain in the U.S., or if less than 50% of the combined company is

²⁸ See "Offshore Shell Games 2014" at <http://connpirgedfund.org/sites/pirg/files/reports/CTP%20ShellGames%20Jun14.pdf>. According to a May 2014 study by Gabriel Zucman, U.S. multinationals book 55% of their foreign profits in six tax havens—the Netherlands, Bermuda, Luxembourg, Ireland, Singapore, and Switzerland. This represents a 20% share of all U.S. corporate profits—domestic and foreign—up from 2% in 1984. See "Tax Evasion on Offshore Profits and Wealth" at <http://gabriel-zucman.eu/files/Zucman2014JEP.pdf>.

²⁹ Recent M&A inversions include Medtronic/Covidien and AbbVie/Shire. "Spinversions," involving the spinoff and merger of a business unit, have been announced by Mylan/Abbott Laboratories and Salix Pharmaceuticals/Cosmo Technologies. To protect against any Congressional clampdown on inversions, many of the recent deals give the buyer walk-away rights if the tax advantages evaporate.

owned by foreign shareholders. The Obama Administration, which is pressing for immediate Congressional action, wants the tax changes to be retroactive to May 2014. Republican lawmakers, however, will not back any inversion legislation that is not part of broader corporate tax reform. In the interim, they are more likely to get behind a recent bipartisan proposal that would offer companies a one-time tax holiday if they repatriated profits earned abroad.

Proxy System Reforms

The profusion of E&S proposals—and shareholder proposals in general—has sparked calls from business groups for reforming the proxy rules. In a recent speech, SEC Commissioner Daniel Gallagher noted that in 2013, 34% of shareholder resolutions were brought by organized labor, 25% by social activists and religious institutions, and 40% by a handful of corporate gadflies, primarily Chevedden and his affiliates. These special interest groups often use the shareholder proposal rules to promote social and political causes that are unrelated to the economic interests of corporations and that are rarely supported by other shareholders. The resulting costs to companies to manage these proposals—costs that are essentially borne by all other shareholders—are, by the SEC’s estimates, \$87,000 per proposal or an aggregate of \$90 million annually.³⁰

Pro-business groups attribute the situation to the decades-old submission threshold—\$2,000 of stock held for one year—which allows activists to buy a nominal stake in a company for the sole purpose of submitting a proposal.³¹ In some cases, individuals who lack even the minimal amount of stock will “rent” shareholder status from a beneficial owner and file a “proposal by proxy.” The problem is further exacerbated by the equally outdated shareholder approval thresholds for resubmissions—3%, 6%, and

10% over five years—which allow minority factions to continuously force attention on their issues against the will of holders of 90% of the shares. In an effort to curb this “tyranny of the minority,” the U.S. Chamber of Commerce and other business associations petitioned the SEC in April to strengthen the resubmission requirements to more meaningful levels.³²

Activists, understandably, are resistant to changing the current shareholder proposal system which would disenfranchise small investors and individuals. Indeed, Chevedden takes the opposite view, telling the *Financial Times*, “Frankly, there are not enough proposals filed ... A lot of companies don’t get any proposals at all.” The Council of Institutional Investors (CII) also disputes the notion that shareholder proposals pose a burden to issuers. In CII’s view, the costs to companies are largely “self-inflicted” because many choose to spend thousands of dollars to keep shareholder proposals off the ballot, and some have even resorted to legal action to block proposals.³³

Although the SEC is unlikely to take up this matter in the near term, it made headway in June on another longstanding corporate complaint—the role and influence of proxy advisory firms.³⁴ The newly released guidance clarifies that investment advisors are not required to vote all proxies or on all proposals, but have broad latitude in determining with their clients when and whether to vote. If an investment advisor retains a proxy advisory firm (such as ISS or Glass

³⁰ See a related Navigant Consulting study at http://www.uschamberfoundation.org/sites/default/files/article/foundation/Analysis%20of%20the%20Wealth%20Effects%20of%20Shareholder%20Proposals_0.pdf.

³¹ By way of example, the People for the Ethical Treatment of Animals (PETA) announced in April that it had bought 359 shares in Groupon for \$2,000 so that it could submit a shareholder resolution and speak at the company’s annual meeting.

³² Although the petitioners did not propose specific percentages of support, they believe the resubmission thresholds considered by the SEC in 1997—6%/15%/30%—are a good starting point. See <http://www.sec.gov/rules/petitions/2014/petm4-675.pdf>. Commissioner Gallagher suggested higher thresholds, such as 5%/20%/50%, to demonstrate that a proposal is realistically on the path to winning majority support; otherwise it would be excludable for the following five years. See <http://www.sec.gov/News/Speech/Detail/Speech/1370541315952#.U7ldYKFOXIU>.

³³ In recent years, several companies have sought declaratory relief from federal courts to exclude Chevedden’s proposals. Only a few have been successful—Apache (2010), KBR (2011), Waste Connections (2013), and Express Scripts (2014). In response, James McRitchie is trying to encourage shareholders and proxy advisors to vote against boards that waste corporate resources by bypassing the SEC’s no-action process.

³⁴ See SEC Staff Legal Bulletin No. 20 at <http://www.sec.gov/interps/legal/cfsilb20.htm>.

Lewis) to handle its proxy voting, the investment advisor must provide ongoing oversight. This includes ensuring that the proxy advisor has the capacity and competency to adequately analyze proxy issues, that the proxy advisor's recommendations are based on accurate information, and that votes are being executed in accordance with the investor's policies, which should be reviewed at least annually. Proxy advisors, for their part, must provide more details on any material conflicts of interest they have with issuers or shareholder proponents so that their clients can better assess the objectivity and reliability of their recommendations.

For issuers, the most promising feature of the guidance is the potential reduction of factual errors in proxy advisors' reports, which issuers can flag and communicate to investors through supplemental filings. Beyond that, the SEC guidance is unlikely to reduce investors' dependence on proxy advisory firms or the proxy advisors' influence on votes, at least in the near term.³⁵ That can be better accomplished through proactive and direct engagement between companies and their shareholders.

³⁵ Recent academic studies found that shareholders have become more independent of both management and the proxy advisory firms in their voting. See "The Power of Proxy Advisors: Myth or Reality?" at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1694535 and "Influence of Public Opinion on Investor Voting and Proxy Advisors" at <http://finance.eller.arizona.edu/documents/seminars/2013-14/LStarks.Investor%20Voting04-14.pdf>.

Table 1: Three-Year Shareholder Proposal Trends

	2012 (First Half)	2013 (First Half)	2014 (First Half)
Governance Proposals			
Submitted ¹	480	410	362
Voted on ²	242	208	211
Majority votes ³	105	74	62
Compensation Proposals			
Submitted ¹	114	184	103
Voted on ²	69	88	63
Majority votes ³	2	1	5
Environmental & Social Proposals			
Submitted ¹	470	418	477
Voted on ²	175	173	198
Majority votes ³	1	3	5
ALL PROPOSALS			
Submitted ¹	1,064	1,012	942
Voted on ²	486	469	472
Majority votes ³	108	78	72

1. Estimated

2. Includes floor proposals; excludes proposals on ballots that were not presented or were withdrawn before the annual meeting.

3. Based on votes FOR as a percentage of votes FOR and AGAINST.

Table 2: 2013 & 2014 Shareholder Proposals

Governance Proposals	2013 Submitted	2013 Voted On¹	2013 Majority Votes²	2013 Average Support²	2014 Submitted	2014 Voted On¹	2014 Majority Votes²	2014 Average Support²
Declassify board	94	31	30	78.7%	40	15	14	84.0%
Director removal	1	0	0		0	0	0	
Majority voting	36	33	19	60.1%	40	29	17	56.9%
Proxy access	21	15	5	34.3%	20	13	6	35.1%
Two candidates per board seat	2	1	0	3.8%	1	1	0	3.2%
Poison pill	5	3	1	36.0%	8	5	4	69.2%
Cumulative voting	3	3	0	32.1%	7	6	0	27.4%
Confidential voting	1	1	1	61.6%	0	0	0	
Enhanced confidential voting	1	1	0	42.2%	23	5	0	36.2%
Virtual meetings	0	0	0		2	0	0	
Supermajority voting	37	16	14	71.4%	20	12	8	67.3%
Voting requirements	11	3	0	9.8%	8	1	1	61.9%
Dual-class stock	10	7	0	26.6%	14	9	0	23.4%
Special meetings	25	11	4	44.5%	29	14	5	45.3%
Written consent	38	27	3	40.9%	31	27	0	38.5%
Other anti-takeover	3	2	0	16.7%	7	4	3	72.1%
Independent chairman	86	63	7	32.4%	78	63	4	31.1%
Lead director	0	0	0		1	0	0	
Board independence/tenure	3	2	0	4.8%	5	0	0	
Outside board seats	3	3	0	4.1%	1	1	0	4.8%
Risk oversight committee	1	1	0	4.0%	1	0	0	
Succession planning	2	2	0	8.0%	1	0	0	
Reincorporate to Delaware	3	2	0	3.3%	0	0	0	
Maximize value	14	6	1	29.4%	12	3	0	23.8%
Stock repurchases, dividends	9	3	0	28.0%	7	3	0	29.0%
Proxy advisor competition	4	1	0	1.7%	1	0	0	
Miscellaneous	18	1	1	82.0%	5	0	0	
Total Governance	431	238	86		362	211	62	

Compensation Proposals	2013 Submitted	2013 Voted On ¹	2013 Majority Votes ²	2013 Average Support ²	2014 Submitted	2014 Voted On ¹	2014 Majority Votes ²	2014 Average Support ²
Triennial SOP	22	0	0		0	0	0	
Severance pay	3	3	1	44.9%	4	2	1	56.2%
Bonus deferral	1	1	0	25.3%	0	0	0	
Accelerated vesting of equity awards	52	30	0	33.0%	29	20	4	35.8%
Golden coffins	2	2	0	38.1%	1	1	0	34.6%
Tax gross-ups	4	1	0	35.7%	1	0	0	
SERPS	3	3	0	30.5%	2	2	0	35.7%
Clawbacks	9	2	1	33.9%	4	3	0	28.7%
Retention of equity awards	46	36	0	23.8%	32	27	0	23.0%
Performance-based awards	5	3	0	37.7%	1	1	0	28.8%
Director pay	2	0	0		0	0	0	
Hedging policy	1	1	0	29.2%	0	0	0	
Pay benchmarking	4	4	0	12.4%	1	0	0	
Performance metrics	7	3	0	22.5%	4	3	0	12.8%
Pay disparity and ratios	7	3	0	10.9%	12	1	0	6.5%
Pay caps	3	0	0		3		0	
Link pay to social issues	2	2	0	7.1%	3	1	0	2.5%
Miscellaneous compensation	16	2	0	10.6%	6	2	0	3.9%
Total Compensation	189	96	2		103	63	5	

Environmental & Social Proposals	2013 Submitted	2013 Voted On¹	2013 Majority Votes²	2013 Average Support²	2014 Submitted	2014 Voted On¹	2014 Majority Votes²	2014 Average Support²
Animal welfare	21	6	1	18.1%	12	6	1	15.0%
Board diversity	26	3	1	35.8%	25	3	0	30.1%
Charitable contributions	2	1	0		2	2	0	3.9%
Charitable contributions	0	0	0		1	1	0	1.7%
Charitable contributions - conservative	2	1	0	3.7%	1	0	0	
Environmental	150	57	1		176	63	0	
Climate change - conservative	0	0	0		6	3	0	2.6%
Coal	3	1	0	6.9%	0	0	0	
Tar sands	0	0	0		1	0	0	
Hydraulic fracturing	6	3	0	34.0%	6	2	0	27.3%
Fugitive methane	3	3	0	31.8%	15	11	0	26.1%
Flaring	1	0	0		1	0	0	
Environmental impact - water	9	4	0	17.5%	5	3	0	25.7%
Climate change report	7	4	0	17.0%	12	7	0	21.6%
GHG emissions reduction	4	3	0	21.6%	26	8	0	25.3%
Finance and climate change	3	2	0	11.4%	8	2	0	23.7%
Energy efficiency and renewable energy	18	2	0	12.5%	11	1	0	21.6%
Nuclear	7	3	0	3.8%	4	2	0	4.9%
Palm oil and deforestation	10	2	0	0.5%	9	0	0	
GMOs	7	4	0	5.3%	6	4	0	5.7%
Nanomaterials	0	0	0		2	1	0	18.6%
Recycling	8	5	0	9.0%	9	3	0	23.8%
Toxic substances	9	3	0	17.5%	5	1	0	14.3%
Board environmental oversight	4	0	0		1	0	0	
Director with environmental expertise	4	3	0	18.8%	3	2	0	14.1%
Other - environmental	4	1	0	7.3%	3	0	0	
Sustainability report	29	12	1	37.9%	35	12	0	30.7%
Supplier sustainability report	14	2	0	4.6%	8	1	0	2.4%
Employment/discrimination	27	12	0		27	11	0	
EEO report	8	4	0	20.5%	4	3	0	23.4%
Misc. Employment/discrimination	4	1	0	0.0%	7	2	0	3.4%
EEO - conservative view	1	0	0		1	0	0	
EEO - sexual orientation	14	7	0	32.8%	15	6	0	37.5%
Finance	13	4	0		18	3	0	
Tax risk and policy	0	0	0		2	1	0	1.0%
Loan/mortgage servicing	5	2	0	25.0%	2	1	0	20.1%
Student loans	2	1	0	4.4%	0	0	0	
Board's moral and legal obligation	0	0	0		5	0	0	
Business standards	0	0	0		3	0	0	
Risk exposure from employees	0	0	0		2	0	0	
Illicit financial flows	1	0	0		0	0	0	
Indemnification	1	1	0	3.3%	1	1	0	2.4%
Payday lending	4	0	0		3	0	0	
Health	1	1	0		7	1	0	
Healthcare reform principles -	0	0	0		5	0	0	

Environmental & Social Proposals	2013 Submitted	2013 Voted On ¹	2013 Majority Votes ²	2013 Average Support ²	2014 Submitted	2014 Voted On ¹	2014 Majority Votes ²	2014 Average Support ²
conservative								
Childhood obesity	1	1	0	8.1%	2	1	0	0.8%
Human Rights	34	20	0		59	21	0	
Country selection/divestiture	4	4	0	12.0%	5	3	0	16.9%
Human trafficking	3	1	0	14.0%	5	0	0	
Code of conduct	10	5	0	15.5%	4	2	0	16.3%
Vendor code of conduct and human rights in supply chain	4	2	0	37.1%	16	8	0	29.1%
Human right to water	1	1	0	10.1%	2	1	0	11.2%
Internet and phone privacy and net neutrality	6	2	0	15.1%	14	3	0	15.9%
Board committee on human rights	5	5	0	3.9%	8	4	0	5.4%
Prison communications	0	0	0		2	0	0	
Miscellaneous human rights	1	0	0		3	0	0	
Political	139	88	2		141	86	4	
Political - conservative view	3	1	0	4.2%	5	2	0	3.3%
Grassroots lobbying	62	38	1	25.9%	56	42	3	27.2%
Lobbying - ALEC	0	0	0		6	2	0	17.6%
Public policy advocacy	0	0	0		7	0	0	
Incorporate values	9	7	0	4.7%	5	2	0	2.3%
Contributions - CPA	56	35	1	31.3%	46	31	1	27.5%
Board oversight	1	1	0	6.7%	1	1	0	5.3%
Prohibit political spending	7	6	0	4.4%	12	4	0	1.8%
Advisory vote on political spending	0	0	0		3	2	0	3.7%
Other political	1	0	0		0	0	0	
Tobacco	3	0	0		4	2	0	
Tobacco advertising and education	3	0	0		3	2	0	3.5%
Smoke-free facilities	0	0	0		1	0	0	
Miscellaneous E&S	10	0	0		5	0	0	
Broadcasting	2	0	0		0	0	0	
Firearms	0	0	0		3	0	0	
Other E&S	8	0	0		2	0	0	
Total Environmental & Social	426	192	5		476	198	5	
TOTAL PROPOSALS (ALL PROPOSALS)	1,046	526	93		941	472	72	

1. Estimated

2. Includes floor proposals; excludes proposals on ballots that were not presented or were withdrawn before the annual meeting.

3. Based on votes FOR as a percentage of votes FOR and AGAINST.

Table 3: 2013 Failed SOP Votes and 2014 Results

Company	2013 Vote*	2014 Vote*	S&P 500
Abercrombie & Fitch Co.	19.6%	96.1%	Y
Alexandria Real Estate Equities, Inc.	8.7%	87.4%	
Annaly Capital Management, Inc.	28.1%	90.8%	
Apache Corporation	50.6%**	96.9%	Y
Atlas Air Worldwide Holdings, Inc.	38.1%	69.7%	
AXIS Capital Holdings Limited (Bermuda)	32.3%	79.4%	
Big Lots, Inc.	31.4%	89.8%	
Biglari Holdings Inc.	42.1%	34.7%	
Children's Place Retail Stores, Inc.	17.3%	61.2%	
Cogent Communications Group, Inc.	39.7%	46.2%	
Comstock Resources, Inc.	32.8%	93.4%	
Consolidated Water Co. Ltd. (Cayman)	49.6%	48.3%	
Delcath Systems, Inc.	50.2%**	73.6%	
Dendreon Corporation	31.4%	41.4%	
Discovery Laboratories, Inc.	42.4%	80.9%	
Dynamic Materials Corporation	35.4%	69.6%	
East West Bancorp, Inc.	41.8%	98.7%	
Equus Total Return, Inc.	47.7%	74.5%	
Everest Re Group, Ltd. (Bermuda)	28.8%	45.3%	
Freeport McMoRan Copper & Gold Inc.	29.4%	62.7%	Y
FTI Consulting, Inc.	41.0%	92.9%	
Gentiva Health Services, Inc.	37.1%	77.6%	
Geron Corp.	52.3%**	82.0%	
Gleacher & Co., Inc.	39.4%	95.6%	
Healthways, Inc.	31.2%	96.9%	
Kilroy Realty Corporation	22.5%	86.5%	
LifePoint Hospitals, Inc.	43.3%	96.6%	
Masimo Corp.	54.5%**	30.3%	
MGP Ingredients, Inc.	21.5%	99.0%	
Middleby Corporation	48.7%	53.3%	
Morgans Hotel Group Co.	27.1%	91.3%	
Nabors Industries Ltd. (Bermuda)	36.4%	40.3%	Y
Navistar International Corp.	19.5%	73.2%	
Nuance Communications, Inc.	41.1%	50.7%	
OpenTable, Inc.	48.0%	81.9%	
OraSure Technologies, Inc.	46.1%	41.5%	
Patriot Scientific Corporation	46.6%	21.2%	
RadioShack Corp.	46.9%	44.8%	
Sonus Networks, Inc.	49.7%	58.2%	
Spancion Inc.	49.7%	89.0%	
Spectrum Pharmaceuticals, Inc.	31.7%	32.9%	
Stillwater Mining Company	32.8%	94.8%	
Strategic Hotels & Resorts, Inc.	49.6%	99.5%	
Tutor Perini Corporation	38.2%	44.5%	

Company	2013 Vote*	2014 Vote*	S&P 500
Ultimate Software Group, Inc.	49.6%	85.4%	
VeriFone Systems, Inc.	20.8%	79.3%	
Vermillion, Inc.	44.2%	99.5%	
Volcano Corp.	38.5%	91.6%	
Wave Systems Corp.	45.5%	91.2%	

*Calculated as the number of "for" votes as a percentage of "for" and "against" votes.

**Received less than majority support after counting abstentions.

Table 4: 2014 Failed Say-on-Pay Votes (through June)

Company	Meeting Date	2014 Vote*	2013 Vote*	Previous Failed Votes*	S&P Index
Aeropostale, Inc.	30-Jun-14	6.0%	98.6%		400
Allscripts Healthcare Solutions, Inc.	22-May-14	45.4%	89.0%		400
American Realty Capital Properties, Inc.	29-May-14	32.4%	None		
Biglari Holdings Inc.	24-Apr-14	34.7%	42.1%		600
BroadSoft, Inc.	2-May-14	26.8%	99.6%		
Carriage Services, Inc.	21-May-14	47.1%	95.5%		
CBL & Associates Properties, Inc.	5-May-14	29.8%	97.0%		
Chipotle Mexican Grill, Inc.	15-May-14	23.4%	73.2%		500
Ciber, Inc.	4-Jun-14	31.7%	84.7%		
Cogent Communications Group, Inc.	17-Apr-14	46.2%	39.7%	2011	
Consolidated Water Co. Ltd. (Cayman)	28-May-14	48.3%	49.6%		
CSP Inc.	11-Feb-14	42.3%	61.0%		
Cynosure, Inc.	14-May-14	47.2%	67.0%		600
CYS Investments, Inc.	9-May-14	27.1%	68.6%		
Dendreon Corporation	15-May-14	41.4%	31.4%		
Echo Therapeutics, Inc.**	19-Jun-14	53.5%	None		
Endurance Specialty Holdings Ltd. (Bermuda)	21-May-14	39.3%	98.9%		
Epiq Systems, Inc.	11-Jun-14	33.3%	65.8%	2012	600
Everest Re Group, Ltd. (Bermuda)	14-May-14	45.3%	28.8%		400
Expeditors International of Washington, Inc.	7-May-14	44.2%	85.8%		500
FirstMerit Corporation	16-Apr-14	41.7%	69.0%	2012	400
FleetCor Technologies, Inc.	29-May-14	30.2%	None		
Forest Oil Corp.	7-May-14	28.7%	72.2%		600
Genpact Ltd. (Bermuda)	7-May-14	45.6%	None		
Guess?, Inc.	26-Jun-14	34.8%	None		400
Hasbro, Inc.	22-May-14	46.0%	64.1%		500
Hologic, Inc.	4-Mar-14	34.4%	65.0%		400
Lexington Realty Trust	20-May-14	27.8%	97.7%		600
Mack-Cali Realty Corporation	12-May-14	30.4%	64.7%		400

Company	Meeting Date	2014 Vote*	2013 Vote*	Previous Failed Votes*	S&P Index
Masimo Corp.**	5-Jun-14	30.3%	54.5%	2012	400
Medidata Solutions, Inc.	28-May-14	43.0%	98.0%		600
Medifast Inc.	17-Jun-14	27.9%	None		600
Monster Worldwide, Inc.	3-Jun-14	38.4%	94.1%		400
Nabors Industries Ltd. (Bermuda)	3-Jun-14	40.3%	36.4%	2012, 2011	500
New York Community Bancorp, Inc.	4-Jun-14	46.2%	None		400
OraSure Technologies, Inc.	22-May-14	41.5%	46.1%		
Orexigen Therapeutics, Inc.	27-Jun-14	38.4%	None		
PacWest Bancorp	19-May-14	42.7%	97.7%		600
Patriot Scientific Corporation	30-Apr-14	21.2%	46.6%		
RadioShack Corporation	3-Jun-14	44.8%	46.9%		
Riverbed Technology, Inc.	22-May-14	27.0%	92.3%		400
Rovi Corporation	29-Apr-14	41.5%	53.2%		400
Sensient Technologies Corporation	24-Apr-14	46.1%	54.3%		400
Spectrum Pharmaceuticals, Inc.	27-Jun-14	32.9%	31.7%		600
Staples Inc.	2-Jun-14	46.4%	98.1%		500
TCF Financial Corporation	23-Apr-14	45.5%	61.5%		400
Titan International, Inc.	15-May-14	47.4%	53.2%		600
TRW Automotive Holdings Corp.	13-May-14	43.7%	93.4%		
Tutor Perini Corp.	28-May-14	44.5%	38.2%	2012, 2011	
United Therapeutics Corp.	26-Jun-14	41.7%	96.0%		400
USA Mobility, Inc.	28-May-14	47.9%	98.8%		600
VCA Antech, Inc.	21-Apr-14	48.4%	64.4%	2012	400
ViewPoint Financial Group, Inc.	19-May-14	47.8%	98.8%		600
Whiting Petroleum Corporation	6-May-14	42.0%	94.0%		
Willbros Group, Inc.	20-May-14	46.1%	87.9%		

*Calculated as the number of "for" votes as a percentage of "for" and "against" votes.

**Received less than majority support after counting abstentions.

Table 5: 2014 Proxy Access Proposals

Target Company	Proponent	Proposed Eligibility	Meeting Date	Result*	ISS Rec	Past Failed SOP Votes*
Abercrombie & Fitch Co.	New York City pension funds	3% for 3 years	19-Jun	55.2%	FOR	2012, 2013
Advanced Photonix, Inc.	Scott E. Bartel (Locke Lord LLP) for Charles M. Knowles	1% for 1 year, bylaw amendment	August	Omitted		
Apple Inc.	James McRitchie	1%-5% for 2 years, or 25 or more holders each owning \$2,000 of stock for 1 year	28-Feb	4.3%	AGAINST	
Bank of America Corp.	Harrington Investments	1%-5% for 2 years, or 25 or more holders each owning \$2,000 of stock for 1 year	7-May	6.5%	AGAINST	
Big Lots Inc.	New York City pension funds, City of Philadelphia Public Employees Retirement System	3% for 3 years	29-May	56.8%	FOR	2012, 2013
Boston Properties, Inc.	Miami Firefighters' Pension and Relief Fund and City of Philadelphia Public Employees Retirement System	3% for 3 years	20-May	65.5%	FOR	2013
Citigroup, Inc.	James McRitchie	1%-5% for 2 years, or 25 or more holders each owning \$2,000 of stock for 1 year	22-Apr	5.5%	AGAINST	2012
Comstock Resources, Inc.	City of Philadelphia Public Employees Retirement System	3% for 3 years	8-May	47.2%	FOR	2012, 2013
Goldman Sachs Group, Inc.	James McRitchie and Myra Young	1%-5% for 2 years, or 25 or more holders each owning \$2,000 of stock for 1 year	16-May	3.2%	AGAINST	
International Business Machines Corp.	Qube Investment Management	3% for 3 years	29-Apr	Omitted		
International Game Technology, Inc.	Steven Krol	3% for 3 years	10-Mar	57.8%	FOR	2012
Kilroy Realty Corp.	New York City pension funds	3% for 3 years	22-May	47.0%	FOR	2011, 2012, 2013
McKesson Corp.	New York City pension funds	3% for 3 years	July	Withdrawn		

Target Company	Proponent	Proposed Eligibility	Meeting Date	Result*	ISS Rec	Past Failed SOP Votes*
Nabors Industries Ltd.	New York City pension funds	3% for 3 years	3-Jun	51.8%	FOR	2011, 2012, 2013, 2014
Oracle Corp.	Nathan Cummings	3% for 3 years	October			2012, 2013
Praxair, Inc.	Qube Investment Management	3% for 3 years	22-Apr	Withdrawn		
SLM Corp.	Nathan Cummings Foundation	3% for 3 years	25-Jun	68.6%**	FOR	
Walgreen Co.	CtW Investment Group	3% for 3 years	8-Jan	43.6%	FOR	
Wal-Mart Stores, Inc.	Hermes Equity Ownership Services Ltd.	3% for 3 years	6-Jun	Withdrawn		
Walt Disney Co.	Hermes Equity Ownership Services	3% for 3 years	18-Mar	Withdrawn	FOR	

*Calculated as the number of "for" votes as a percentage of "for" and "against" votes.

**The SLM board made no recommendation on the proposal.

For further information or questions, please contact:

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