LIGHTHOUSE

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MORROW SODALI

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CORPORATE GOVERNANCE Q&A

Jennifer Carberry, Director of Marketing – US, spoke with Bill Ultan, Managing Director, and Susan Choe, Senior Director, of Morrow Sodali's Corporate Governance Consultancy, about their observations from the recent proxy season and what to expect in 2021.

Bill, what shifts have you observed between last year and this year's proxy season in terms of voting, shareholder proposals and other key areas of institutional focus?

BU: In general, voting results were not dramatically different year over year, but there were a few specific areas of note. We saw an increase in support for independent chair proposals as well as for some social referendums regarding lobbying activity and workforce diversity. On director elections, we continue to see more institutions focusing on overboarding, leading them to adopt more restrictive policies that have increased opposition for certain director nominees.

Susan, in light of the two concurrent events, the COVID-19 pandemic and the racial injustice movement, what are the key themes that companies should prepare for in advance of the fall engagement season?

SC: There are a number of them that I can highlight but let me focus on a few that are top of mind. The global health crisis rapidly accelerated the way companies think about the way we work, which is the natural transition given the technology that is in place. As COVID-19 progressed, the prominence of the "S" in ESG became magnified to new levels, with investors seeking answers on how companies are prioritizing the health, safety, and well-being of its workforce, including their mental health, to ensure that they remain engaged, motivated, and resilient to the ongoing challenges of living and working through a pandemic. Additionally as the racial injustice movement took shape, it amplified the issues around human capital management and took the topic to new heights. During the fall season, companies should fully expect investors to probe on a company's racial equity policies and programs, how the board is overseeing these efforts to promote greater racial equity, and its integration into long term strategy. That said, companies should continue to expect a robust discussion on climate change. We believe that investors will continue to put pressure on companies to take action to better manage greenhouse gas emissions in order to mitigate climate risk. More importantly investors will expect board oversight and director fluency on the topic, which will better demonstrate the company's commitment to the matter. Lastly, we expect the scrutiny on executive compensation programs to be unprecedented in 2021. Boards will need to proceed with extreme caution and manage optics and expectations given current views of an all stakeholder model.

BU: If I could just expand on a point Susan made around board risk oversight, we've seen in recent years requests for directors to participate in shareholder engagements with more regularity, especially with certain large investors. We anticipate that this trend will continue to grow in the year ahead. The ability of directors to speak to key risk areas, including the topics of corporate culture and corporate purpose, is going to be extremely important – and especially to be able to do it with a command of these issues.

Susan, especially in the US, executive pay is an area of perpetual interest and to a certain extent, controversy. What are some of the key areas of vulnerability that companies face and what steps can be taken to minimize the risk of opposition to Say on Pay in 2021?

SC: The pandemic has impacted different industries to varying degrees, with certain industries like airlines, hospitality, and retail being the hardest hit while certain companies in pharma, biotech and utilities continue to fare relatively well. For companies where layoffs, furloughs and pay cuts were announced, and performance has been deeply affected, pay increases especially on nonperformance-based pay, will not be viewed favorably. Also with depressed stock prices, market volatility, and the need for cash preservation, a slew of associated issues must be considered such as burn rate concerns, potential repricing of stock options and determining the size of the equity grants so that they do not lead to windfall gains once the markets recover. For companies where the current performance metrics and their goals no longer make sense, the compensation committee will need to either make changes to the program mid-stream or use substantial discretion at the end of the performance period. If either of these decisions lead to payouts that are not commensurate with performance, especially if the committee exercises positive discretion, then there will be significant questions regarding the committee's decision-making process. Even for companies that have fared well, managing the optics of rewarding management for good performance may be a challenge due to the current environment. Additionally, the market is unique right now because there isn't much relative comparison to be made outside of some general similarities. Each company's story really is different. While compensation committees are struggling to do the right thing, whether it be paying for great performance for effectively navigating the crisis or perhaps paying in line with how shareholders have fared, this is the year in which we will need to overexplain our story through engagements and in proxy disclosure. It will be critical to communicate that the decisions the committee made come fiscal year end are in the best interest of the company for the long term. And that certain short-term decisions were made to get through the crisis and support long-term strategy. One additional point on proxy advisors. We would hope that proxy advisors will be a bit more flexible in their assessments in 2021, but if they do remain rigid and stringent in their views without taking company-specific situations into proper context, we suggest focusing the efforts on a company's top investors, and placing less emphasis on proxy advisory firm perspectives.

> "During the fall season, companies should fully expect investors to probe on a company's racial equity policies and programs, how the board is overseeing these efforts to promote greater racial equity, and its integration into long term strategy."
> **Susan Choe**

Bill, if you had to pick a governance topic that investors have continued to scrutinize, what would that be and are there other recent developments of significance?

BU: Board composition certainly is an area that continues to get more scrutiny, as it incorporates a number of different issues, including diversity in all of its definitions and overboarding. To Susan's earlier comments regarding the focus on diversity and corporate culture, the make-up of boards and the search processes that boards go through to identify new candidates – ensuring that they are looking at a diverse pool of individuals – is going to be extremely important. I also would extend my comments to senior management as well, where I believe we also will see a similar focus on composition. One additional topic I would mention is the activism side of diversity. We are already aware of a few institutions, namely New York City Employees' Retirement Systems (NYCERS) and Calvert Asset Management, that are targeting specific companies and requesting disclosure of workforce diversity and specifically EEO-1 data. These overtures appear to be precursors to shareholder proposals for the coming 2021 season, making workforce diversity an important issue for companies to be managing and thinking about.

> "The make-up of boards and the search processes that boards go through to identify new candidates – ensuring that they are looking at a diverse pool of individuals – is going to be extremely important."
> **Bill Ultan**

Susan, we have all heard that due to COVID-19 and the Black Lives Matter movement, the "S" in ESG has gained significant prominence. What actions can companies take to demonstrate their commitment to social issues?

SC: Board and management actions that demonstrate an effort to foster a diverse, inclusive and informed workforce will certainly be critical. Additionally, the Black Lives Matter movement in particular has placed significant focus on opportunities that companies provide from the recruitment stage and throughout one's career with training, programs and policies that ultimately lead to a healthy pipeline of minority candidates, especially from the black community, for advancement - and eventually in leadership positions, including the boardroom. Obviously, although these changes cannot occur overnight, we expect to see greater investor demand for ethnic diversity throughout the organization, including at the board level.

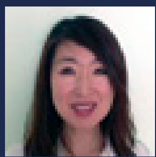
**Bill, due to the global health crisis, it seems that a vast majority of companies held their annual meetings virtually. What are your expectations for 2021?
Do you see a significant shift from physical to virtual only meetings? Are there any notable implications for companies as they prepare for 2021?**

BU: It's not surprising given world events that virtual meetings very quickly became the norm. I am not sure what we would have done years back before this technology existed, but fortunately it exists today. While there were some challenges technologically and otherwise, most meetings went off fairly smoothly. Between March and June, approximately 75% to 80% of all **annual meetings** were virtual; it is very difficult to say what the proportion will be for 2021, although I am reasonably confident that there will be more virtual meetings than there were pre-pandemic. I am aware of a number of companies that would prefer to get back to physical meetings, but circumstances certainly remain unclear at this stage as to whether or not that will be feasible and safe. I expect that the capability to conduct a virtual meeting, including the competence of individual companies as well as that of the providers, will be improved. I have a couple of thoughts regarding concerns with virtual meetings that companies should be aware of. I believe it is important to conduct a virtual meeting in the same manner that a company would do so for a physical meeting, so directors should be in attendance and if a company typically has a management or board presentation, they should continue to offer this. In addition, issuers should ensure that they are allowing questions during the meeting and responding to questions as much as possible, including giving proper time allotment for questions and for the proponents of shareholder proposals.

> "Also, we believe this is the year that really underscores how governance, compensation, environmental, and social issues come together, and the importance of each of these critical areas to long-term strategy."
> **Susan Choe**

Susan, are there any proxy season trends or updates that you can highlight?

SC: With the heightened focus on sustainability matters, an increasing number of companies, especially large cap companies, have formed a separate sustainability committee to oversee certain key issues in this area, including climate change. We expect this trend to continue in the coming years. On human capital management, we already spoke of the prominence of the S in ESG, but even prior to the health crisis and the racial injustice movement, we slowly began to see companies adapting the names of compensation committees to reflect oversight of human capital management, talent management, succession planning, diversity and inclusion, and so forth. With the two ongoing crises, we expect more boards to take similar action. Also, we believe this is the year that really underscores how **governance**, compensation, environmental, and social issues come together, and the importance of each of these critical areas to long-term strategy. As an example, there will be a greater push to incorporate sustainability metrics into executive compensation programs. While a substantial number of companies holistically tie a company's sustainability progress to executive performance, many investors are and will be seeking companies to quantitatively tie environmental and social metrics to their executive pay program.

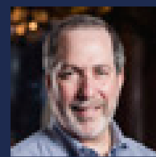


SUSAN CHOE

Susan Choe is Senior Director of the Corporate Governance Group at Morrow Sodali LLC. She helps companies assess and strategically manage their corporate governance, executive compensation, ESG and stockholder engagement imperatives. She advises boards and senior management on prevailing trends, market practices and overall investor climate on key emerging governance and compensation topics to help minimize the risk of stockholder activism.

Susan also advises directors and senior management on stockholder and proxy advisory firm engagements and solicitation strategies, including leading director and management prep sessions, providing guidance on key talking points and cultivating relationships with top institutions. She works year-round with clients in preparing for annual and special meetings and leads the draft proxy review process with a keen focus on executive and director compensation, corporate governance and sustainability disclosures and communication.

Prior to relocating to our London headquarters in the Fall of 2018, Susan was based in our New York City headquarters.

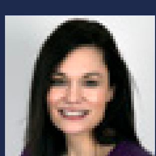


BILL ULTAN

Bill Ultan is a Managing Director at Morrow Sodali and a member of the firm's Senior Leadership Team. As manager of the firm's Corporate Governance Consulting Group with over 30 years of experience in the field, Bill has guided companies through a wide range of governance and takeover challenges, including contentious shareholder proposals and compensation-based initiatives, proxy contests, tender offers, and other corporate control matters.

He previously was a senior member of the firm's Stock Surveillance and Proxy Solicitation departments. Bill's vast experience has been gained through years of observing shareholders and proxy advisory firms, assessing compensation practices and governance policies, and analyzing voting results and solicitation strategies.

He prepares many strategic assessments and counsels officers and directors of public companies across a diverse range of industries and market capitalizations.



JENNIFER CARBERRY

Jennifer is Director of Marketing US for Morrow Sodali. Prior to joining the firm, Jennifer was Director of Marketing for a private equity firm with portfolio investments focused primarily in the technology and financial services sectors. Previously, Jennifer held the senior marketing and investor relations with two public companies.

Jennifer began her career in the hedge fund markets, where she conducted research for a financial consultant specializing in alternative investments. Jennifer is a cum laude graduate of Columbia University.

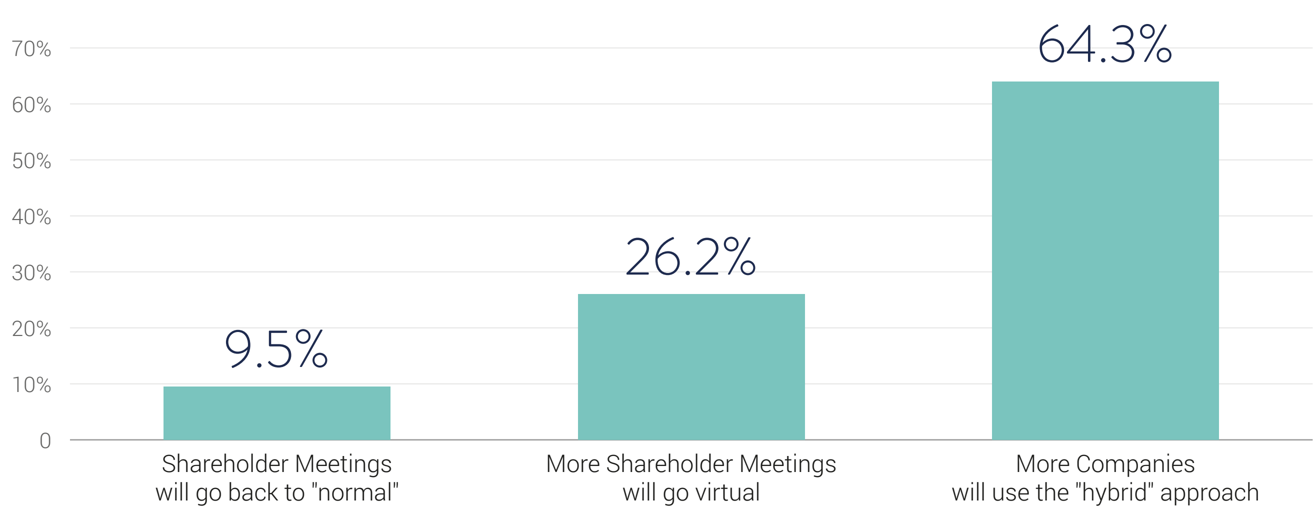
VIRTUAL SHAREHOLDER MEETINGS

In our first US Lighthouse Edition in August of 2019 we touched on the mechanics and process of a Virtual Shareholder Meeting (VSM). Little did we know about 6 months after that issue was published that we would be thrown into a pandemic leaving most public companies scrambling to adapt to a VSM format for their **shareholder meeting**. This was a big change in a very short period of time and presented challenges for both public companies and the service providers who were now compelled to hold a virtual shareholder meeting.

COVID-19 changed the landscape for most shareholder meetings in the U.S. for the 2020 proxy season. Fortunately, the SEC provided guidance for conducting a meeting in light of COVID-19 early on in the proxy season, making it easier for most companies to switch to the virtual format. The SEC issued guidance allowing that if a company had already mailed and filed its definitive proxy materials they would be able to notify shareholders of any changes to the meeting by either issuing a press release announcing the change, filing the announcement as DEF14A on EDGAR or at the least taking all necessary steps to inform other proxy service providers and the appropriate national securities exchange.

Both ISS and Glass Lewis, taking the pandemic into consideration, said they would not recommend negatively against a company that plans on going to a virtual only format during the pandemic.

In a recently released publication by Proxy Insight, it asked a group of investors (58 Asset Managers, 12 Asset Owners, 7 research/advocacy groups, 6 law firms, 1 government/regulator and 1 union group) if they expect



SOURCE: Proxy Insight

shareholder meetings to change once the crisis was over. The survey showed 9.5% of investors expect shareholder meetings will go back to "normal" (e.g. – in person shareholder meeting), 26.2% stated that they expect more shareholder meetings to go virtual in the future while an overwhelming 64.3% expect more companies will use a hybrid (e.g. – combined physical and virtual) format moving forward.

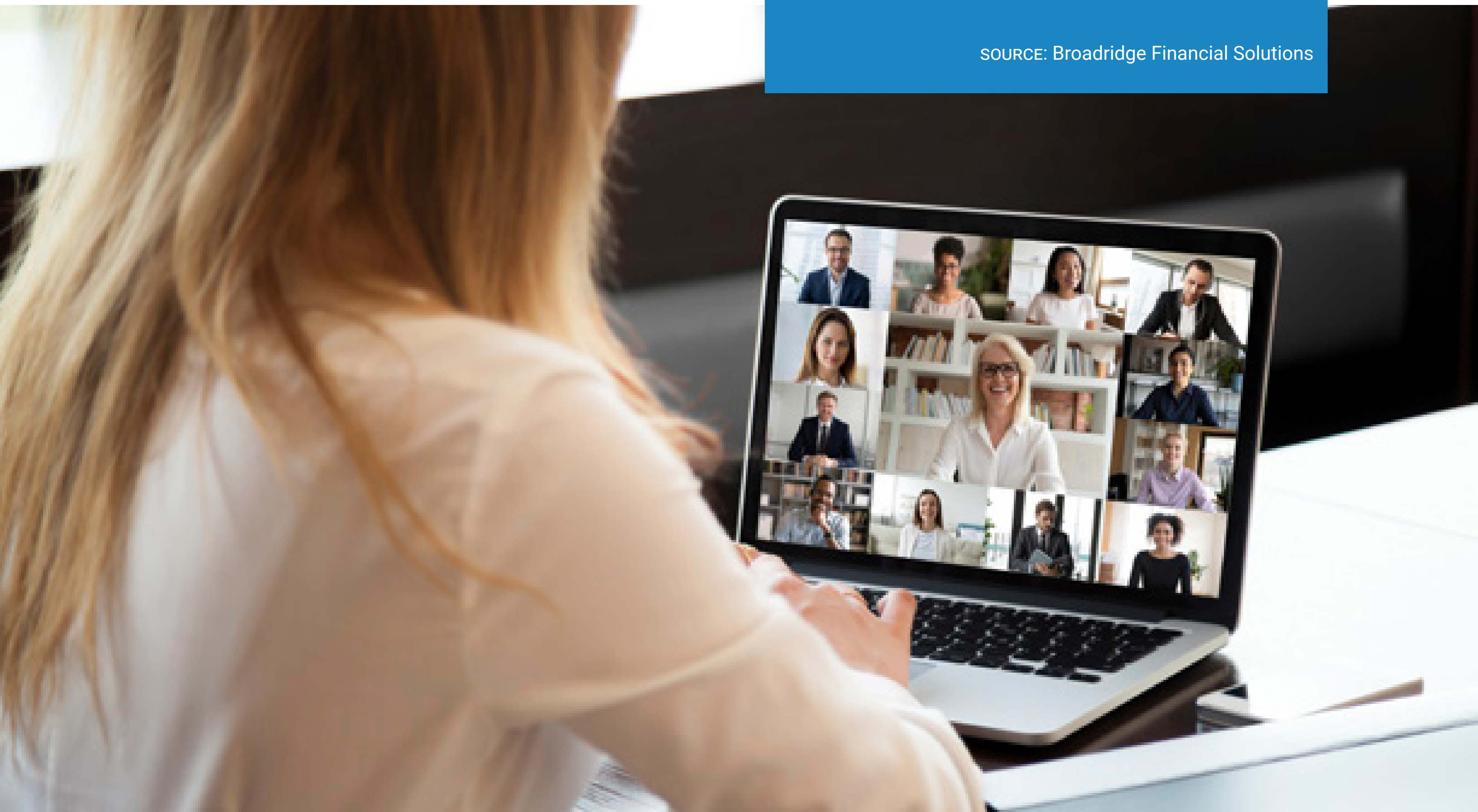
Many companies provided services for a VSM format (e.g. – Broadridge, Mediant Communications, Computershare, Continental Stock Transfer and Trust and American Stock Transfer and Trust to just name a few) though Broadridge handled the vast majority of VSMs in 2020. Recently, Maryellen Andersen from Broadridge posted a paper on the Harvard Law School Forum of Corporate Governance where she spoke in more detail regarding the jump in Broadridge VSMs for the first half of 2020. Though she states that the jump in VSMs was primarily due to the COVID-19 pandemic, she also says "VSMs were expected to increase modestly year-over-year as familiarity with them grows among companies and shareholders, and as the greater shift toward digital communications unfolds".

Key Metrics for VSMs Held between January 1, 2020 through May 22, 2020

- Total Number of Meetings: 860 (in 2019 Broadridge hosted 125 VSMs in the same timeframe)
- Average Duration of Meetings: 22 minutes
- Average Attendance: 59 shareholders and guests
- Average Number of Shareholders voting "Live" at the meeting: 4 (highest 178)
- Average Number of Questions from Shareholders: 6 (highest 316)
- Shareholder Proposals: 132 Meetings had one or more shareholder proposals

  Over 80% of the proposals were presented by the proponent 'live' over a telephone line. At other times, a proponent's pre-recorded message was played, or the proposal was read aloud by a company official on behalf of the proponent.

SOURCE: Broadridge Financial Solutions



Even though VSMs provide more access for shareholders to attend the meeting, shareholder activist investor John Chevedden received an e-mail from AT&T letting him know that he wouldn't have a chance to speak at the 2020 Annual Meeting which was held virtually. Mr. Chevedden had a shareholder proposal on the agenda for AT&T regarding independent board chair. He, as well as other proponents, were asked to provide written comments to be read by the management team during the meeting. Even though his proposal was read by the company he was quoted as saying "Companies are trying to take advantage of COVID-19 and silence voices." He also publicly stated that he had some difficulties at other annual meetings this year for companies such as the Goodyear Tire & Rubber Co., where he believes he was cut off as he spoke and Bank of New York Mellon Corp., where he said the company would not take his questions. Bloomberg recently spoke to shareholder advocate James McRitchie who believes not having a face-to-face shareholder meeting can negatively affect the governance process. He stated that VSMs "have become an easy way to discourage shareholder communications" and added "there are many instances where I have resolved issues with management through face-to face discussions at a meeting."

In a paper written by the Council of Institutional Investors (CII) titled "Shareholders Face Obstacles to Participation in Virtual Annual Meetings", it noted various issues shareholders have with the virtual annual meeting process. Ed Durkin with the United Brotherhood of Carpenters mentioned that the Computershare VSM platform only allowed record holders or asset managers to ask questions during the meeting but did not provide the same right to beneficial holders. When Mr. Durkin reached out to Computershare he was told that beneficial holders must have a legal proxy in order to ask questions at the meeting. This process was different for beneficial holders that used the Broadridge platform which allowed beneficial holders to ask questions at the VSM. In an e-mail to Computershare, Mr. Dunkin said, "The proxy delegation required under your policy for beneficial shareholders to simply ask questions at the meeting is a restriction on shareholder rights."

Based on our experience with clients' virtual meetings, the vast majority ran smoothly without any issues. While there were concerns that more holders would attend the meetings and ask questions of management due to the virtual nature of the meeting, that did not materialize. Most companies had a similar number of questions asked as they had at previous in person meetings. Also, in these virtual meetings we saw that shareholder proponents were generally reasonable and only presented their proposals without any grandstanding.

It is unclear how COVID-19 will impact shareholder meetings in 2021 but if this virus continues to persist early next year, we may see another wave of VSMs for the 2021 proxy season. Most companies should be in a better position from their VSM experience this year should they be forced to conduct another VSM for the coming proxy season. In the interim, companies should also consider which meeting format is the best option for the company and its shareholders in the future as we come out of the pandemic. Morrow Sodali will continue to monitor the situation closely and we will keep our clients informed of any relevant updates to the meeting format process for the coming proxy season.

THE COVID-19 IMPACT ON RETAIL VOTER TURNOUT

During the 2020 Proxy Season, proxy voting, like many things, was not impervious to the widespread impact the COVID-19 pandemic had, and continues to have, on our everyday lives. COVID-19 seemed to disproportionately affect the retail holder community, who are typically the most difficult shareholder demographic from which to solicit a vote. Based on Morrow Sodali's research regarding companies which had shareholder profiles with historical retail populations above the norm, and in cases where no additional solicitation measures were taken from the previous year, voting on non-discretionary items dropped on average 1-3% of the outstanding shares, with some issuers seeing drops of 4-5%. While this may not seem like an impactful number, these margins could have proven detrimental to the passing of proposals requiring a majority of the outstanding shares (or greater) in favor, or helping combat negative voting from institutions, due to the tendency of **retail holders** to support management.

While there are likely a number of factors that can be attributed to drops in retail participation, one of the major contributors was the impact COVID-19 had on Broadridge Financial Solutions, which services over 90% of the brokerage community for mailing and voting needs. At no fault of their own and despite remarkable efforts to help issuers maintain their Annual Meeting timelines, with their operations located in Long Island, New York, which during the proxy season was the epicenter of the U.S. outbreak, Broadridge faced a multitude of challenges to their normal course of business. As the apex of infections peaked at the height of proxy season, at least in New York, Broadridge had to abide by state mandated on-site workforce reductions that significantly limited the capacity for which proxy material could be delivered to shareholders. In order to adapt, they had to prioritize certain services at the temporary expense of others. As these delays materialized well into Annual Meeting timelines for many issuers, little could be done to change course. Outlined below are additional factors that likely aided in a lower voter turnout among retail shareholders this past proxy season:

- The biggest delays we saw were in the physical mailing of proxy material, which has a propensity to cater more to retail shareholders. Depending on when during the peak of the pandemic material arrived at Broadridge and other intermediaries from the financial printers, hardcopy mailings were often delayed beyond the usual five business days after receipt, causing shorter solicitation timeframes for shareholders to return their votes.

- Due to the prioritizing of Annual Meeting mailings, physical reminder mailings were often delayed and, in some cases denied, limiting issuers to send reminders only to those who receive proxy material electronically.

- For companies that utilized a Notice & Access mail method, the SEC allowed leniency on the typical 40 calendar day rule to mail notices, and the five business day rule for traditional package mailouts, which again, shortened the time holders normally have to respond.

- Additionally, fulfillment requests for Notice & Access mailings from shareholders wanting a physical copy of material were in many cases not being completed without significant delays.

- Some shareholders lived in different locations while in quarantine and did not receive proxy materials shipped to their home address.

- Due to unprecedented circumstances brought on by COVID, people likely were more concerned with physical, emotional and financial stress, and rightfully so, rather than focusing on voting proxies.

While lower vote turnout may have been true for the retail population of many issuers, the same cannot be said of institutional holders. Most institutional shareholders did not experience much of a lag in receiving their proxy material and voting information as they are typically set up to receive this via electronic platforms (email, ProxyEdge, etc.), which did not endure the same level of delays as physical mailouts. Many passive institutional investors have dedicated teams in place that handle all things governance and proxy related. These teams appeared to seamlessly adapt to the new realities COVID-19 swiftly brought upon us, from working remotely to dealing with the displacement of entire workforces. Greater efforts seemed to be made to allow little disruption in engaging with issuers and executing proxy votes in a timely manner. Despite dealing with extreme market volatility, even active investors where portfolio managers and analysts typically weigh in on voting decisions helped ensure their firm's vote was present. Advisory firms were also part of the equation in ensuring no slippage in institutional voting as proxy analyses were being released according to the typical timeframes (usually two weeks in advance of a meeting), as well as the automated voting of institutions who outsource voting implementation to these firms.

Although it is unclear what the future holds as we continue to battle COVID-19, all parties involved in the Annual Meeting process should be in a position to be better prepared moving into 2021. Building in contingencies when constructing your 2021 meeting timelines can help anticipate the unknown and provide flexibility, whether you increase the allotted time between your anticipated mailing and meeting date or consider additional solicitation strategies to ensure more normal participation from retail holders, all can help mitigate the potential COVID-19 impact. Nevertheless, we will continue to monitor how things unfold over the next several months and as we move into the 2021 Proxy Season.

2020 SHAREHOLDER PROPOSALS

A total of 425 shareholder proposals went to a vote as of August 1, 2020. Overall volume has slightly decreased year over year since 2017 potentially due to an increase in company proactiveness, successful negotiations with proponents and no action relief letters granted by the SEC. **Governance** related proposals have represented over half of all shareholder proposals in each of the last four years. We highlight a number of the shareholder proposal trends we saw during the 2020 Proxy Season on the following pages.

TOTAL SHAREHOLDER PROPOSALS 2017-2020

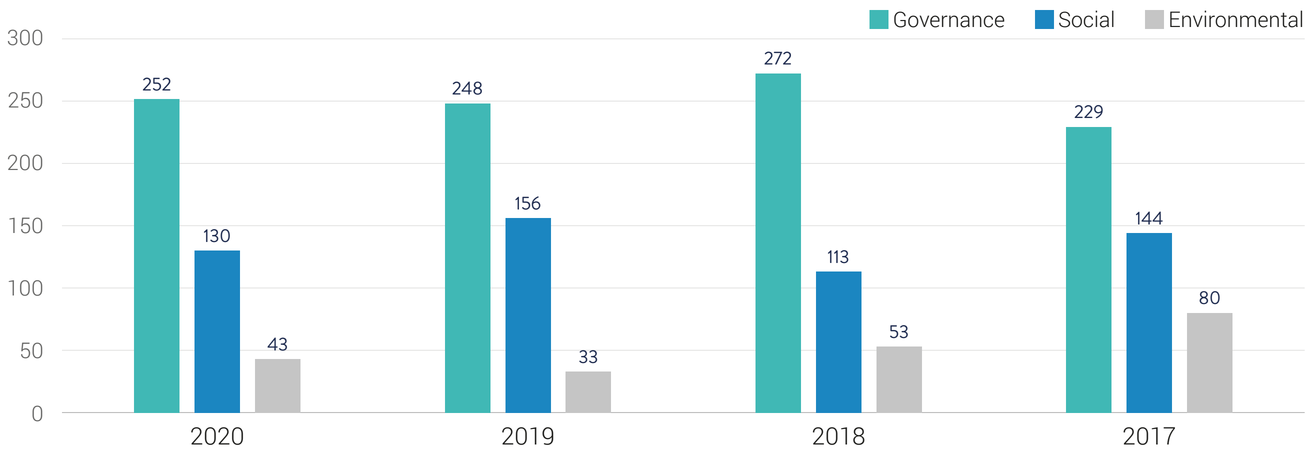


Chart represents shareholder proposals voted on at companies within the Russell3000 from January 1, 2017 through August 1, 2020. Excludes contested situations.

GOVERNANCE PROPOSALS

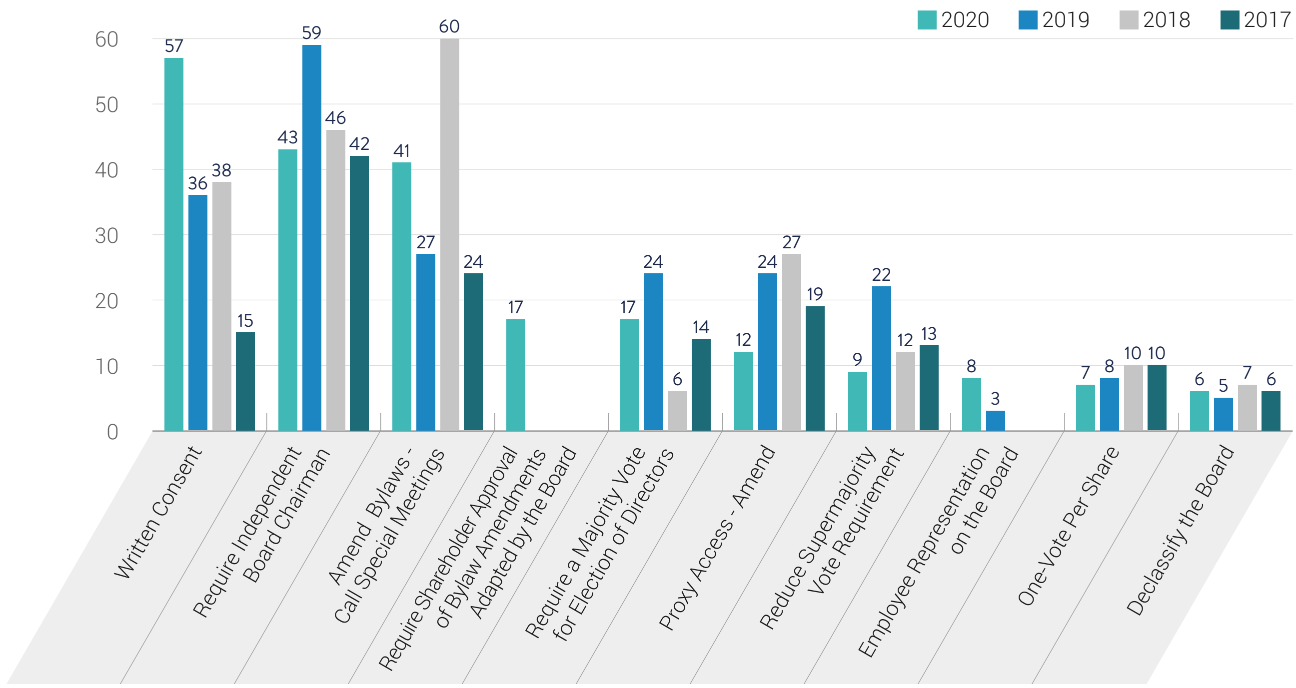


Chart represents common Governance shareholder proposals voted on at companies within the Russell3000 through August 1, 2020.

WRITTEN CONSENT

Proposals related to shareholders' right to act by written consent increased substantially this year. Average support decreased slightly from 40% in 2019 to 37% in 2020. Only three proposals, at **Berry Global Group, Inc. (BERY), OGE Energy Corp. (OGE)** and **Stanley Black & Decker, Inc. (SWK)** received a majority of the votes cast compared to six in 2019. John Chevedden was the main proponent behind most written consent proposals. Chevedden was the sponsor or co-sponsor of over half of the proposals that went to a vote.

INDEPENDENT BOARD CHAIR

The volume of proposals requesting a split Chair/CEO decreased but average support was up from 29% in 2019 to 34% in 2020. Two proposals received a majority of the votes cast at **Baxter International (BAX)** and **The Boeing Company (BA)** compared to none in 2019. Investors consider many factors when voting on this proposal including clearly defined duties of a Lead Independent Director, strong financial/stock price performance and robust governance practices.

SHAREHOLDERS' RIGHT TO CALL SPECIAL MEETINGS

Average support for this proposal was 41% which is consistent with previous years. Over half of the proposals voted on received support over 40%. Shareholders' ability to call special meetings is considered a fundamental shareholder right and as such, it remains a common proposal. The five proposals that passed consisted of two that requested the right to call a special meeting and three aimed to reduce the ownership threshold required to call a meeting. Company specific factors including size, performance, existing anti-takeover provisions and responsiveness to shareholders are all considerations for institutions and advisory firms when reviewing these proposals.

REQUIRE SHAREHOLDER APPROVAL OF BYLAW AMENDMENTS ADOPTED BY THE BOARD

New this year were proposals requesting shareholder approval of bylaw amendments adopted by the Board. 17 proposals were submitted and none received a majority of the

ENVIRONMENTAL & SOCIAL PROPOSALS

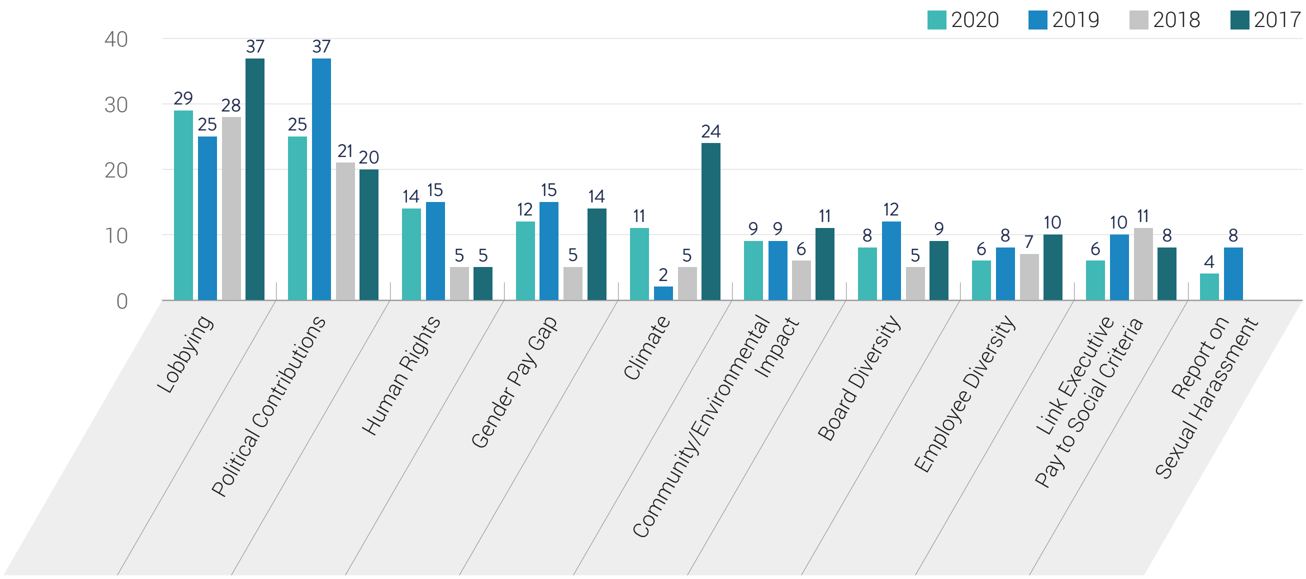


Chart represents common E & S shareholder proposals voted on at companies within the Russell3000 through August 1, 2020.

votes cast. Average support was just 2% of the votes cast. Proponents argued that certain amendments potentially limit the rights of shareholders and reduce accountability of directors and management. The main proponent was John Chevedden, who submitted the majority of these proposals.

LOBBYING/POLITICAL CONTRIBUTIONS

Lobbying proposals were up slightly this year and average support was 32% which is consistent with last year. Only one proposal at **Alaska Air Group, Inc. (ALK)** received a majority of the votes cast which is also consistent with 2019. Proposals related to Political Contributions were down but average support was up from 36% in 2019 to 41% in 2020. Four proposals received a majority of the votes cast compared to two last year. Several proposals were narrowly defeated receiving above 45% of the votes cast. ISS recommended a vote in favor of all proposals related to political contributions this year and opposed only two in 2019.

HUMAN RIGHTS

Twelve proposals requested a report on human rights while two requested the company adopt a formal human rights policy. Average support was 24% compared with 32% in 2019. No proposal received a majority of the votes cast compared with two last year.

GENDER PAY GAP

Arjuna Capital and Proxy Impact were the main proponents of Gender Pay proposals this year. The number of proposals was consistent with 2019 but average support was down considerably from 24% in 2019 to 13% in 2020. The decrease in support may be attributed to additional disclosure from companies on the topic. Additionally, ISS recommended against all but one proposal this year compared to recommending in favor of all but one proposal in 2019. To date, no proposal has received a majority of the votes cast.

CLIMATE RELATED PROPOSALS

There was an increase in climate change proposals this year and average support increased to 36% compared to 32% in 2019. Two proposals requesting a report on climate change received a majority of the votes cast at **J.B. Hunt**

Transport Services, Inc. (JBHT) and **Ovintiv, Inc. (OVV)** and a proposal requesting a report on climate lobbying aligned with Paris Agreement goals received a majority of votes cast at **Chevron Corporation (CVX).** Neither of the two climate change proposals passed in 2019.

COMMUNITY – ENVIRONMENTAL IMPACT

Proposals in the community/environmental impact category varied widely based on the individual company and industry. Proposals ranged from reporting on coal combustion, deforestation, food waste, and health harms to communities of color, petrochemical operations, plastic bag use and water pollution. Average support was 22% and only one proposal received a majority of the votes cast compared with none in 2019. The proposal that passed was at **Phillips 66 (PSX)** and requested a report on risks of Gulf Coast petrochemical investments.

DIVERSITY

A total of eight proposals relating to Board Diversity went to a vote compared to twelve in 2019 and average support of 20% was up slightly from 18% in 2019. Three proposals requested companies adopt a policy regarding Board Diversity, one of which received a majority of the votes cast at **Expeditors International of Washington, Inc. (EXPD).** This compared with four proposals that went to a vote in 2019 with two receiving a majority of the votes cast. Four proposals that requested companies disclose a board diversity and qualifications matrix went to a vote. Average support was just 4% and none received a majority of the votes cast which was consistent with 2019. One proposal requested a report on plans to increase board diversity which received 60% of the votes cast at **National HealthCare Corporation (NHC).** A similar proposal was submitted at a controlled company in 2019 and did not receive a majority of votes cast.

Average support for proposals related to employment diversity continued to increase from 38% in 2019 to 53% in 2020. Three proposals at **Fastenal Company (FAST), Fortinet, Inc. (FTNT)** and **Genuine Parts Company (GPC)** received a majority of the votes cast compared to two in 2019.

LOOKING AHEAD

It is unclear how COVID-19 and social unrest will affect the 2021 proxy season. Due to the current environment, issues related to Human Capital Management, Supply Chain, Diversity and Community Support may garner more attention and potentially more support.

As always, engagement with institutional investors for companies is crucial, as is adding appropriate and thoughtful disclosure in the proxy statement.

DIVERSITY MATTERS – IN THE BOARDROOM AND BEYOND

Corporate boardrooms have long been colloquially referred to as an “old boys’ club,” consisting predominantly of older, white males. Historically, this phrase has rung true for many boards. And then 2017 happened.

Enter the #metoo movement, which quickly became part of the mainstream discussion and ushered in a new found focus on gender issues in the US. In response to the popularity of the movement - and as fiduciaries representing millions of people - major institutional investors adopted new stewardship guidelines to address perceived gender imbalances on public company boards.

State Street Global Advisors was one of the early leaders, symbolically moving the *Fearless Girl* statue to a more prominent Wall Street location in front of the New York Stock Exchange. They soon followed that up by implementing a policy to “vote against the entire slate of incumbent **board** members on the nominating committee if a company does not have at least one woman on its board, and has not engaged in successful dialogue on State Street Global Advisors’ board gender diversity program for four consecutive years.”

Other investors quickly followed suit by adopting their own policies seeking to address gender diversity at the board level. These investor efforts have certainly had an effect. According to Spencer Stuart, 2017 marked the “first time in the history of [their] survey” where “more than half of the new S&P 500 directors [were] women and/or minorities. Female representation among new directors rose to 36% in 2017, a 20-year high.”[1] This trend continued into 2019, where women made up 46% of all new directors added to S&P 500 boards throughout the year – up from 40% in 2018. More than 90% of S&P 500 boards now have two or more women directors, compared to 86% in 2018 and just 53% a decade ago.[2]

1. *2017 Spencer Stuart U.S. Board Index.* Available at: https://www.spencerstuart.com/~/media/ssbi2017/ssbi_2017_final.pdf
2. *2019 Spencer Stuart U.S. Board Index.* Available at: https://www.spencerstuart.com/-/media/2019/ssbi-2019/us_board_index_2019.pdf

Enter 2020. We find ourselves in the midst of a global pandemic. Long-simmering civil unrest has hit a boiling point. Black Lives Matter and similar movements have been thrust into the international spotlight, and issues of systemic racial discrimination are now front and center in the public dialogue.

Corporate America has offered public statements of support, voicing solidarity with the African-American community through various social media platforms. The official Disney Twitter account tweeted “we stand against racism. We stand for inclusion. We stand with our fellow Black employees, storytellers, creators and the entire Black community.”[3] Amazon offered a similar statement, tweeting “together we stand in solidarity with the Black community – our employees, customers, and partners – in the fight against systemic racism and injustice.”[4]

Companies have been lauded for their supportive statements, but they have also been met with criticism. There is a sentiment that while tweets are nice, companies must do more than just offer supportive statements. “I appreciate your Black Lives Matter post,” said Brickson Diamond, Chief Executive of diversity consulting firm Big Answers, “Now follow that up with a picture of your senior management team and your board.”[5] In a Washington Post article, Shaun R. Harper writes, “if leaders want to seriously convey that black lives do indeed matter at their companies, there’s a lot they can do. They could take strategic steps to recruit more black professionals, ensure black employees have equitable opportunities for advancements and promotion, routinely assess the workplace racial climate and take meaningful actions to improve it, mandate company-wide professional learning experiences on a range of diversity and inclusion topics, invest considerably more financial resources into black employee network groups, ask black people for feedback and input on how to make the workplace less racist – and hold themselves accountable for acts of anti-blackness. Anything short of this will weaken the credibility of the values they’re now so loftily proclaiming.”[6]

Institutional investors have also weighed in publicly. In response to the corporate statements of support, Scott Stringer, New York City Comptroller, sent letters to S&P 100 companies requesting that they “walk the walk” when it comes to condemning racism. He followed, "it's not enough to condemn racism in words, systemic racism in corporate America is going to require concrete action.”[7] Stringer is calling on companies to disclose the “Consolidated EEO 1 Report reflecting the race, ethnicity and gender of [the] firm’s employees, with oversight provided by the independent members of the board,” arguing that without this disclosure, “investors, as well as employees and the public, are unable to monitor, assess and benchmark the company’s performance in hiring, retaining and promoting black employees, other employees of color and women in the U.S.”[8]

Going forward, public company boards and management should expect investor questions, demands and/or **activism** related to their current racial and gender makeup – not just for the board and management, but the entire organization. At present, investor efforts regarding both gender and racial diversity are mostly focused on the board level, but corporate boards will need to be proactive in formulating comprehensive strategies for inclusivity at all levels of the organization and be prepared to communicate those strategies to shareholders.

3. @disney “We stand against racism. We stand for inclusion. We stand with our fellow Black employees, storytellers, creators and the entire Black community.” *Twitter*, 31 May 2020, 6:41pm, https://twitter.com/Disney/status/1267224613152571393
4. @amazon “The inequitable and brutal treatment of Black people in our country must stop. Together we stand in solidarity with the Black community – our employees, customers, and partners – in the fight against systemic racism and injustice” *Twitter*, 31 May 2020, 1:05pm, https://twitter.com/amazon/status/1267140211861073927
5. Jan, McGregor, Merle (2020) ‘As big corporations say ‘black lives matter,’ their track records raise skepticism’, *The Washington Post*, 13 June. Available at: https://www.washingtonpost.com/business/2020/06/13/after-years-marginalizing-black-employees-customers-corporate-america-says-black-lives-matter/
6. Harper, S. (2020) “Corporations say they support Black Lives Matter. Their employees doubt them.” *The Washington Post*, 16 June. Available at: https://www.washingtonpost.com/
7. Kerber, Ross (2020) ‘New York City comptroller tells companies 'to walk the walk' on racial equality.’ *Reuters*, 1 July. Available at: https://www.reuters.com/article/us-minneapolis-police-corporatediversity/new-york-city-comptroller-tells-companies-to-walk-the-walk-on-racial-equality-idUSKBN2425J1
8. Stringer, Scott. “Dear Mr. Bezos.” 1 July 2020. Available at: https://comptroller.nyc.gov/wp-content/uploads/2020/06/SMS-to-Amazon-EEO-1-Disclosure-7.1.20-1.pdf

DIRECTOR OVERBOARDING IN 2020

Over the past few years, director board service has become a major area of focus for the institutional investor community. Investors believe that directors should be able to devote sufficient time to their companies in order to manage their responsibilities effectively. To that end, institutions began to codify certain limits on the total number of directorships a certain individual could have. Failure to fall within these limits would result in a vote against that director's election to the board.

Scrutiny on director "overboarding" began to pick up steam in early 2019 after the Vanguard Group announced that they would start voting against director nominees that were considered to have too many commitments. Other large investors began to update their voting policies with numerical caps on allowable directorships. Most policies shared the same general format – total allowable directorships would be capped for independent (non-executive) directors and further restrictions would be placed on public company CEOs (or NEOs, in some cases).

The 2020 proxy season saw continued investor focus on overboarding. Some institutions added restrictions on directors who also serve as a board chairperson. For instance, Legal & General Investment Management (LGIM) considers a board chair role to be the equivalent of two directorships. For independent directors, LGIM will allow up to 4 board commitments. Thus, if a certain director nominee sits on a total of three boards but serves as a board chairman at two of those boards, he or she would be considered by LGIM to be overboarded and would not receive their support.

The following chart shows directorship limits imposed by some of the largest institutional asset managers (as disclosed in their voting policies):

TOTAL ALLOWABLE DIRECTORSHIPS THRESHOLDS

INSTITUTION/ ADVISORY FIRM	DIRECTOR TYPE			
	Independent	CEO (including their own board)	NEO (non-CEO)	Board Chairmanships
ISS	5	3*	5	
Glass Lewis	5	2*	2	
Vanguard	4	2*	2	
BlackRock	4	2	4	
SSgA (State Street Global Advisors)	4	2	2	3
Invesco	6	3	6	
J.P. Morgan	4	3*	4	
BNY Mellon	6	3	6	
Northern Trust	4	2	4	
Goldman Sachs	5	3*	5	
Norges (NBIM)	5	5	5	2
Legal & General	4	2	4	counts as 2 roles
T. Rowe Price	5	3	5	
AllianceBernstein	3	2*	3	
Massachusetts Financial	4	2*	4	

*Will withhold at outside boards only

As shown in the chart, most institutions will not support an independent director that sits on more than 4-5 total boards or a CEO that sits on more than 2-3 total boards (including their own).

While the average number of board seats occupied by independent directors remains consistent, increased Investor attention to overboarding appears to be influencing commitments made by public company CEOs. According to the 2019 Spencer Stuart U.S. Board Index, "on average, independent directors of S&P 500 companies serve on 2.1 boards, unchanged over the past five years. An increasing number of S&P 500 CEOs serve on no outside boards. This year's survey found 59% of S&P 500 CEOs serve on no outside boards, up from 55% last year and 51% 10 years ago. More than one-third (37%) of S&P 500 CEOs serve on one outside board. Only 23 S&P 500 CEOs (5%) serve on two or more outside boards, and 79 independent directors (2%) serve on more than four public company boards."[1]

Director overboarding will continue to be scrutinized, so issuers must continue to focus on and manage the overall composition of the board. A "best practice" definition for what constitutes an overboarded director is starting to materialize. Each year, ISS launches a Global Policy Survey that invites institutional investors, corporate issuers and other market participants to give feedback on a variety of governance issues to assist with the development of ISS' voting guidelines. Currently, ISS policy allows for up to 5 boards for non-executive directors and up to 3 for directors that also serve as a CEO of a public company. The results of the most recent ISS Survey, however, suggest that many investors have a more stringent view on an appropriate number of board commitments. The survey found that a "plurality (42 percent) of investor respondents selected four public-company boards as the appropriate maximum limit for non-executive directors" and a "plurality of investor respondents (45 percent) also responded that two total board seats is an appropriate maximum limit for CEOs."[2] These results, combined with the proliferation of overboarding policies amongst the major institutions, make for a strong possibility that ISS (and other advisory firms) will reexamine their current overboarding policies and, perhaps, lower their allowable thresholds. Morrow Sodali will continue to monitor developments and keep our clients informed of any significant changes.

1. *2019 Spencer Stuart U.S. Board Index.* Available at: https://www.spencerstuart.com/-/media/2019/ssbi-2019/us_board_index_2019.pdf
2. Institutional Shareholder Services Inc. (2020, July 29). *ISS Announces Results of Global Benchmark Policy Survey* [Press Release] Available at: https://www.issgovernance.com/iss-announces-results-of-global-benchmark-policy-survey/

DO YOU KNOW WHO YOUR SHAREHOLDERS ARE?

IN THESE TIMES OF ECONOMIC AND MARKET UPHEAVAL, STOCK SURVEILLANCE IS MORE CRITICAL THAN EVER.

The first half of 2020 has brought on a wave of new risks in many areas for Corporate America. While it has been a relatively slower year for activist campaigns based on historical standards, current conditions of economic and stock market upheaval have increased the level of concern within small-cap to mega-cap companies globally. Amid these uncertain times, senior management and Boards of Directors are faced with a question that may be harder than ever to address – due to increased trading volumes and sharp price swings over the past several months - who currently owns our stock? **Activism** has generally remained slow in the US during the COVID-19 pandemic; however, many executives are pondering the likelihood of an activist accumulation and whether there is an opportunity for an activist to influence change. Some companies have already taken strategic steps as evidenced by the recent increase in poison pills as an anti-takeover mechanism. Since March 2020, at least 78 companies have announced the adoption of poison pills.[1] As activist trends continue to evolve, companies must consider new hedge funds and involvement from significant players like pension funds, private equity firms, and influence from the passive index investors in the activism arena.

1. According to Factset data as of, August 19, 2020

In order to help assess these risks, there are some proactive steps companies can take as part of recommended best practice preparation. Generally, corporations should always consider having a thoughtful plan in place before the event of an activist attack, essentially avoiding a potential fire-drill scenario once a campaign is quickly launched.

Typically, corporations will assemble a dedicated team of advisors including legal counsel, public relations, investor relations, proxy solicitor for potential activism defense, strategic **stock surveillance**, and a financial advisor. Once the team is organized, a comprehensive plan is developed, including the evaluation of specific high-level risks and critical vulnerabilities that could serve as target points for an activist. Morrow Sodali has dedicated teams that handle activism defense and strategic stock surveillance and we believe there are benefits to having those services under one-roof if a company encounters activism.

In order to best address the important question of who are the current shareholders, the first critical step is engaging a stock surveillance firm to monitor trading activity, DTC settlement, broker activity, short interest, options and block trades. Hedge funds and activist investors have utilized more sophisticated derivatives, such as options and swaps via prime brokers, to establish positions. The real-time insight provided by a surveillance firm offers valuable information on recent buyers / sellers and serves as early detection for any unusual trading activity or large accumulations. Based on SEC filing requirements, investment advisors managing more than $100M in equity assets are required to file security holdings quarterly, however there is a significant lag time as that information only becomes publicly available 45 days after the end of the quarter. Stock surveillance sheds light on these blackout periods between the extended SEC required filing time periods.

It is worth noting that quant-trading has significantly increased over the past several years and these fast-money algorithms will generally account for a larger percentage of overall volume. In addition, new market players such as Robinhood and other automated investment platforms have played a larger role on behalf of retail investors which has been a meaningful factor when analyzing ownership profile trends. To be sure, the most important consideration in the current trading environment is to effectively weed-out the high frequency programs and other various sources as share prices fluctuate. The volatility these automated trading programs create provides a window of opportunity for activists to accumulate shares anonymously – this risk is one of the greatest stock ownership challenges that companies are faced with.

To conclude, consider the recent proposal by the SEC to update the Form 13F for institutional investment managers. This proposal would raise the reporting threshold to $3.5 billion from $100 million.[2] One study suggests for the most recent quarter, there would be a reduction in the number of funds that disclose holdings to the public from 5,283 to 549, which represents almost 90% of all filers which means $2.3 trillion in investment holdings would no longer be disclosed to the public.[3] The impact is clearly expected to reduce corporate visibility on the publicly available ownership data and further increase the need to consider the benefits of utilizing a stock surveillance firm to keep track of current ownership trends. This may help corporations with the challenges of managing potential risks and serve as an early warning system prior to any 13G or 13D filings that are required once the 5% ownership threshold is met.

2. SEC Proposes Amendments to Update Form 13F for Institutional Investment Managers; Amend Reporting Threshold to Reflect Today's Equities Markets, July 10, 2020
3. Whalewisdom email response to SEC Proposes to Reduce Equity Ownership Transparency, July 14, 2020

CONTRIBUTORS / CONTACTS

WILLIAM ULTAN	Managing Director, Corporate Governance	T 203-658-9449	w.ultan@morrowsodali.com
SUSAN CHOE	Senior Director, Corporate Governance	T +44 204-513-6912	s.choe@morrowsodali.com
TOM MARGADONNA	Director, Capital Markets Intelligence	T 203-658-9423	t.margadonna@morrowsodali.com
TOM SKULSKI	Managing Director, Proxy	T 203-658-9441	t.skulski@morrowsodali.com
JERRY MUCHA	Managing Director, Proxy	T 203-658-9427	j.mucha@morrowsodali.com
DONNA M. CORSO	Senior Director, Proxy	T 203-658-9374	d.corso@morrowsodali.com
JUSTIN O'KEEFE	Senior Director, Proxy	T 203-658-9434	j.okeefe@morrowsodali.com
DAVID CHECKOSKY	Vice President, Proxy	T 203-658-9452	d.checkosky@morrowsodali.com
JILLIAN KENNY	Vice President, Proxy	T 203-658-9413	j.kenny@morrowsodali.com
RYAN LOVELESS	Vice President, Proxy	T 203-658-9456	r.loveless@morrowsodali.com
JERRY PETER	Vice President, Proxy	T 203-658-9384	j.peter@morrowsodali.com
MAX MANNUCCIA	Associate, Proxy	T 203-658-9428	m.mannuccia@morrowsodali.com
GREGORY REPPUCCI	Manager, Sustainability & Corporate Governance	T 203-658-9397	g.reppucci@morrowsodali.com
JENNIFER CARBERRY	Director, Marketing	T 203-658-9419	j.carberry@morrowsodali.com
NICHOLAS SASSO	Associate, Proxy	T 203-658-9379	n.sasso@morrowsodali.com

ABOUT MORROW SODALI

Morrow Sodali is a leading provider of strategic advice and shareholder services to corporate clients around the world. The firm provides corporate boards and executives with strategic advice and services relating to corporate governance, shareholder and bondholder communication and engagement, capital markets intelligence, proxy solicitation, shareholder activism and mergers and acquisitions.

From headquarters in New York and London, and offices and partners in major capital markets, Morrow Sodali serves more than 700 corporate clients in 40 countries, including many of the world's largest multinational corporations. In addition to listed and private companies, its clients include mutual funds, ETFs, stock exchanges and membership associations.

NEW YORK

509 Madison Avenue, Suite 1206
New York, NY 10022
USA
P. +1 212 825 1600

LONDON

103 Wigmore St, Marylebone, W1U 1QS
London
United Kingdom
P. +44 207 355 0921

SYDNEY

135 King Street, Suite 25.02, Level 25
Sydney NSW 2000
Australia
P. + 61 2 8022 7940

BUENOS AIRES

Cap. Gral. Ramon Freire 1865, CABA - 1428
Buenos Aires
Argentina
P. +54 11 4555 7767

FRANKFURT

Mainzer Landstrasse 50
60325 - Frankfurt am Main
Germany
M. +49 176 6366 7485

HONG KONG

Unit 1106, Two ChinaChem Central
26 Des Voeux Road Central, Central,
Hong Kong
P. +852 2158 8404

MADRID

Calle de Almagro 3
28010 Madrid
Spain
P. +34 9142 91 412

MELBOURNE

101 Collins Street, Level 27
Melbourne VIC 3000
Australia
P. +61 403 747 362

PARIS

29-31 Rue de Courcelles
75008 Paris
France
P. +33 1 79 97 13 66

ROME

Via XXIV Maggio, 43
00184 Rome
Italy
P. +39 06 45212800

SAO PAULO

Rua Prof. Atílio Innocenti 165, 2º Andar
Vila Nova Conceição
São Paulo - SP, 04538-000, Brazil
M. +55 11 972 783 858

SEOUL

Suite 1637, Level 16, Tower 8,
7 Jongro 5gil, Jongro-gu,
Seoul, 03157, Republic of Korea
P. +82 2 6226 7267

STAMFORD

470 West Avenue, Suite 3000
Stamford, CT 06902
USA
P. +1 203 658 9400

Local Partnerships

BEIJING
MEXICO CITY
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morrowsodali.com

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