United States

GLASS LEWIS

Proxy Season Review Highlights: Spotlight on ESG

2022

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Our customers include the majority of the world's largest pension plans, mutual funds, and asset managers, collectively managing over $40 trillion in assets. We have teams located across the United States, Europe, and Asia-Pacific giving us global reach with a local perspective on the important governance issues.

Investors around the world depend on Glass Lewis' **Viewpoint** platform to manage their proxy voting, policy implementation, recordkeeping, and reporting. Our industry leading **Proxy Paper** product provides comprehensive environmental, social, and governance research and voting recommendations weeks ahead of voting deadlines. Public companies can also use our innovative **Report Feedback Statement** to deliver their opinion on our proxy research directly to the voting decision makers at every investor client in time for voting decisions to be made or changed.

The research team engages extensively with public companies, investors, regulators, and other industry stakeholders to gain relevant context into the realities surrounding companies, sectors, and the market in general. This enables us to provide the most comprehensive and pragmatic insights to our customers.

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About this Paper

This paper is an excerpt from Glass Lewis 2022 United States Proxy Season Review, which includes over 70 pages of charts and analysis, covering key trends, notable meetings, and season highlights related to governance, executive remuneration, and environmental & social issues.

In addition to providing a spotlight on ESG issues, this year's U.S. review looks at multi-class share structures, the corporate response to the Russia's invasion of Ukraine, and the lingering impact of COVID-19 on executive pay, among other topics. The review also includes data covering board composition, governance and disclosure trends, environmental and social oversight, executive pay, shareholder voting and Glass Lewis' recommendations — and much more.

Our Proxy Season Review series, covering a range of markets as well as speciality reviews focused on shareholder proposals, contested meetings and M&A transactions, are available exclusively to Glass Lewis customers. In addition, the data underlying these reviews is available in raw form.

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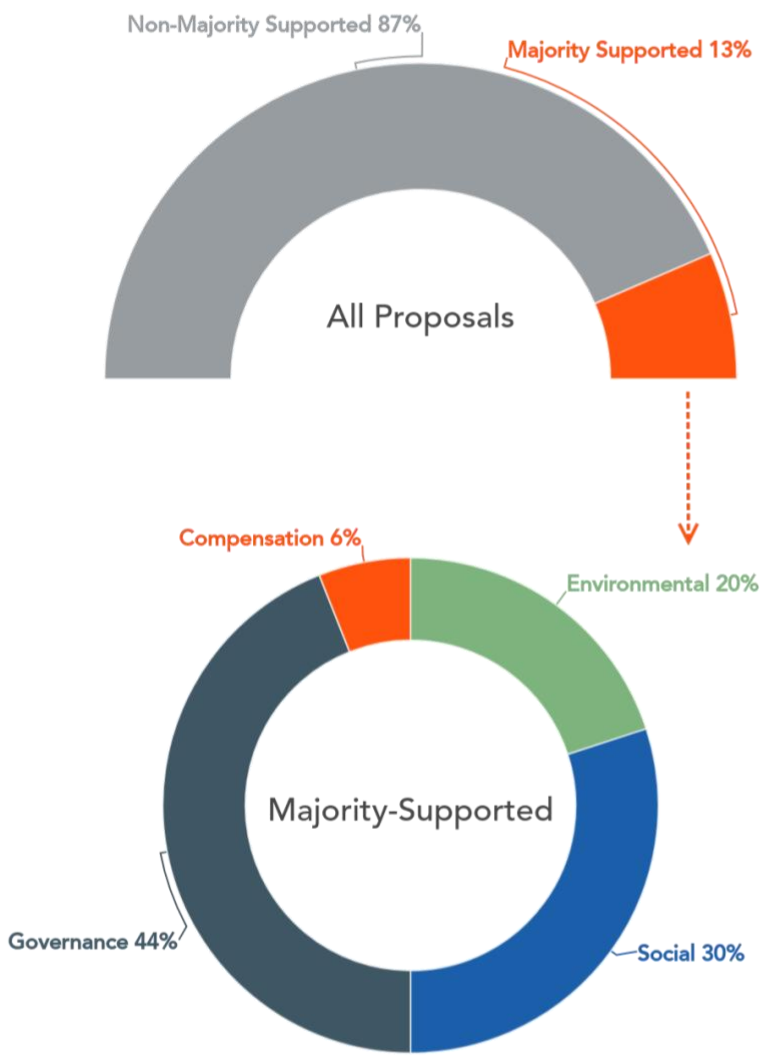
Spotlight on ESG

The 2022 proxy season continued to see a rise in disclosure concerning environmental, social and governance issues in proxy statements in correlation to shareholders' ongoing focus on these topics. While governance and compensation issues have historically been primary areas of focus for investors, there has been a notable shift to include environmental and social considerations, including how these matters are overseen at the board level.

Shareholder-Driven Environmental and Social Initiatives

Unsurprisingly, an increased interest in these issues resulted in increased shareholder environmental and social initiatives. Following the upward trend, the 2022 U.S. proxy season contained the largest number of shareholder proposals seen in recent years, with a 27% increase from last year. This is primarily due to the SEC's changing approach to no-action requests, making it more difficult for companies to exclude certain shareholder proposals.



Vote No Campaigns

However, the impact goes beyond shareholder proposals. At the same time, many investors have incorporated more environmental and social considerations in their voting policies and are actively looking at board oversight over these matters. Although voting against board members is a common way to express shareholder dissatisfaction regarding traditional corporate governance and compensation concerns, targeting directors for ESG matters is still a relatively new concept, but one that is growing in popularity.

Part of the growth in voting against directors on environmental and social grounds has been fueled by a growing number of “vote no” campaigns, in which shareholders or activist groups encourage investors to vote against directors at companies where they have identified environmental and social risks or underperformance. For example, Majority Action, a climate-focused NGO issued the largest number of “vote no” campaigns throughout the 2022 season, targeting at least 20 companies and urging shareholders to vote against approximately 40 directors they believe demonstrated insufficient oversight of climate risks. Of the targeted companies, the majority operate in the energy sector, including ExxonMobil Corp., Chevron Corp. and Kinder Morgan, Inc.; however, this year Majority Action widened its scope to include additional major financial institutions, such as JPMorgan Chase &Co., The Goldman Sachs Group, Inc., and Wells Fargo & Company. On average, directors targeted by Majority Action received 91% support from shareholders.

Although many vote-no campaigns have traditionally been focused on environmental issues, there was a growing focus on social issues over the last year. For example, in April 2022, the Comptroller of the City of New York launched a campaign urging shareholders to vote against two directors at Amazon.com, Inc., both longstanding members of the leadership development and compensation committee, for what the Comptroller believed to be a failure to exercise adequate oversight of Amazon’s human capital management practices.

Further, in May 2022, the SOC Investment Group urged shareholders to vote against the election of six directors at Activision Blizzard, Inc., including CEO Bobby Kotick, for what it believed to be an inadequate response to the company’s sexual harassment crisis and a failure to appropriately address Activision’s culture. The targeted directors at Amazon.com, Inc. received 93% and 78% support from shareholders, while the six targeted directors at Activision received support ranging from 72%-89%.

Overall, it appears that shareholders are increasingly willing to express their concerns about companies’ E/S risks and oversight through director elections, as several of these directors targeted in social risk driven vote no campaigns were opposed by over 20% of shareholders, and all but one were opposed by at least 10% of shareholders voting at the annual meetings.

Contested Elections

Another form of shareholder resistance is demonstrated through contested elections. Investors are becoming more willing to use these contests as an opportunity to dispute key points of contention, including insufficient action on environmental and social issues, following the example of Engine No. 1 set at ExxonMobil's 2021 contested director elections. Although none were as successful as the campaign launched at Exxon, there were a number of attempts at changing the board composition of companies where activists identified significant environmental and social issues.

Arguably, the most notable of these was at Guess?, where the dissident cited ongoing claims of sexual misconduct and related concerns by the firm’s chief creative officer. While this did receive notable support, it was not enough to overcome the strong inside ownership of the founders, who own an approximate aggregate 41.5% of the company’s outstanding common stock (and one of whom was the subject of allegations in this campaign).

However, in stark contrast to the contests at Guess? and Exxon, two campaigns focused on issues of animal welfare did not garner strong shareholder support. In advance of their 2022 meetings, affiliates of Carl Icahn announced that they would be contesting the elections of members of the board of McDonald’s Corporation and The Kroger Co., largely based on the use of gestation crates within their pork supply chains. At McDonald’s, the earlier of these two meetings, the dissident directors received less than 2% shareholder support, which was likely the reason why the campaign at Kroger was withdrawn prior to its annual meeting.

Director Accountability

There is a growing expectation among investors that boards should maintain oversight of a company's material environmental and social risks, and companies are increasingly meeting this. In 2022, 88.6% of companies included in the Russell 1000 index disclosed board oversight of environmental and social issues, a staggering 31% increase from last year and 37% increase from 2020. While we have tracked companies' disclosure of environmental and social oversight for several years, this year, Glass Lewis began recommending voting against directors at S&P 500 companies who provided no disclosure of this oversight function. Of the companies in the S&P 500 index, 98.4% provided some level of disclosure of environmental and social oversight. Just eight companies (1.6%) did not provide explicit disclosure.

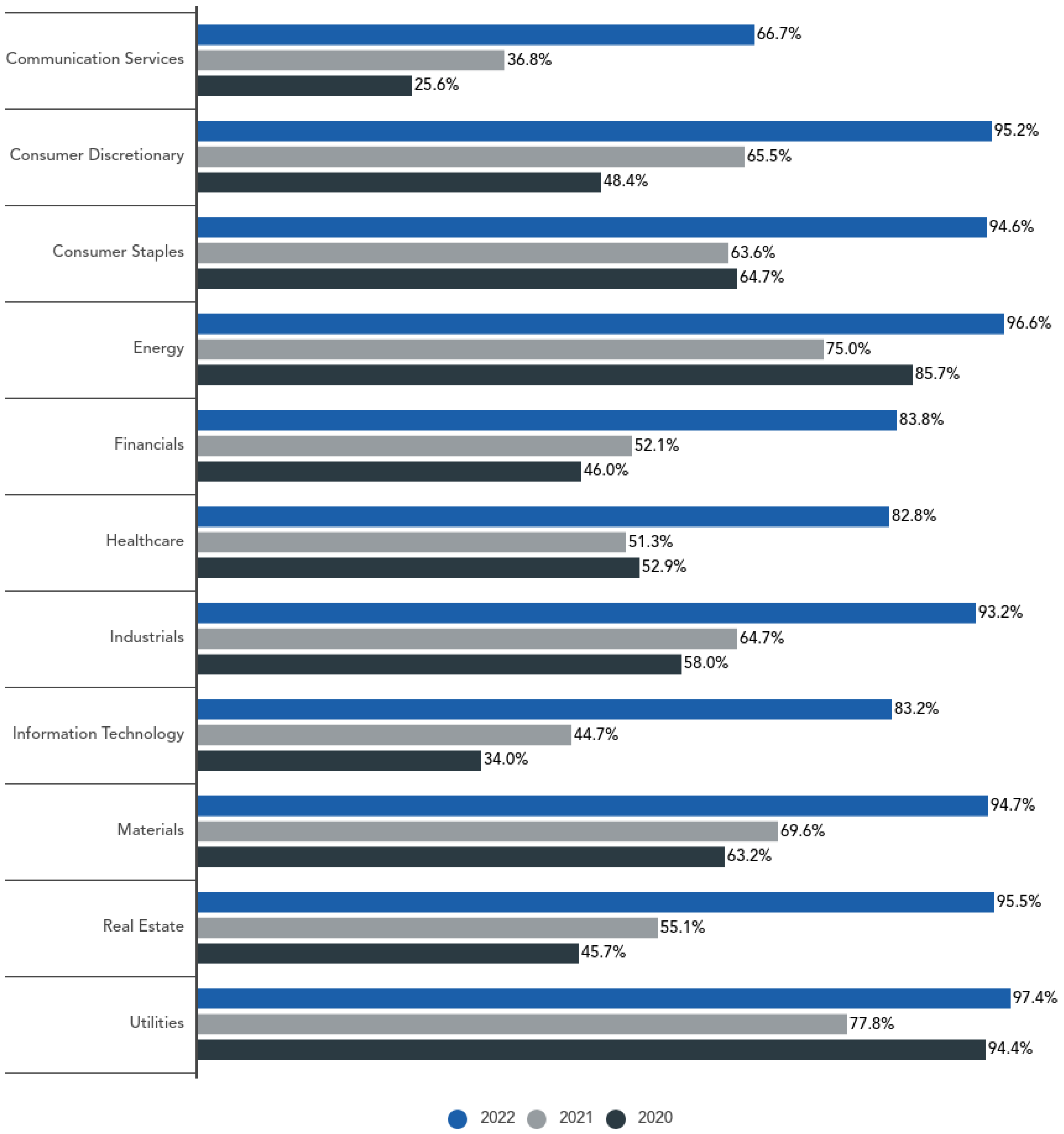
In addition, for a number of years, Glass Lewis has recommended voting against directors at U.S. companies in instances where we believed that companies' management of environmental or social risks has threatened shareholder value. For the second year in a row, Glass Lewis has increased the number of such recommendations. For example, Glass Lewis recommended against directors serving on the board of Berkshire Hathaway, Inc. on account of a significant and notable lack of disclosure on climate-related risks. We also issued recommendations at companies including Amazon.com Inc., Johnson & Johnson and The Boeing Company, in response to concerns regarding human capital management, ongoing litigation and reputational risks, and product safety, respectively.

In addition to managing and overseeing environmental and social risks, we believe directors have a responsibility to engage with shareholders on these matters and respond appropriately to related concerns. This response is particularly important when companies receive strong support for shareholder proposals. In 2021, there was a notable increase in the number of majority-supported shareholder resolutions on environmental and social issues. However, companies' response to this shareholder sentiment varied significantly. Of approximately 25 companies that had a majority-supported shareholder proposal, only two failed to respond adequately.

When companies fail to engage with shareholders in the presence of high opposition, or sufficiently respond to a majority-supported shareholder proposal, we will generally recommend voting against directors. In our view, we saw an insufficient response to majority-supported proposals at Bloomin' Brands, Inc. and Wendy's Corporation, which resulted in negative recommendations against the chair of their nominating and corporate governance committees. We also encouraged shareholders to withhold from the chair of the board at Sturm Ruger & Company, Inc. in response to concerns regarding its engagement with the proponent of a shareholder resolution as well as its general responsiveness to shareholder concerns. In our view, companies should be not only be engaging in an ongoing dialogue with shareholders, but also providing disclosure to that effect, as it helps to promote transparency, robust governance structures and companies' responsiveness to, and engagement with, their shareholders.

A notable example of responding to shareholder feedback occurred at Netflix, Inc., which has, for multiple years, failed to implement majority-supported shareholder proposals dealing with matters including declassifying the

Russell 1000 E&S Oversight by Sector



board, shareholders' ability to call special meetings, and removing supermajority vote requirements. However, in 2022, Netflix, Inc. introduced several governance-related reforms aimed at addressing this longstanding shareholder sentiment.

Conclusion

It is our view that every company faces material ESG-related risks, and that a failure to mitigate these risks, or fully allow shareholders to understand these risks as they are making their investment decisions, has the potential to result in loss of shareholder value. Glass Lewis therefore believes that effective and robust oversight of ESG risks is critical to ensuring the long-term viability of companies. It is clear, as demonstrated through votes on shareholder proposals and on directors, that many investors share this view.

As the market's understanding of material ESG-related continues to deepen, there is an increased expectation that companies are both providing disclosure concerning their ESG considerations and that they are providing adequate oversight of the issues most relevant to their operations. Many investors also acknowledge that companies that have not provided for this disclosure or oversight are increasingly viewed as laggards in this regard. Therefore, it is critical that companies monitor not just their own ESG-related risks, but also the evolving expectations of investors and the market.

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