2025 SEC Annual Reporting Workshop – Hot Governance and Engagement Proxy Tips You Need to Know

Key takeaways for Session 2

Below are 2024 proxy season stats (through the end of November), courtesy of Steve Pantina of Proxy Analytics.

1. 2024 shareholder proposal stats

- Submitted proposals
  - 147 shareholder proposals tracked as submitted to Russell 3000 companies
  - 104 environmental and social (E&S) proposals (~71%), a higher proportion than the same time last year
  - 13 proposals (9%) submitted by anti-ESG proponents, proportionately lower than during the 2023 season (11%)
- Voting
  - Proposals voted: 40 versus 46 at the same time last year
  - Average support: 26.4% versus 28.1% at the same time last year and 22.9% for the whole 2024 season
  - E&S proposal support: 22.3% versus 29.6% at the same time last year and 16.3% for the whole 2024 season
  - Majority-supported proposals: 3 versus 6 at the same time last year; all governance proposals to date
- 14a-8 no action letter activity
  - 37 letters submitted attributable to the 2025 season (33 by Russell 3000 companies)
  - 10 responses to date:
    - 9 granted
    - 1 denied
  - 25 letters pending, 2 withdrawn
  - Of granted requests:
    - Rule 14a-8(i)(7): 7 grants
      - 55% for “seeks to micromanage” (versus 23% in 2023 and 45% in 2024)
      - 45% for “relates to ordinary business” (versus 77% in 2023 and 55% in 2024)
    - Rule 14a-8(b)/(f): 2 grants
  - Other notes:
    - No binding bylaw proposals tracked this season

2. Expectations for the 2025 season

- Proposal submissions
  - Record-breaking numbers of proposals submitted and voted on for at least the past four seasons
  - Last year, E&S proposal submissions by traditional proponents declined; the record was driven by an increase in anti-ESG proposals and unexpected submissions
  - A marginal decline is expected this season; hard to quantify but probably less than 10%
- Proposal support
  - Expecting a slight uptick in support, but no major changes
  - Big Three support for E&S proposals continued to decline:
    - Vanguard supported 0% of E&S proposals
- Rise in artificial intelligence-related proposals
  - Anticipate increases in both the volume and variety of AI-focused proposals
  - Topics likely to include AI risks, integration into operations and board oversight
    - Issues like generative AI, algorithm bias and workforce displacement
- More targeted proposals
  - Major criticisms from investors about proposals lacking materiality or targeting already addressing material risk
  - Expect some investors to address material issues more effectively, avoiding topics companies have already addressed
  - Accountability board initiatives may reflect this trend
- Higher support for anti-ESG proposals
  - Growing push from investors to assess proposals on their merits, regardless of proponent
  - Outcomes will depend on the language in resolved clauses and supporting statements
  - No major increases expected, but case-by-case higher support is anticipated
  - Notable: National Legal and Policy Center (NLPC) press release highlighting GLC's support for its AI proposal at Microsoft
- New proposals to watch
  - Proposals targeting companies that miss climate targets

3. Notes on investor guidelines

- Glass Lewis updates for 2025
  - AI oversight
    - Glass Lewis expects companies using AI to disclose the board's role in overseeing AI-related issues
      - While no recommendations will be based solely on AI oversight in the absence of incidents, Glass Lewis may recommend against directors if insufficient oversight leads to shareholder harm
  - Board responsiveness to shareholder proposals

        - For proposals receiving significant support (30% to 49%), Glass Lewis expects boards to engage with shareholders and provide transparent disclosures
        - Emphasis on responsiveness, even when proposals do not achieve majority support
    - General investor trends
        - No wholesale changes expected in investor guidelines
        - Market trends show fewer “hard” diversity, equity and inclusion (DEI) targets and metrics, likely reflected in investor policies
            - Companies may discuss board diversity more opaquely without changing practices
        - Continued focus on director time commitments, with more updates expected in this area

4. Notes on growing divide between voting and engagement

- Engagement trends
    - Engagement season is active, with robust discussions on E&S initiatives, despite declining support for proposals
    - Increasing integration of investment and stewardship teams in engagement calls
        - Sustainability teams are more integrated with investment teams and modeling processes
- Engagement preparation
    - Tailor preparation to the audience:
        - Identify the type of investor (active/passive)
        - Request a participant list
        - Research participants’ roles within the organization

Cooley

Preparing for Proxy Season: 15 Tips and Reminders for In-House Teams

November 21, 2024

Cooley will be hosting two webinars in December 2024 and January 2025 to help companies prepare for the upcoming proxy season:

- **Hot Governance and Engagement Proxy Tips You Need to Know**, at 11:30 am PST/2:30 pm EST on December 12, 2024, featuring Cooley partner **Beth Sasfai**, special counsel **Michael Mencher**, corporate governance senior strategic advisor **Broc Romanek**, and co-founder and CEO of Proxy Analytics **Steve Pantina**.
- **Proxy Season Preview (Including ISS and Glass Lewis Policy Updates)**, at 10:00 am PST/2:00 pm EST on January 15, 2025, featuring Cooley partners **Ali Murata** and **Brad Goldberg**, along with Compensia principal **Mark Borges**.

In advance of these webinars, our compensation and benefits, governance, and ESG teams put together a list of 15 key reminders for general counsel and in-house teams to consider as they ramp up for proxy season.

1. Brush up on proxy advisor and investor policies with an eye toward proactive disclosure opportunities.

Pay attention to proxy advisor and investor policies, including **upcoming updates**, but distinguish between general recommendations and policies with voting implications. These policies highlight which practices may impact voting recommendations and decisions but also indicate areas where proxy disclosure can be impactful, especially around executive compensation. In many cases, discovering that a company practice is misaligned with a voting policy is not a death sentence and, even at this stage, companies can craft disclosure and engagement strategies to compensate.

2. Remember to overlay proxy advisor independence standards.

Don’t forget that ISS and Glass Lewis have their own independence definitions, which include numerous and more detailed trip wires than listing exchange standards.

3. Start now on compensation disclosure.

If you have not already started working on your compensation disclosure, initiate that process now – and establish a timeline that affords sufficient time for reflection, drafting and revisions.

4. Considering adding new workstreams.

Make sure to consider the need for additional workstreams, either because of recent compensation disclosure developments – for instance, option grant timing and application of clawback policies – or because of a change in reporting status, such as loss of emerging growth or smaller reporting company status or adoption of new types of plans.

5. Pay attention to investor feedback.

Review results of engagement discussions when planning proxy disclosures. This often gives you much more useful information than formal policies.

6. Begin from your weak points.

Anticipate your weaknesses so that they can be addressed in a positive manner. Among other things, review your prior year's proxy advisor reports to identify areas of historical concern – and consider whether additional shareholder engagement is warranted or would be helpful at this point. (And it's never too late to start if there has not yet been any engagement.)

7. Respond to prior-year issues.

Consider adding shareholder engagement and responsiveness disclosure to your proxy, especially if you received low support for management proposals last year or a shareholder proposal received significant support.

8. Engage with your compensation committee.

Consult the compensation committee chair to see if there are any points they will want to see emphasized in the compensation disclosure.

9. Reflect bylaw and governance guidelines amendments.

If you amended your bylaws or governance guidelines since the last proxy – either to address the universal proxy rules or in response to recent Delaware litigation or plaintiffs' demands – confirm that the description of your advance notice requirements and other bylaw provisions and governance guidelines are up to date in the proxy statement.

10. Confirm if additional proposals or a preliminary proxy are needed.

Consider if additional management proposals will be needed for this year's meeting – such as equity plan amendments or changes to governance documents in response to a successful prior-year shareholder proposal – and determine if any will require the filing of a preliminary proxy under Rule 14a-6.

11. Talk about board composition and address any concerns.

If you have board composition vulnerabilities related to diversity, independence, overboarding, or tenure, or you have received investor pressure on refreshment, consider adding proxy disclosure regarding director skills and recruitment, as well as evaluation of time commitments and tenure.

12. Review proxy maturation strategies.

Trying to keep up with the Dow Joneses? Consider how your pacing peers have evolved their proxy governance disclosure as they've matured, particularly the addition of polished overviews of governance practices, engagement, leadership structures and board composition.

13. Find the right place for environmental, social and governance (ESG) disclosures.

Review any proxy ESG disclosures included in the past and consider whether these disclosures are appropriate for your proxy, or if some material should be moved to a website or ESG report.

14. Focus on risk oversight.

Do you have disclosure of board and management oversight of key risk and strategic areas? Remember that proxy advisors and investors have policies emphasizing the importance of oversight of matters such as cyber, climate, and emerging technologies.

15. Have a post-meeting game plan.

Plan for after the meeting, including a board session to review the results of the meeting and proxy season more broadly. If you expect negative outcomes, prepare your senior management and the board, and develop a response strategy.

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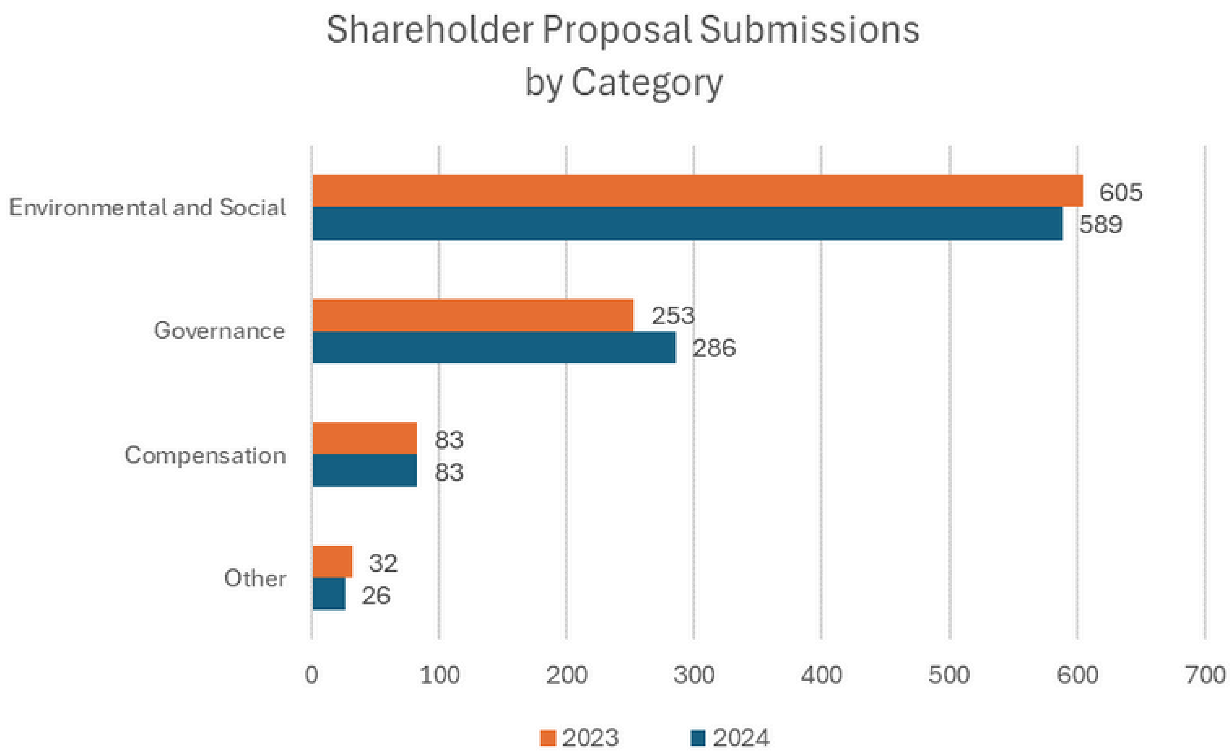
Over the past twelve months, our team has tracked and reported on results for nearly 3,300 shareholder meetings and 30,000 unique resolutions. As expected, many of the macro trends around shareholder voting that emerged last season continued into this one, particularly around voting on shareholder proposals, which remained at or near record-level lows. Despite limited changes in overall support levels, some new and interesting proposals emerged this season, including some that will likely persist into the future. Below is a final summary of shareholder proposal trends among Russell 3,000 companies from the 2024 proxy season and our thoughts on how voting trends may evolve from here.

Shareholder Proposal Submissions.

Overall. A record was once again set for the number of shareholder proposals submitted in a proxy season. Overall, proposal submissions were up slightly from 973 last season to 984 this season. However, unlike prior seasons, the increase observed this year was not driven by an increase in traditional environmental and social (E&S) proposals, but instead by conservative-leaning (or anti-ESG) proposals. Additionally, a surprise proposal from the Carpenters Union related to director resignation provisions helped drive an increase in the number of governance proposals tracked this season.

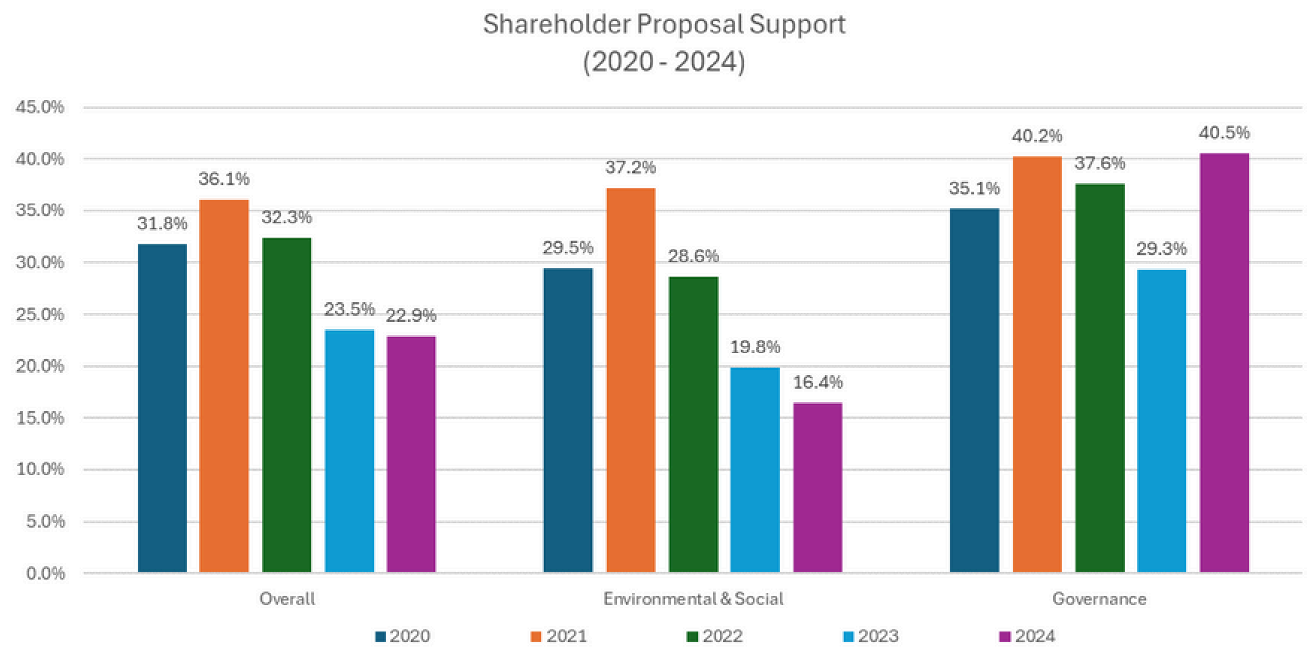


Environmental & Social. E&S proposal submissions were down by approximately 3% this season, from the previous high of 605 last year to 589 this season. Declines were observed despite the fact that conservative-leaning versions of E&S proposals rose by more than 30%. Submissions of traditional E&S proposals declined by approximately 7%, from 536 to 499. Although submissions were generally down across the spectrum of E&S sub-categories, declines were most prevalent among Diversity and Human Capital and Environmental and Natural Capital proposals, which declined by 16% and 8%, respectively—27% and 14% if anti-ESG proposals were excluded from the calculation.

Withdrawn Proposals. We tracked fewer withdrawn proposals this season compared to last. Overall, the number of proposals categorized in our database as withdrawn (including those that appeared in proxy statements but were either not presented or withdrawn prior to a vote) was 213, or 22% of all proposals submitted. By contrast, the number of withdrawn proposals last season was 263, or 27% of submitted proposals. Interestingly, the number of proposals withdrawn during the no-action process increased quite substantially (62 vs. 38, or 63% higher). However, much of the increase can be attributed to the withdrawal of proposals on director resignation policies, noted above, and a series of proposals submitted by individual investors related to transfer agents and registered shares.

Vote Outcomes

Overall. For the second consecutive year, overall support for shareholder proposals fell to the lowest level we have seen in at least the last 10 years (and likely even longer). While modest compared to last year's drop, the average level of support declined from 23.5% in 2023 to 22.9% this season. Declines were especially prevalent among E&S proposals, which saw support levels drop from an average of 19.8% to 16.4%.



Impact of Anti-ESG Proposals. As noted above, anti-ESG proposal submissions reached record levels again this year, accounting for more than 11% of proposals submitted and 14% of proposals voted. Support for anti-ESG continues to significantly lag traditional proposals and, interestingly, support for conservative-leaning proposals declined this year from an average of around 5% last year to just over 2% this season. The materially lower support levels for anti-ESG proposals lowered overall support by approximately 3%, according to our calculation. Average voting results, after "fully" adjusting to exclude

(1) anti-ESG proposals and (2) instances where management either recommended in favor of a shareholder proposal or made no recommendation (resulting in materially higher levels of support), were 24.3% of votes cast in favor, down 0.5% from last year.

Support for 'Traditional" ESG Proposals by Sub-Category

- **Governance**: A total of 158 governance proposals were voted on this season, down 15% from last season. Average support for governance-related shareholder proposals increased considerably, rising from an average of 31% during the 2023 proposal season to more than 43% this year. The rise in support was largely attributable to John Chevedden deciding to focus a greater proportion of his proposals on the elimination of supermajority voting rights, which routinely receive over 50% support. This season, 40+ proposals averaged 71% support, with 31 receiving majority backing. Proposals targeting the separation of chair and CEO roles (39 proposals) and those seeking amendments to existing special meeting provisions (18 proposals) were the other most frequently voted proposals in this category, averaging 31% and 38% support, respectively.

- **Political and Civic Activities**: A total of 70 proposals in this category were voted on this season, marking a 13% increase from last year. Proposals seeking reporting on policies and practices related to political and lobbying activities accounted for more than 60% of the voted proposals. Average support for political proposals fell by more than 4%, dropping from 28.1% last season to 23.6% this year. Proposals focused on the congruence between political activities and corporate policies saw the most significant decline, with 11 proposals averaging 16% support, down from 26% last season.

- **Environmental and Natural Capital (ENC)**: There were 68 environmental-focused proposals voted on this season, down slightly from 72 last season. Average support for ENC proposals ended at 22.2%, a decrease of 1.6% from last season. Notably, proposals seeking the adoption or disclosure of GHG emission reduction targets—which made up about 40% of voted proposals—saw a 2% increase in support, reaching 28%, with two proposals receiving majority support.

- **Diversity and Human Capital (DHC)**: DHC proposals experienced the steepest decline in support this season, with 60+ proposals averaging 21.5% support, down 5.3% from last season. In our review of results, we found that nearly every proposal in this category saw some level of deterioration in support, including those seeking reporting on workplace harassment policies and practices (down from 30% in 2023 to 16% in 2024), collective bargaining rights/freedom of association (down from 36% to 26%), workforce health and safety practices (down from 34% to 23%), and pay equity (down from 34% to 29%). Racial equity audit proposals, which just two seasons ago averaged nearly 46% support, finished this season with an average of just 13%, with no proposals receiving more than 20% of votes cast in favor.

- **Human Rights-Related**: Human rights proposals cover a broad spectrum of issues, including inquiries about modern slavery, mechanisms to monitor supply chain risks, human rights impact assessments, operations in foreign countries, data and privacy rights, among others. Support for these proposals tends to be highly fact-specific, varying based on the materiality of the issue addressed and the comprehensiveness of the policies in place to manage it. This season, 52 human rights proposals were voted on, with average support at 16%, nearly identical to last season.

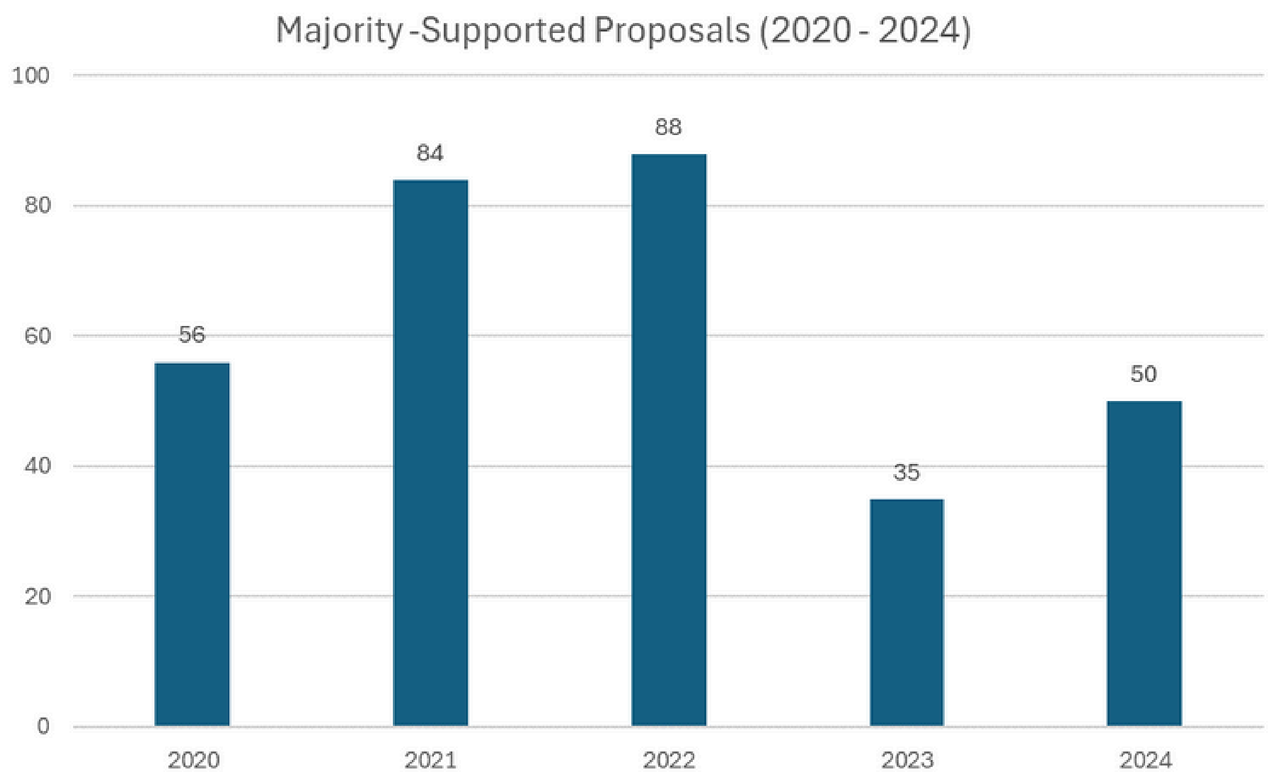
Majority-Support Proposals

The number of majority-supported shareholder proposals increased by more than 40% this season from 35 to 50. This rise was almost entirely due to Mr. Chevedden's focus on supermajority voting, which alone had 30 majority-supported outcomes (compared to just 10 last season). Only three E&S proposals received majority support this year, down from 10 last year. As detailed below: two of the three proposals focused on GHG Emission reduction targets while the third related to reporting on political contributions policies and practices:

- DexCom, Inc.: Sponsored by John Chevedden, a proposals seeking disclosure on the company's policies and practices around political contribution proposal received 52% of votes cast in favor.

- Jack in the Box Inc.: A proposal submitted by The Accountability Board regarding the the adoption and disclosure of GHG emission reduction targets received 56% of votes cast in favor.

- Wingstop Inc.: A proposal submitted by The Accountability Board, Inc. regarding the the adoption and disclosure of GHG emission reduction targets received approximately 52% of votes cast in favor.



Proposal Spotlight

Each proxy season introduces a mix of new proposals, often met with varying levels of success. While many fail to gain attention due to their lack of materiality to shareholders or because they are too specific to capture significant interest from large investors, a select few standout, capturing the focus of shareholders and sparking meaningful conversations. Below, we spotlight two proposals that caught our attention this season.

Artificial Intelligence (AI). AI-related proposals were undoubtedly the hot button item of the season. Throughout the season, we tracked 16 AI proposals submitted to companies, with 12 proceeding to a shareholder vote. Not surprisingly, the majority targeted large tech companies. However, we also tracked five proposals submitted to large entertainment organizations, which the AFL-CIO argued might use AI to "*create literary material and replace human performances*" and an additional two proposals targeted healthcare and consumer discretionary companies. On average, AI proposals received around 19% of votes cast in favor. However, many of the targeted companies had dual-class voting structures or significant founder/insider ownership, which impacted results. When adjusted to exclude these positions (referred to below as "adjusted" results or on an "adjusted basis"). [1]

- Prepare Report on Use of AI, Oversight, and Principles: This was the most common version of the AI proposal that we saw this season, with eight proposal submissions and five proceeding to a vote. The proposal was primarily sponsored by the AFL-CIO and NYC/NYS Pension systems and requested that companies prepare a transparency report on the use of AI in their operations and disclose any ethical guidelines adopted regarding AI technology. Average support for this proposal was 25% on an unadjusted basis and 36% on an adjusted basis.

- Report on Risks of Generative AI, Misinformation, and Disinformation: Sponsored by Arjuna Capital, we tracked three "Gen AI" proposals voted on this season. The proposal requested that the company assess risks "presented by the Company's role in facilitating misinformation and disinformation generated, disseminated, and/or amplified via generative Artificial Intelligence" and steps the Company plans to measure and take to remediate risks. Average support for these proposals finished at 18.5% on an unadjusted basis but higher than 40% on an adjusted basis.

- Conduct Human Rights Impact Assessment of AI-Driven Targeted Ads: Voted on at two companies, this proposal requested an assessment of the human rights impacts of the company's AI-driven targeted advertising practices. The proposals received an average of 16.5% support unadjusted, but over 47% adjusted.

- Require Additional Oversight of AI: Voted on at two companies, this proposal requested that the company either charter a new committee or amend an existing committee's charter to clearly assign responsibility for overseeing AI activities. This version garnered the lowest average support, at 8.6% unadjusted and 15.3% adjusted.

Given the rapid pace of AI development and its increasing integration into business operations, we expect to see a proliferation of that AI-related proposals. As companies continue to explore and expand their use of AI, the complexity and implications of these technologies will likely prompt more sophisticated and diverse proposals in the future. As such, businesses should prepare for heightened scrutiny in this area, with growing expectations for transparency, ethical oversight, and proactive management of AI-related risks.

Proposal Name	Submitted	Voted	%For Unadjusted	%For Adjusted
Prepare Report on Use of AI, Oversight and Principles	8	5	25.2%	35.6%
Report on Risks Generative AI Misinformation and Disinformation	3	3	18.5%	40.2%
Conduct Human Rights Impact Assessment of AI-Driven Targeted Ad Policies	2	2	16.5%	47.2%
Board- Require Additional Oversight of AI	3	2	8.6%	15.3%

Living Wage. The concept of wage reforms is not necessarily new to shareholder proposals. In fact, we've tracked proposals on wage reform as far back as the 2015 and 2016 proxy seasons, continuing as recently as 2022. Historically, proposals have focused on raising the minimum wage and advocating for adjustments to ensure that the lowest-paid workers receive a baseline level of income. However, as the landscape of corporate responsibility has evolved, the focus has shifted from minimum wage reform to the broader concept of a "living wage," which is broadly defined as the income necessary for a worker to meet their basic needs, including food, housing, healthcare, and other essential living expenses. Activists view the growing emphasis on the living wage as not just a matter of addressing wage disparities but also as a way to manage the operational risks associated with low wages, such as high employee turnover, reduced productivity, and potential reputational damage.

In the most recent proxy season, we tracked 10 proposals submitted on the living wage. Of these, six were challenged under the "ordinary business" and "micromanagement" exceptions of Rule 14a-8(i)(7). The SEC granted no-action relief for three of these challenges under the micromanagement exception but denied the other three, leaving the door open for investors to reconsider how they structure their proposals in the future.

From a voting perspective, average shareholder support this season was relatively modest—generally finishing under 15%—which raises questions about whether investors view the issue as sufficiently material to generate high levels of support. However, it is worth noting that Legal & General Investment Management (LGIM), one of the largest EU-based investors and a top 30 shareholder in most S&P 500 companies, co-sponsored a number of the living wage proposals that appeared on their ballots this season. LGIM has recently featured the living wage as an emerging priority in its engagement program, particularly in industries like retail, hospitality, and services that rely heavily on hourly wage workers.

Given the involvement of organizations like LGIM and Mercy Investment Services, which coordinate proposals across a wide range of activist groups, we may see more living wage proposals in future proxy seasons. We may also see proponents refine their resolved statements with more broadly worded language to better survive SEC scrutiny and attract greater support from larger institutional investors.

Analyzing the 2024 Proxy Season and a Look Ahead

We believe that shareholder proposals are best evaluated through the lenses of materiality, prescriptiveness, and company response. Over the past two years, several major investors have openly expressed concerns about the materiality and prescriptive nature of shareholder proposals in their Annual Stewardship reports. For example, BlackRock noted this year that it has "observed a greater number of overly prescriptive proposals or ones lacking economic merit." Similarly, State Street pointed out the "evolution of proposals that use increasingly prescriptive language." and T. Rowe Price wrote in its most stewardship report that "the increase in the volume of proposals resulted in a decrease in their overall quality... [with] more inaccuracies in proposals, more poorly targeted resolutions, and more proposals addressing non-core issues."

While issues around proposal materiality and prescriptiveness persist, we wrote last year—and continue to believe—that the primary driver behind the trend toward lower support is the continued targeting of companies that have made significant improvements in their disclosures around material ESG risks. This belief is echoed by each of the "Big Three" investors. For example, in the same Annual Stewardship report, BlackRock noted that the "majority of these proposals failed to recognize that companies are already meeting their asks." Vanguard similarly attributed the decline in support to "improved company disclosures on financially material risks," and State Street observed that "proposals continued to be filed with companies where disclosures have improved." Given this context, why didn't this year's results change? Consider the following insights on proposals submitted and voted on this season:

- More than 60% of companies targeted with proposals also received a proposal last season;
- More than 45% of companies that included an Environmental & Social (E&S) proposal in their proxy statement this season had faced a similar proposal previously; and
- Approximately 29% of all voted proposals, including governance resolutions, were either duplicates of a proposal voted last year or addressed a substantially similar topic ("duplicated proposals").

Examples of vote outcomes among duplicated proposals (excluding anti-ESG) include:

- **Report on Congruence Between Corporate Policies and Political Activities**: Eight of the 11 voted proposals were duplicates. Seven of the eight duplicated proposals reported lower results, with average support dropping from 23.5% to 16.7%.
- **Report on Gender/Ethnic Pay Equity**: Eight of the 16 voted proposals were duplicates. Seven of these eight proposals reported lower results, with average support decreasing from 29.7% to 27.9%.

- **Report on Virgin Plastic Use**: Four of the five proposals voted on were duplicates. All four duplicated proposals reported lower results, with average support dropping from 19.2% to 16.4%.

- **Workplace Health and Safety**: Three of the five proposals voted on were duplicates. Each of these three proposals reported lower results, with average support declining from 22.7% to 19.5%.

Looking ahead, the likelihood of seeing a meaningful increase in support for shareholder proposals remains slim unless there are significant adjustments in approach. The redundancy in both the companies targeted and the types of proposals submitted has contributed to stagnation in overall support levels, especially given the belief that targeted companies are already doing more to address and report on material risks. To achieve notable gains in support, investors would need to evolve the content and focus of their proposals, ensuring they are better aligned with current investor priorities. Alternatively, shifting focus to entirely different companies—particularly those that have not yet made significant strides in ESG disclosures and risk management—could change the dynamics. However, neither of these scenarios seems likely. Without such changes, the trends observed in recent years are likely to persist, with proposals continuing to face declining support due to perceived redundancy, lack of materiality, or overly prescriptive language.

The Growing Divide Between Engagement and Voting

The results from this proxy season show that shareholder voting on ESG initiatives is trending downward and, for the reasons stated above, will likely remain low in the future. For some, the lower levels of support might result in a false belief that investor interest in ESG risk management is waning when, in fact, it's quite the opposite.

Off-season engagement discussions continue to be the primary forum for investors to have in-depth conversations with companies about their ESG risk management programs. The feedback we have received indicates that investor questions around ESG matters are not only persisting but expanding in both scope and specificity. Investment teams are increasingly integrating ESG experts to facilitate comprehensive discussions that bridge financial and ESG risk considerations. Core governance issues, succession planning, and risk management remain central to most engagement conversations but now also include questions around how the board identifies risks, receives information from third-party experts, and identifies candidates to fill potential skills gaps. Discussions about supply chain resilience have become more prominent in the post-COVID era, with investors keen to understand how companies manage risks associated with key suppliers, especially those in geopolitically unstable regions. Environmental topics are also evolving, with discussions moving beyond emission reduction targets to broader issues such as biodiversity, water stewardship, sustainable mining practices, and the circular economy. Additionally, human capital management and human rights are more frequently discussed, with conversations delving into topics such as modern slavery risks, whistleblower protections, workforce engagement, DE&I effectiveness, and leadership development strategies.

The key takeaway for companies is clear: the recent decline in voting support for ESG proposals should not be seen as a signal to reduce focus on ESG practices. Instead, it reflects the progress many companies have already made. Investors may feel less compelled to vote on proposals when they see that companies are proactively addressing these issues. Therefore, it is crucial for companies to remain vigilant in their engagement and disclosure efforts, ensuring they continue to meet the evolving expectations of their investors and maintain robust ESG practices to stay ahead of potential risks.

New Director Voting Policies for Failure to Meet Climate Goals?

Although we do not currently anticipate any major overhauls in investor voting policies similar to those seen in the past few years, one area where we may see policy shifts is in the realm of climate risk and, in particular, how investors respond to significantly missed or revised climate goals. Nearly all major institutional investors have established ESG-related guidelines that inform their voting decisions, emphasizing the importance of overseeing core ESG issues and allowing for potential votes against directors who fail to manage material risks effectively. However, these guidelines often remain broad, lacking specific criteria or detailed actions for missed or substantially revised targets.

According to the CDP (Carbon Disclosure Project), more than 80% of S&P 500 companies have disclosed their climate-related risks and opportunities. Although significant effort undoubtedly goes into setting these targets, the real question is whether companies will be able to meet their ambitious goals. Instances have already arisen where companies have had to revise or restate their ESG targets. However, our review of voting trends indicates that there has not yet been a clear correlation between these missed goals and voting outcomes.

As we approach critical milestones, particularly the 2030 targets, there has been increasing discussion about the implications of missed goals among large institutional investors. While no definitive actions have been established, it is possible that investors will begin to evolve their guidelines, leading to heightened scrutiny of directors in cases where targets are not met. If this shift occurs, the criteria for what constitutes a "material" missed target will likely become a central focus, with materiality varying by investor. In either case, the likelihood of negative votes against directors could increase. Given this potential development, it is crucial for companies to proactively communicate with their investors. If goals are missed or need to be revised, companies should be prepared to explain the reasons for the shortfall, outline the steps being taken to ensure new goals will be achieved, and provide clear timelines for when and how investors can expect further updates. We may see more specific voting policies in the future as investors seek to hold companies accountable for their climate commitments.