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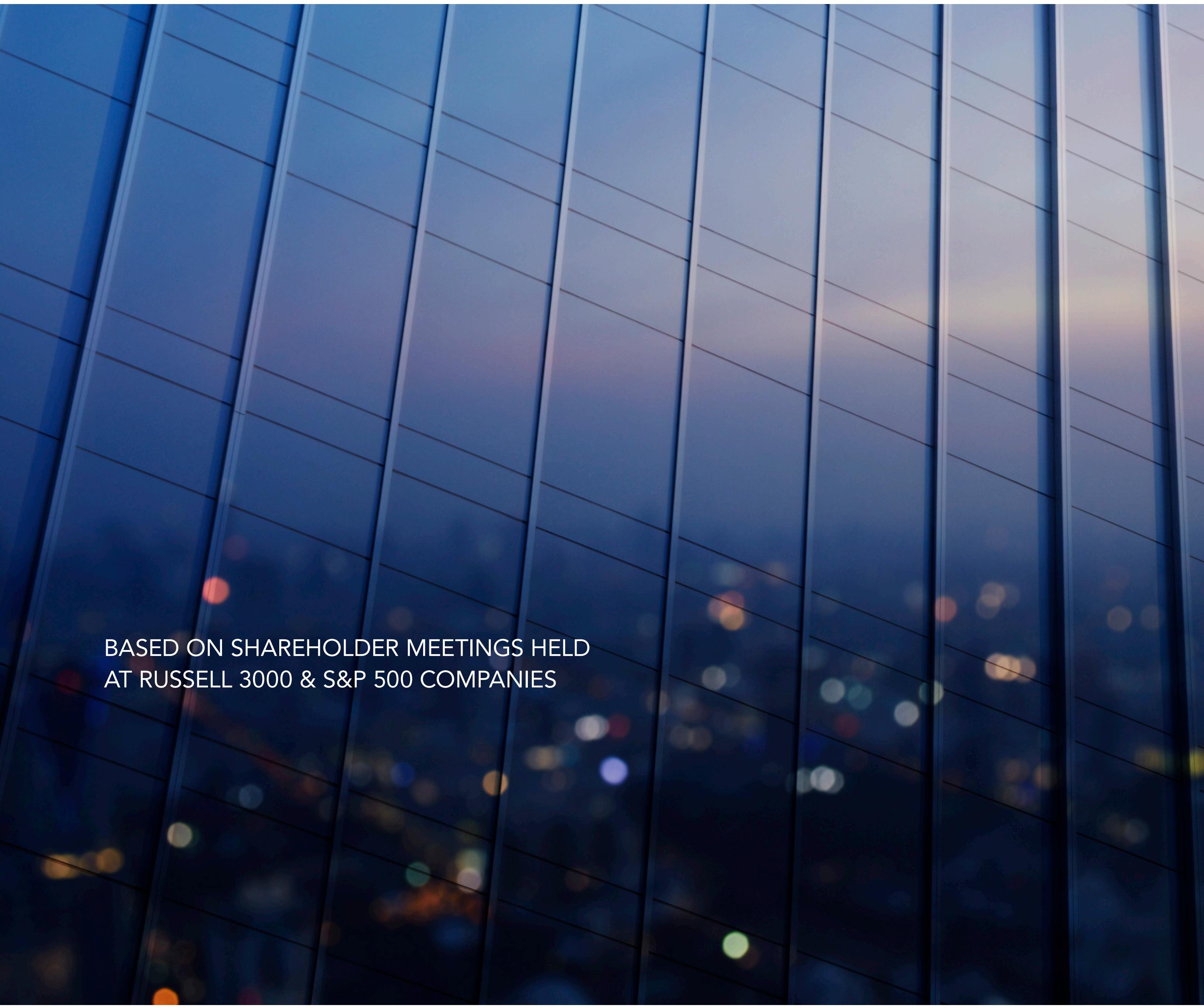
# Proxy Voting Analytics (2015–2018)



BASED ON SHAREHOLDER MEETINGS HELD
AT RUSSELL 3000 & S&P 500 COMPANIES

In partnership with RUTGERS Center for Corporate Law and Governance

In collaboration with IRGS ANALYTICS FACTSET

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# Proxy Voting Analytics (2015–2018)

## Based on shareholder meetings held at Russell 3000 and S&P 500 companies

RESEARCH REPORT 1674-18-RR

by Matteo Tonello

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# Using This Report

*Proxy Voting Analytics* reviews proxy voting data of business corporations registered with the U.S. Securities and Exchange Commission (SEC) that held their annual general shareholder meetings (AGMs) between January 1, 2018 and June 30, 2018 and that were in the Russell 3000 index as of January 2018. The Russell 3000 index was chosen because it assesses the performance of the largest 3,000 U.S. companies, representing approximately 98 percent of the investable US equity market.

The study is the result of a collaboration between The Conference Board, FactSet and Rutgers Center for Corporate Law and Governance; unless specifically noted, the report examines data compiled by FactSet and data mining firm IRGS Analytics and drawn from public disclosures as of July 10, 2018. To access the underlying database—which is updated daily—and retrieve management and shareholder proposals, no-action letter requests, and voting results regarding individual companies, visit www.conference-board.org/proxyvoting.

Aggregate data on shareholder proposals, management proposals, proxy contests and other shareholder activism campaigns is examined and segmented based on business industry and company size (as measured in terms of market capitalization). For the purpose of the industry analysis, this report aggregates companies within 11 business sectors (Exhibit 1), using the applicable Global Industry Classification Standard (GICS) codes (Exhibit 5, on p. 254). In addition, to highlight differences between small and large companies, findings in the Russell 3000 sample are compared with those regarding companies that, at the time of their AGMs, were in the S&P 500. Year-on-year comparisons are conducted by referring to the same time period of previous proxy seasons—a fairly comprehensive review since most corporations hold their annual shareholder meetings before the end of June. In some instances, this report revises calculations published in prior edition of the study to reflect updates to the dataset and, in particular, information on AGMs that was not yet reported or captured then. For this reason, direct year-on-year comparisons with those prior editions are not always valid.

Exhibit 1
**Sample Distribution—by Industry Groups**

| Industry | Number of companies | Percentage of total |
|---|---|---|
| Consumer Discretionary | 325 | 13.0% |
| Consumer Staples | 72 | 2.9 |
| Energy | 155 | 6.2 |
| Financials | 489 | 19.5 |
| Health Care | 407 | 16.2 |
| Industrials | 342 | 13.6 |
| Information Technology | 317 | 12.6 |
| Materials | 120 | 4.8 |
| Real Estate | 189 | 7.5 |
| Telecommunication Services | 23 | 0.9 |
| Utilities | 70 | 2.8 |

n=2,509

*Source:* The Conference Board, 2018.

This report is divided into five parts:

**Part I: Shareholder Meetings** offers an overview of the meeting season by index and industry groups. The index-based analysis includes the number of AGMs held in each month of the sample period.

**Part II: Shareholder Proposals** focuses on voted proposals introduced by shareholders and related to executive compensation, corporate governance, and social and environmental policy. A fourth all-inclusive "other" category comprising resolutions on director nomination, mergers and acquisitions transactions, asset divestitures, or other value maximization proposals is also included in the analysis. For a description of shareholder proposal topics under the subject categorization "other," see the "Subjects" section on p. 42. Data reviewed in Part II includes proposal volume, topics, and sponsorship. Proponent types considered in the sponsorship analysis are described in the "Sponsors" section on p. 32 and reflect the categorization used by FactSet. For proposals with multiple sponsors, the analysis by sponsor is based on the investor listed as the main proponent by FactSet. The discussion of voting results is integrated with information on nonvoted shareholder proposals (due to their withdrawal by sponsors, the decision by management to omit them from the voting ballot, or undisclosed reasons). Omission figures indicate that the company was granted no-action relief by the staff of the SEC in connection with the exclusion of a shareholder proposal from its proxy materials, as allowed for under Rule 14a-8 of the Securities Exchange Act of 1934. Data on withdrawn proposals are limited to publicly available information or information provided to FactSet by the proponent or issuer.

**Part III: Management Proposals** follows a similar organization of information as Part II to analyze company-formulated resolutions submitted to the vote of shareholders when applicable state corporate laws or the company's articles of incorporation or bylaws require shareholder approval on a certain business action. In this section of the report, specific attention is paid to the results of say-on-pay votes (now generally mandated by federal regulation). The review of management proposals helps to complement the findings of Part II, especially with respect to those corporate policy changes related to executive compensation, corporate governance, or social and environmental issues that are implemented by management after a precatory shareholder proposal on the same topic received wide support at a previously held AGM.

**Part IV: Proxy Contests and Other Shareholder Activism Campaigns** reviews all shareholder activism campaigns involving a director election, an action by written consent or a (shareholder or management) resolution put to a vote at a shareholder meeting. Specific attention is paid to proxy solicitations and contested director elections, including information on dissidents, dissenting reasons, and outcomes. However, the discussion extends to exempt solicitations (including vote-no campaigns) and other public agitations mounted by activist investors to influence fellow shareholders and put pressure on target companies. To provide insights on the profile of major activists, the analysis in Part IV is supplemented by a table summarizing campaign tactics adopted by investors in FactSet's SharkWatch50 index during their entire history of activism.

**Part V: Issues in Focus** corroborates the quantitative analysis of Part II and Part IV with a more in-depth review of critical shareholder proposal topics faced by companies during the 2018 proxy season, including information on the most frequent sponsors and those cases where the proposal received the highest and lowest support level. This section brings focus to governance matters (including majority voting, board declassification, CEO-chairman separation, and proxy access) and requests related to environmental and social policy (such as sustainability reporting and disclosure on corporate political spending and lobbying activities). Proposals on the election of a director nominee not supported by management, usually included in the dissident's proxy card in a proxy contest, are also analyzed. The discussion is further integrated with references to voting guidelines offered by proxy advisory firm Institutional Shareholder Services (ISS) on the issue in question.

The report ends with an Appendix featuring recommendations by The Conference Board to companies facing shareholder activism.

Data included in this report should be interpreted with caution. While the report offers a comprehensive set of charts segmenting aggregate data across industries, size groups, subjects, and sponsor types, trends in proxy voting may also depend on a variety of other aspects that are sometimes referenced but not fully assessed in these pages.

In particular, factors that may play a role include corporate ownership structures; financial performance; and the current state of organizational practices in corporate governance, executive compensation, and social and environmental policy. The relevance of each of these factors and its interaction with the findings described in *Proxy Voting Analytics* may also vary depending on industry, size, and investor type. Finally, the effects of external market results and political circumstances should not be underestimated, as shown, for example, by the increase in shareholder proposals on corporate political spending and lobbying following the 2010 *Citizens United* decision of the U.S. Supreme Court.

When included in the commentary, references to an earlier edition of this report refer to Matteo Tonello and Melissa Aguilar, *Proxy Voting Analytics (2010-2014)*, The Conference Board, Research Report, 1560-14-RR, 2014.

# Key Findings

This report analyzes proxy voting data of SEC-registered business corporations that held their AGM between January 1, 2018 and June 30, 2018, and, at the time of their AGM, were in the Russell 3000 index. This year, approximately 83.6 percent of the companies in the Russell 3000 index held their AGM in the examined time period. See "Using This Report" on page 8 for a description of data sources and study methodology.

The following are the major findings.

**Shareholder proposal volume was lower this year, with a sharper decline among larger companies as investors focus on new topics and broaden their targets**. In 2018, shareholder proposal volume decreased 8.9 percent in the Russell 3000 and 11.6 percent in the S&P 500. In the Russell 3000, shareholders filed a total of 638 proposals at companies with AGMs during the examined period, compared to 700 during the same period in 2017. In the S&P 500, the number of shareholder proposals decreased from 550 in 2017 to 486 in 2018. While shareholder proposals remain more common among larger companies, the proportion between the two indexes is gradually changing. In particular, shareholders are increasingly turning their attention to social and environmental proposals across a broader spectrum of business organizations, while proponents of corporate governance resolutions are redirecting their efforts toward smaller firms, where the rate of adoption of shareholder-friendly practices remains lower.

Albeit small, these declines resume the reversal of the volume growth that The Conference Board had reported until the 2013 proxy season (and, in particular in 2010-2013), when the number of shareholder proposals seemed to be heading back to the peak registered in 2008 (919 proposals at Russell 3000 companies and 714 at S&P 500 companies). Compared to the same examined period exactly 10 years ago, the number of investor-sponsored resolutions submitted in 2018 is down more than 30 percent in both indexes. New forms of corporate-investor engagement (especially in the area of executive compensation) and the effects of a revised Institutional Shareholder Services (ISS) policy on board responsiveness also help explain these findings. Telecommunications, utilities, and consumer staples companies were the sectors with the highest concentration of shareholder proposals (0.91, 0.60, and 0.57 proposals per company, respectively), while real estate companies were the least exposed (0.14 proposal per company). See Charts 3, 4, and 5.

**PETA, the National Center for Public Policy Research, and a number of other stakeholder firms investing in publicly traded companies to advance the stance of special interest groups have been increasing their presence at annual meetings, focusing their demands on social and environmental policy issues**. The analysis of shareholder proposals by sponsor type highlights the gradual rise to prominence of a category of proponents that had traditionally played a marginal role at AGMs: that of nonfinancial firms, which try to foster corporate changes in the interest of stakeholder groups rather than mainstream institutional investors. These organizations—which include the National Center for Public Policy Research, the People for Ethical Treatment of Animals (PETA), and the Humane Society of the United States—were the major sponsors of resolutions in the environmental and social policy area.

Collectively, they submitted 59 proposals in 2018 (or 9.25 percent of the total), down from the record registered in 2017 (88 proposals) but nonetheless at a level that was unimaginable only a few years ago (for example, there were only 28 proposals from these investors in 2013). See Chart 6.

**The number of resolutions filed by hedge funds continues to decline. However, rather than abating, their activism has morphed into new tactics to put pressure on target companies**. Hedge fund activity by means of shareholder proposals continued to decline in 2018, as these investors have been refining tactics to stir public debate on their portfolio companies' business strategy and agitate for change without making a single SEC filing. Activist hedge funds have long used the threat of proxy contests to pressure management. The tactic of filing a shareholder resolution to get a phone call returned is also far from new, as proven by the proportion of withdrawn proposals documented over time by The Conference Board. However, the rise of campaign announcements unrelated to a shareholder meeting and a specific vote proves that many of these investors have mastered ways to exercise pressure on management without any recourse to the regulatory filing channel.

This evolving approach becomes quite apparent if current sponsorship volume is compared to the one recorded only a few years ago. Then, hedge funds seemed to be on a trajectory to dominance of the proxy voting season, often using precatory resolutions as a means to publicize their view on critical issues at their target companies and to galvanize fellow shareholders around activism campaigns aimed at obtaining board representation. During the 2018 proxy season, hedge funds submitted only 18 proposals (a mere 2.8 percent of the total), down from 28 in 2017 (4 percent) and 39 in 2014 (5.2 percent). Health technology companies and the financial sectors received most of the resolutions filed by these investors. The most common proposals requested that the board break up the company or divest it of specific noncore assets, engage a financial advisor to evaluate a business combination, or issue dividends to return capital to shareholders. See Charts 6 and 9.

**Activity in the area of executive compensation by investment funds affiliated with labor unions continued to soften as those shareholders either ceased their proxy voting initiatives or showed new interests, especially in social and environmental policy issues.** The 2018 season marked another sharp year-on-year decline in the number of shareholder resolutions submitted by multiemployer investment funds affiliated with labor unions, such as the United Brotherhood of Carpenters and Joiners of America or the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). There were only 45 resolutions filed by this type of proponent in 2018 (7.05 percent of the total), down from the 80 resolutions (11.02 percent) of 2015. By way of comparison, an earlier edition of this study had reported 151 proposals submitted by this type of funds in 2010. This means that, in total, proposal volume by labor-affiliated funds dropped 70.2 percent from 2010 levels, a phenomenon that is partially responsible for the lower aggregate volume of shareholder proposals recorded in 2018.

Most commentators agree that the gradual, steady decline is attributable to the introduction of the say-on-pay vote and the federal regulation imposing more widespread executive compensation disclosure, which had traditionally been main topics of concern for labor unions. Some of these investment funds, including the Sheet Metal Workers' National Pension Fund, have completely exited the activism scene in the last few years, while others have scaled back their involvement. Labor unions filed only 17 executive compensation proposals in 2018, compared to the 28 of those reported in a previous edition of this report for the 2014 proxy season and the 57 of the 2013 proxy season. The volume of their proposals on corporate governance also dropped in 2018 (from 35 in 2014 to 11 this year), while some of these players have chosen to shift their focus to the social and environmental policy-related areas (17 filed resolutions). While their proposals in the environmental and social sphere gained limited traction among fellow shareholders, funds such as AFL-CIO have been using shareholder proposals to suggest that companies publicize studies on the impact that a new strategy or a changed business environment may have on the workforce and local communities—from the closure of factories to the rise of mega online retailers. See Chart 10 and Tables 7, 10, and 13.

**Once signature issues for public pension funds, matters of corporate governance are seldom the subject of the shareholder proposals sponsored today by this investor type—a sign of the progress made by many public companies in the adoption of best practices**. Following a pattern that is similar to the one observed among labor union-affiliated funds for executive compensation proposals, public pension funds have progressively reduced their submissions on corporate governance issues among Russell 3000 companies—from 61 in 2013 to 35 in 2014 and 14 in 2018 (a 77 percent decline since 2013). A confluence of factors has been contributing to this downward trend: The progress made by many companies in the adoption of governance best practices (from majority voting in director elections to board declassification, and from the independence of board leadership to the elimination of supermajority vote requirements); the effects of proxy advisory firms' voting recommendations on board effectiveness, which penalize boards of directors that do not implement widely supported precatory proposals; interest in new social and environmental issues such as climate change risk and political contributions disclosure; and a growing propensity by corporate directors to seek input from large shareholders.

Although pronounced, the decline in shareholder proposal activity is irregular across the public pension fund industry. Some funds have cut back significantly on their filings; for example, the California State Teachers Retirement System (CalSTRS) sponsored only one resolution this year—to eliminate supermajority vote requirements at Netflix (NASDAQ: NFLX)—compared to five in 2014 and 18 during the same period in 2013. Some, such as the Pension Reserves Investment Management Board, have even exited the list of most frequent sponsors. But others remained active proponents even in 2018 (the New York State Common Retirement Fund and the New York City Employees' Retirement Systems), even though their attention has shifted more toward matters of corporate social responsibility. This year, NYCERS filed six requests for proxy access rights; four of these resolutions went to a vote and two (at Netflix and at Hospitality Property Trust (NASDAQ: HPT) received majority support and passed. See Chart 10 and Table 11.

**Issues of social and environmental policy have garnered the attention of most proponent types in recent years, but their main sponsors are the endowment funds of religious orders and special stakeholder groups**. In 2018, shareholders filed 247 resolutions on social and environmental policy issues (or 38.7 percent of the total), down from the 302 during the same period in 2017 (a record year, where they were the single most frequent subject of investor activity and represented 43.1 percent of the total, beating even the 41.1 percent of corporate governance) but in line with the share registered since 2010. Quite varied (and ranging from political contribution disclosure to compliance with human rights and from sustainability reporting to the adoption of a climate change policy), these matters are pursued by multiple investor types (including, as mentioned earlier, public pension funds, labor union, and gadfly individual investors); however, the highest concentration of proponents is among religious groups (30 filed resolutions in the first semester 2018 alone) and other stakeholders like the Humane Society of the United States and the National Center for Public Policy Research (collectively, 44 sponsored resolutions).

Confirming data from prior proxy season, the analysis by volume shows that the most popular shareholder resolutions in this category are the requests for political contributions and lobbying disclosure (50 voted resolutions at Russell 3000 companies in the first semester of 2018) as well as those for reports on the environmental impact of business activities (36 voted resolutions). In 2018, they were followed by proposals requesting information on the company's stance on certain health-related issues that may affect their employees or other stakeholders (10 voted resolutions in 2018) and those urging the adoption of a corporate policy detailing compliance with human rights standards across the supply chain (also 10 resolutions that went to a vote). See Chart 13, Chart 24 and Table 13.

**Social and environmental policy proposals typically fail at the AGM. However, data show a slow but steady upward trend in terms of voting support, and abstention levels have dropped markedly in just a few years**. Proposals related to social and environmental policy received, on average, the support of just 25.7 percent of votes cast. This finding indicates that US shareholders, in general, continue to believe that the board of directors and senior management are better suited to determine the business viability of certain sustainability activities, and that one-size-fits-all policies may lead to inefficiencies or capital misallocations.

Besides their increase in volume, however, two factors may be indicative of the future performance of sustainability issues at AGMs:

1. Even though almost all of these proposals fail to receive a majority vote, the overall upward trend regarding their average support level is quite clear: for proposals on political contribution disclosure and lobbying, the 28 percent for votes of 2018 represented an uptick from the 24.6 percent of 2017 and the 24 percent of 2015; those on human rights went from 10.7 percent in 2017 to 17.5 percent in 2018; and health issues-related resolutions received the support of 21.4 percent of votes cast in 2018, up from 18.8 percent in 2017 and only 6.1 percent in 2015.

2 In the last few years, these resolutions have been gaining wider endorsement by retail investors, as shown by data from The Conference Board on voting abstention: the average abstention rate dropped from 10.9 percent of votes cast in 2014 to a mere 2.5 percent this year—a number fully aligned with the one seen for shareholder resolutions on executive compensation and corporate governance.

Only a handful of social and environmental policy proposals passed in 2018: They include two at energy company Kinder Morgan Inc. (NYSE: KMI), for the publication of a sustainability report and the assessment of the risk that policies requiring the company to address climate change may pose to the business; and one sponsored by Calvert Investment Management at transportation company Genesee & Wyoming (NYSE: GWR), requesting the setting of greenhouse gas emission targets. See Table 14.

**The rate of withdrawals of shareholder proposals doubled from a few years ago as companies voluntarily implement their own reforms.** In 2018, the number of voluntary withdrawals of shareholder proposals in the Russell 3000 (11.1 percent of the total submissions in the Russell 3000, up from 8.7 percent in 2017 and a mere 5.9 percent in 2012), when combined with omissions by management, exceeded the number of granted SEC no-action letters to companies seeking exclusions. This finding reflects the success of renewed corporate efforts to engage with key shareholders. More than ever before, in this proxy season activist funds and institutional investors have pursued opportunities to be heard ahead of a shareholder meeting. However, guidelines on board responsiveness from proxy advisory firm ISS are also likely to share the responsibility for the growth of withdrawn proposals. Under the new policy, ISS recommends that institutions voting on director elections exercise close scrutiny in those situations where a company failed to implement a precatory shareholder proposal that had received majority support of votes cast at a prior AGM. Therefore, in some cases, withdrawals may result not from dialogue but from the decision of the company to either voluntarily implement the requested change or to submit its own proposal on the same topic to mitigate the risk of wide opposition to management's nominees to the board of directors.

Withdrawn proposals were mostly submitted by gadfly investors and the investment vehicles of stakeholder groups and religious orders—all investor types that rarely elevate these matters to an outright proxy solicitation and would rather use the precatory proposal as a tool to receive the attention of their portfolio companies on issues of concern. However, in 2018, 23 of the 71 withdrawn proposals were sponsored by investment advisers (of hedge funds, mostly), for which the decision to drop the request was likely the result of private discussions or settlements with management. The most commonly omitted proposals were seen in the social and environmental policy area, on which SEC no-action letters are more frequently granted on the basis of the ordinary business operation exclusion (Rule 14a-8(i)(7) under the Securities and Exchange Act). See Charts 14, 15, 16, and 17.

**As large groups of institutional investors reduced their 14a-8 filings or shifted their attention to new topics, the percentage of voted proposals winning the support of a majority of shareholders reached a new low; not a single resolution related to executive compensation passed in 2018**. The percentage of voted shareholder proposals receiving majority support has inexorably declined since 2009, from more than 20 percent to less than 11.2 percent in the Russell 3000 sample and from 17.3 percent to 8 percent in the S&P 500. This downward trend is attributable to a decline in the volume of proposals on topics that are traditionally widely supported by shareholders (for example, majority voting and board declassification) and an increase in the share of new types of shareholder resolutions (including those on environmental and political issues) that spark a debate on emerging corporate policies but that fail to obtain majority support. Even though a handful of proposals on each of these new issues passed in 2018 (notably, on proxy access, on the right to call special meetings, and on environmental reporting), sponsoring investors are far from obtaining the widespread support that the shareholder community has shown on key governance practices such as majority voting and board declassification.

In the examined 2018 general meeting period, on average, more than 70 percent of votes on shareholder proposals submitted by other stakeholders, other institutions, and religious groups were *against* the proposal. The highest level of votes *for* was observed for proposals by public pension funds (41.4 percent), individuals (35.7 percent), and hedge funds (35.1 percent). Public pension funds and individuals had the highest percentage of voted proposals receiving majority support (25 and 12 percent, respectively).

Notably, none of the executive compensation proposals voted during the period received majority support in 2018, while the highest share of proposals that did receive it was found in the corporate governance subject category (15.7 percent, or much lower than 27.5 percent of 2017 and 33.9 percent of 2015). Within the corporate governance subject category, three shareholder proposal types received average support of greater than 50 percent of votes cast: those on board declassification (82 percent support, on average), on the adoption of majority voting in director elections (73.9 percent), and on the elimination of supermajority requirements (60.7 percent). See Charts 18, 21, 25 and Tables 11, 12, and 14.

**In the year of the nascent #MeToo movement, large pension funds have become more vocal about the need for safe work environments, while other shareholders have urged prominent companies to address gender pay gaps and link executive compensation to human capital management**. The #MeToo movement has barely turned one year old. In a first sign of the significance of the current climate, a couple of large and influential institutional investors (California Public Employees' Retirement System and BlackRock) followed the early example of the New York State Common Retirement Fund and were receptive of recommendations included in a recent publication by the Council of Institutional Investors (CII), announcing revisions to their voting policies meant to promote corporate practices combating sexual harassment in the workplace.

Walmart (NYSE: WMT), Facebook (NASDAQ: FB), Alphabet (NASDAQ: GOOG), and Texas Instruments (NASDAQ: TXN) were among the recipients of gender pay gap proposals in 2018. There were eight such proposals in the Russell 3000, with five that advanced to a vote at the target companies' AGMs. Socially responsible investment fund Arjuna Capital filed one for the third consecutive year at Google's parent company, Alphabet, in the wake of a US Department of Labor investigation as well as leaked employee-gathered data suggesting gender pay gaps across the workforce. None of the proposals of this type, including the Alphabet one, passed; however, at least in some cases, their influence appeared to extend beyond the annual shareholder meeting vote. Following the filing of Arjuna's proposal, for example, Google published wage data showing a zero percent statistically significant pay gap for 89 percent of its employees worldwide; while applauding the company's disclosure, Arjuna refused to withdraw its demands due to what it characterized as the incompleteness of the analysis and the lack of a definitive conclusion on the remaining 11 percent of the workforce. Moreover, in recent months, several companies in the financial services sector that had been the target of similar requests during the 2017 voting season preempted new investor demands by volunteering information on the inequities of their compensation policies and by pledging to close the gaps.

Twitter (NYSE: TWTR) received a proposal regarding online sexual harassment, the first of its kind, which was filed by the New York State Common Retirement Fund. The proposal requested a report detailing the extent to which users of the social network abuse its content policies and assessing the risks posed by content management controversies—whether pertaining to election interference, fake news, hate speech, or sexual harassment. And at Nike, Inc. (NYSE: NKE), investment adviser Trillium Asset Management sought to prompt a debate on how goals pertaining to equality and diversity can be embedded into the company's incentive plans for senior executives. See Chart 22 and Table 7.

**Shareholders' right to call a special meeting tops the list of corporate governance-related resolutions, while issues that had galvanized investors for over a decade barely made the list.** The historical analysis by topic of filed shareholder proposals on corporate governance shows that issues that shareholders had frequently pressured companies on for over a decade barely made the list of submissions for 2018. For example, only five proposals on the adoption of majority voting in director elections went to a vote at Russell 3000 companies in the first six months of 2018, down from 14 in the same period of 2017; according to an earlier edition of this study, there were 27 in 2014. Similarly, there were only five voted proposals on board declassification in 2018, down from nine in 2015, 29 in 2013, and 44 in 2010.

Instead, it was the request to allow shareholders to call special meetings that topped the 2018 list of governance-related proposals by volume. Their proponents were primarily individual gadfly investors (including John Chevedden, Kenneth Steiner, and *corpgov.net* publisher James McRitchie). Investors voted on 58 of these resolutions at Russell 3000 companies in the first six months of the year, twice the number The Conference Board recorded for 2017 (23 resolutions) and more than three times the number for 2015 (17) and 2013 (10).

Proxy access reform resolutions ranked second on the 2018 list by volume, but their number continued a decline that had been observed even last year (shareholders of Russell 3000 companies voted on 38 of these proposals in 2018, down from the 49 and 76 instances of 2017 and 2015, respectively). More consistent over the years has been the volume of resolutions meant to strengthen board leadership, given that many companies continue to argue in favor of a dual leadership model that combines the CEO and board chairman positions; in 2018, investors voted on 46 of these resolutions, up from the 40 that were recorded last year.

The average support level for all corporate governance proposals in 2018 was 37.5 percent. Only three proposal types received average support of greater than 50 percent of votes cast: Proposals on board declassification (82 percent support level, on average), those on the adoption of majority voting in director elections (73.9 percent), and those requesting the elimination of supermajority requirements (60.7 percent). In fact, the average percentage of *for* votes recorded in 2018 in each of these categories was significantly higher than those reported for 2017 and 2015—a finding confirming that the decline in volume observed over the years for these types of proposals is due to the saturation of investor demand, not their waning support in the investment community.

Even though their average support level was below the majority threshold, resolutions on the shareholders' ability to act by written consent and to call special meetings received 41.9 percent and 40.9 percent of *for* votes, respectively, in 2018. Among others that passed, a proposal submitted by William Steiner at Nuance Communications received the support of 92.37 percent of votes cast. The lowest level of support was recorded for proposals to introduce terms limits for directors, to allow cumulative voting (9.3 percent, on average), and to increase the size of the board of directors (7.7 percent). The only voted proposal to adopt term limits for board members, which William Steiner filed at real estate construction firm Lennar Corporation, received only 1.1 percent of votes cast. See Tables 9, 10, 11, and 12.

**Say-on-pay analysis confirms a significant turnover in failed votes, with several companies losing the confidence of their shareholders this year after winning the vote by a wide margin in 2017**. In the Russell 3000, 53 of the executive compensation plans put to a say-on-pay vote in the first half of 2018 failed to receive the majority support of shareholders. This compares with 28 companies that failed those votes during the same period in 2017 and, according to an earlier edition of this study, 51, 47, and 51 companies that failed those votes during the same period in 2014, 2013, and 2012, respectively. Twelve companies that reported failed votes in 2018 also had failed votes in 2017. They include: IMAX Corp. (NYSE: IMAX); Universal Insurance Holdings, Inc. (NYSE: UVE); Medifast, Inc. (NYSE: MED); Nabors Industries Ltd. (NYSE: NBR); Hospitality Properties Trust (NASDAQ: HPT); Whitestone REIT (NYSE: WSR); New York Community Bank (NYSE: NYCB); and Tutor Perini Corporation (NYSE: TPC). Tutor Perini Corporation is the only company in the Russell 3000 that has failed all eight years of say-on-pay advisory votes. Nabors Industries Ltd. had four consecutive failed votes as of 2014, received 65.3 percent of *for* votes at its 2015 AGM, then failed the advisory vote again in 2016 (with a mere 36 percent of votes cast in favor of the compensation plan proposed by management), in 2017 (where the percentage of favorable votes cast increased only slightly, to 42.3), and in 2018 (with 62 percent of votes cast against the say-on-pay proposal).

There is a significant year-over-year turnover in failed votes and, aside from the cases indicated above, all companies that failed their say-on-pay votes in 2018 had successful votes in 2017, in most cases by wide margins. This is an indication that companies cannot lower their guard when it comes to compensation oversight and need to ensure ongoing transparency, not only by communicating any new compensation decision made by the board but also by providing reassurance that the compensation policy continues to be aligned with the long-term business strategy of the organization.

Another 113 companies in the Russell 3000 (5.7 percent) reported passing say-on-pay proposals with support of less than 70 percent of votes cast, the level at which proxy advisory firms may scrutinize their compensation plans and evaluate issuing a future negative recommendation. This finding is in line with the 5.6 percent of companies with votes under 70 percent seen during the same period in 2017. The list includes Motorola Solutions, Inc. (NYSE: MSI); Humana, Inc. (NYSE: HUM); Mylan N.V. (NASDAQ: MYL); Weight Watchers International, Inc. (NYSE: WTW); Etsy, Inc. (NASDAQ: ETSY); Harley-Davidson, Inc. (NYSE: HOG); Unisys Corporation (NYSE: UIS); Netflix, Inc. (NASDAQ: NFLX); and Six Flags Entertainment Corporation (NYSE: SIX). Moreover, 19 of the companies below the 70 percent support threshold in 2018 were below that level in 2017. Their boards will inevitably need to reopen the discussion on pay for performance and either persuade investors that their compensation policies are sound and fit the company's strategic needs or revisit those policies. In fact, many of the companies on this gray list have already made additional filings to integrate information on their approach to executive pay or to dispute ISS's characterization of their compensation choices. See Exhibit 3 and 4.

**Although activism campaign announcements in the Russell 3000 were up in 2018, the number of campaigns related to a shareholder meeting declined, as some hedge funds choose to agitate for change without even filing a shareholder proposal.**
In the first half of 2018, activist investors announced 254 campaigns against Russell 3000 companies, compared to 240 in the same period in 2017 (a 5.8 percent uptick). Activism campaign announcements include proxy contests, exempt solicitations, and any other public announcement of the investor's intention to agitate for change at a target organization—whether through a press release, an appearance on a CNBC talk show, a Twitter chat, or the filing of a lawsuit. However, the number of campaigns pertaining to a vote at a Russell 3000 shareholder meeting held in the January 1-June 30 time period declined slightly in 2018, to 147 from the 149 of the prior year; a similar phenomenon was shown in the S&P 500, where the total number of activism campaigns involving a shareholder vote went from the record high 94 in 2017 to 80 in 2018. In particular, there were fewer exempt solicitations this year (including "vote no" campaigns to withhold votes at director elections): 100 compared to 107 in 2017.

The discrepancy between announcements and campaigns related to a shareholder vote indicates that a growing number of activists are agitating for change without even filing a shareholder proposal. In fact, considering the recent entry of a cadre of new hedge funds to the activist investment business, some of the campaign announcements unrelated to a shareholder meeting could be mere attempts to assess the bargaining power that a fund exercises on its portfolio companies. In these cases, the activist does not aim at galvanizing other shareholders around a director election or an action by written consent or a vote on a specific resolution. Instead, the announcement serves the purpose of publicizing the investor's view of the business strategy or organizational performance. It is used as a first step that may lead to the future filing of a shareholder proposal or the solicitation of proxies; it may also prove sufficient on its own to persuade the board of directors to seek dialogue and reach a compromise.

For example, on February 2018, Barington Capital sent a letter and detailed presentation to the chairman and CEO of restaurant chain Bloomin' Brands, Inc. (NASDAQ: BLMN), recommending that the company implement a variety of measures to improve shareholder value—including the spin-off of its smaller brands, measures to enhance guest experience, and improvements to the company's corporate governance and board composition (in particular, the addition of new independent directors with strong backgrounds in the restaurant industry). The letter was publicly disseminated though a press release, but it was not followed by an explicit threat of a proxy fight or an exempt solicitation.

Similarly, in March 2018, Jericho Capital Asset Management sent a letter to the management of VMWare, Inc. (NYSE: VWM) arguing that the company would be better off considering other strategic options instead of a potential reverse merger with computer manufacturer Dell, a transaction then under consideration. Jericho then requested a meeting with the board to discuss strategic alternatives. The letter was never escalated to the threat of a proxy fight or an exempt solicitation; in fact, the transaction was never put to a shareholder vote and, later in the year, VMWare and Dell decided not to pursue it. See Chart 37.

**Proxy contests were the only type of activist campaign related to a shareholder vote to increase among Russell 3000 companies in 2018. However, the outright success rate of dissidents reached a record low this year, with the majority of such contests resulting in settlements**. Among types of activist campaigns related to a shareholder vote, proxy contests were the only one that registered an increase in 2018. Activists engaged in 34 proxy contests against Russell 3000 companies that held a shareholder meeting in the first six months of the year, compared to 28 launched in the corresponding 2017 period, 49 in 2015, 35 in 2013, and 23 in 2010. Companies in the consumer discretionary sector faced seven solicitations and companies in the industrials sector were exposed to six; there were four contests in each of the energy, financials, real estate, and information technology sectors, while only one in the telecommunications sector.

Hedge funds have consistently been the most active dissident type. In 2018, they mounted 19 (or 55.9 percent of the total) of the voting fights against management, followed by other stakeholders (six proxy contests, or 18.2 percent of the total), investment advisers (six contests, or 17.6 percent), and individuals (two contests, or 5.9 percent). The vast majority of such contests (23, or 67.6 percent) were motivated by an attempt to gain a seat on the board of directors. Six fights (or 17.6 percent of the total) sought to obtain control of the board to foster a broader range of strategic, organizational, and governance changes, whereas the others were waged to oppose a merger (at AmTrust Financial Services, Inc. [NASDAQ: AFSI], by Carl Icahn), to seek board control (at Aqua Metals, Inc. [NASDAQ: AQMS], by Kanen Wealth Management), and to vote against a management proposal (at HomeStreet, Inc. [NASDAQ: HMST], by Roaring Blue Lion Capital Management).

In 2018, for the first time since The Conference Board began tracking proxy contest outcomes, the majority of initiated proxy contests resulted in a settlement between the dissident and the company, where the company made certain concessions to obtain the support of the activist investor. By the same token, in 2018 the outright success rate by dissidents was the lowest recorded by The Conference Board since 2010, where dissidents won only one of the 23 proxy contests mounted then against Russell 3000 companies (or 4.3 percent). In the Russell 3000, dissidents scored an outright win in only 2 of the 34 (or a mere 5.9 percent) proxy contests where an outcome was reached in 2018, down from a percentage of 17.9 in the same period of 2017 and of 12.5 in 2015. By way of comparison, according to an earlier edition of this study, dissidents succeeded in 7 of the 41 (17.1 percent) proxy contests held during the same period in 2014 and in 5 of the 35 proxy contests of 2013 (14.3 percent). In 2018, three contests (8.8 percent) were withdrawn and eight (or 23.5 percent) resulted in a victory for management. Most importantly, almost 60 percent of the Russell 3000 proxy contests in 2018 concluded with a settlement—as mentioned, the highest share of proxy fight settlements found by this periodic study (previously, the highest percentage of settlements had been found in 2015, and it was 47.9 percent). See Charts 42–55 and Tables 27–31.

**Constructive engagement between corporations and investors has been curbing the most hostile forms of activism, as the volume of proposals to elect a dissident's nominee remains fairly high.** In the Russell 3000, in the first semester of 2018, shareholders filed 25 proposals to elect a dissident's director nominee. Volume was down from the 28 proposals documented for the same period in 2016 and, according to earlier editions of this report, the 39 proposals documented for the same period in 2013, let alone the 52 proposals submitted in 2009—a record year for hostile activism.

The explanation should be sought in certain developments of the last few years, from the introduction of say-on-pay votes (which many shareholders can now use more effectively than director opposition proposals to voice their discontent) to the passage of new rules enhancing governance disclosure and, in general, a business climate favoring more constructive dialogue with investors. Even though it did not match the data for earlier years, the number of contested elections, where management nominees to the board are challenged, was still fairly high in 2018, with roughly 80 percent of proposals of this type (or 20 of the 25 filed) going to a vote during the first six months of the proxy season.

By way of comparison, in 2014, 31 of the 35 filed proposals (88.6 percent) on the election of a dissident's nominee were voted at Russell 3000 AGMs. Such proposals are far less frequent among S&P 500 companies, where large capitalizations make it more arduous for an activist to garner enough support from fellow investors, and ultimately reduce the likelihood of success. There were only two proposals submitted during the 2018 period (and neither of them went to a vote), compared with six in 2017, zero in 2016, five during the same period in 2013, and three in 2012.

As usual, requests for board representation were primarily submitted by activist hedge funds and investment advisers, which are SEC-registered companies that in turn often manage assets of a portfolio of hedge fund clients. Carl C. Icahn led the list with seven filed and four voted board representation proposals, followed by investment adviser GAMCO Asset Management, with six filed proposals (all voted). All but three of the proposals submitted by the top six most frequent sponsors went to a vote, accounting for 88 percent of the total voted.

The 2018 average support rate for this proposal topic has increased to 43.2 percent of shares outstanding. This result was up considerably from the findings in previous years (by way of comparison: 36.7 percent in 2017, 31.4 percent in 2014, and 36.3 percent in 2013), and much higher than the average support reported in 2012 (18.2 percent) and in 2009, which had been a record year in terms of proxy contests (26.4 percent of shares outstanding voted in favor). Nine of those 20 nominees were elected at SandRidge Energy [NYSE: SD], Acacia Research Corporation [NASDAQ: ACTG], Natus Medical Incorporated [NASDAQ: BABY], and Taubman Centers [NYSE: TCO]. Interestingly, none of GAMCO Asset Management's nominees received majority support and were elected. Among resolutions on this topic, the highest support level (83.1 percent of *for* votes as a percentage of shares outstanding) was received by a proposal filed at SandRidge Energy by Carl C. Icahn. The lowest support level (18.7 percent) was on a proposal filed at The E.W. Scripps Company. See Charts 92, 93, 94, and 95 and Table 39.

PART I
# Shareholder Meetings

State corporate laws in the United States require public companies to hold an annual general meeting (AGM) of shareholders for the purpose of electing the board of directors and ratifying any business decision subject to shareholder approval. Examples of these prescriptions at the state level include Section 211 of the Delaware General Corporation Law, Section 602 of the New York Business Corporation Law, and Section 600 of the California Corporations Code. State law also governs several procedural aspects of the AGM, such as location, notice and record date requirements, quorum requirements, the ability of shareholders to vote by proxy, the right of shareholders to review the company's shareholder list, and the procedures for inspecting elections.

Federal securities laws complement state laws by focusing on the proxy solicitation process that accompanies the AGM. Under Section 14 of the Securities and Exchange Act of 1934, corporations registered with the SEC must make meeting materials publicly available. Public companies that solicit shareholder votes must file a proxy statement with the SEC detailing, among other things, information on the matters put to a vote and voting procedures, the names and background of director nominees submitted by management, and the compensation of board members and top executives. Individual (or groups of) shareholders can also submit their own proposals by filing a resolution according to SEC rules.

The sample examined for the purpose of this report includes 2,318 companies in the Russell 3000 (including non-US companies registered with the SEC) that held AGMs from January 1 to June 30, 2018. In this section, the sample is compared with the S&P 500 and across industry groups.

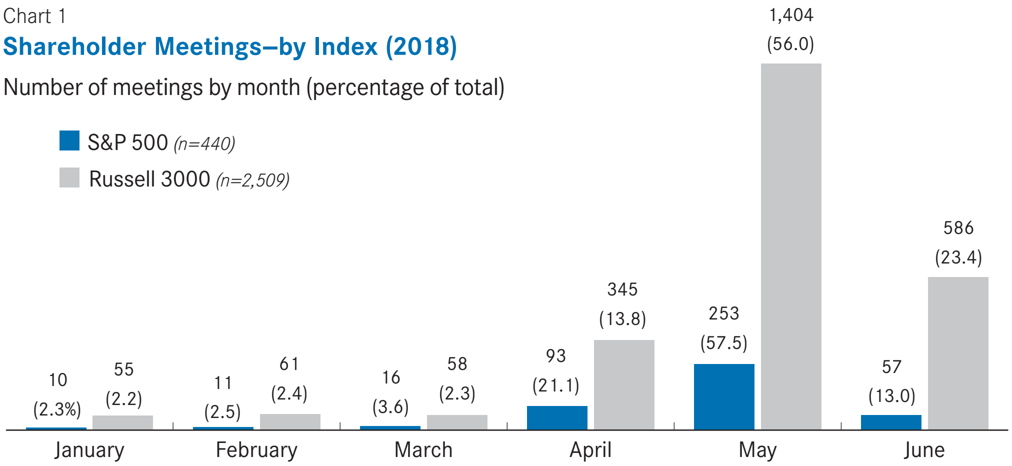
## By index

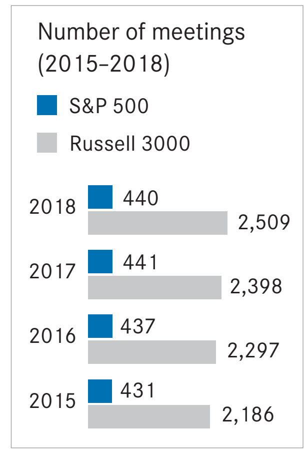
Of the companies in the Russell 3000 that held their AGM in the first six months of 2018, 56 percent held it in May. In the corresponding S&P 500 sample, that share was 57.5 percent. In the Russell 3000, the month with the second highest number of shareholder meetings is June; in the S&P 500, it is April. By the end of June 2018, 83.6 percent of Russell 3000 companies and 88 percent of S&P 500 companies had held their AGM.

Chart 1

**Shareholder Meetings—by Index (2018)**

Number of meetings by month (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By industry

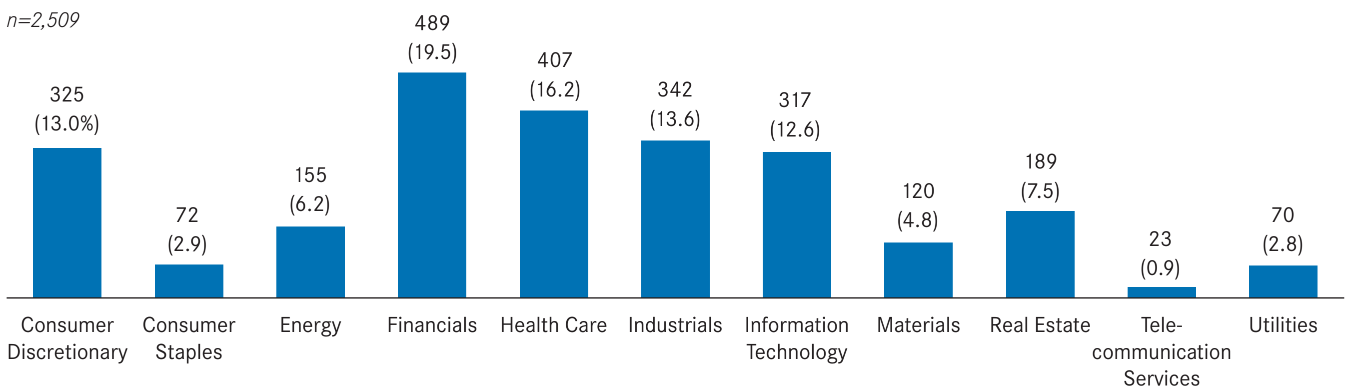
Chart 2 illustrates the distribution of Russell 3000 AGMs held by June 30, 2018, across industry groups. Financial services firms had the highest number of shareholder meetings across industries in the first half of the year (489), followed by health care companies (407) and industrials companies (342).

Chart 2

**Shareholder Meetings—by Industry (2018)**

Number of meetings (percentage of total)

*n=2,509*




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

# PART II
# Shareholder Proposals

According to Rule 14a-8(b) under the Securities Exchange Act of 1934, any shareholder who has held more than $2,000 in stock or 1 percent of the company's outstanding shares for at least a year is permitted to initiate a shareholder proposal and request that a certain item be placed on the agenda and put to a vote at the next AGM. In most cases, management opposes these proposals and urges other shareholders to vote against them. However, especially when the proposal is popular, management may negotiate with activist investors to make those changes in corporate policy that can avoid a public campaign against the company and the risk of a widely supported shareholder proposal.

A shareholder proposal must be included in proxy materials unless the corporation receives authorization from the SEC to exclude it (a "no-action letter"). To avoid the use of shareholder proposals for the purpose of disrupting the ordinary administration of corporate affairs, federal regulation may enable the company to exclude it from the voting ballot. The bases for exclusions are detailed by Rule 14a-8(i). Exclusions are common in cases where the proposal is not on a proper subject for action by shareholders under applicable state laws—for example, because it relates to the company's daily business operations for which shareholder approval is not required or because the company has shown that it would lack the power or authority to implement the proposal.

Under the laws of most states (including Delaware, New York, and California), the company's board of directors and senior management hold the responsibility to attend to business affairs. Shareholders, in turn, have the authority to amend company bylaws and can cast mandatory proposals to put such amendment to a vote. Aside from the case of bylaws amendment, shareholder proposals generally must be "precatory" and phrased as recommendations or suggestions; otherwise, they risk exclusion from the proxy materials. The approval of a precatory shareholder proposal has its own significance since it may shed light on a certain corporate practice criticized by investors and put pressure on the board to effect change. Nevertheless, the board may appropriately determine not to implement the proposal if it in good faith believes that its implementation is not in the best interests of the company and its shareholders.

This section reviews the volume, sponsorship types, subjects, and voting results of shareholder proposals filed at SEC-registered companies. The analysis highlights certain developments of the 2018 proxy season as well as its major themes. For more information on these themes, also see "Part V: Issues in Focus" on p. 197.

## Volume

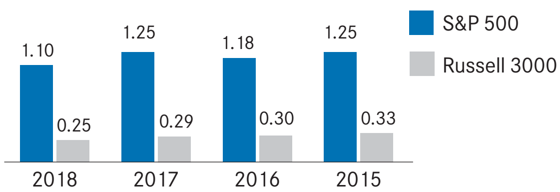
### Per company

In the Russell 3000 sample examined for the purpose of this report, in 2018 shareholders filed on average 0.25 proposals per company, compared to the average of 0.29 proposals for the same period in 2017. The average was calculated by dividing the total number of proposals submitted in the sample period (Chart 3) by the total number of shareholder meetings held by index companies during the sample period (Chart 1).

Chart 3

**Average Shareholder Proposal Volume per Company (2015–2018)**

Average number of shareholder proposals per company




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

In the S&P 500 sample, the average number of shareholder proposals per company decreased from 1.25 in 2017 to 1.10 this year. Shareholder proposals continue to be more common among larger companies. However, the decline in the number of proposals per company is much more pronounced in the S&P 500, suggesting that the proportion of 14a-8 resolutions between the two indexes is gradually changing.

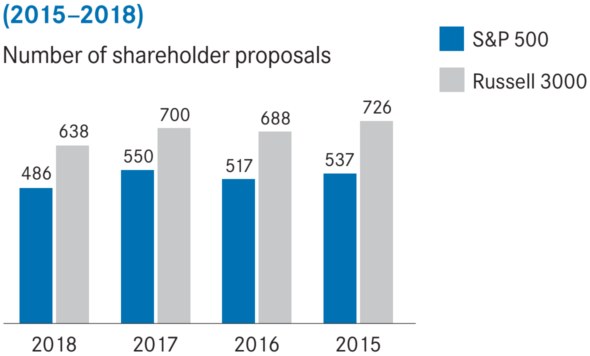
### By index

In both indexes, shareholder proposal volume for the 2018 period was lower than in 2017 (Chart 4). Shareholders submitted 638 proposals at Russell 3000 companies that held AGMs during the period (a 8.9 percent decline from the volume registered in 2017), 589 of which were related to issues of executive compensation, corporate governance, or social and environmental policy (Chart 7, on p. 31). For the same period in 2017, shareholders had submitted 700 proposals, 647 of which related to executive compensation, corporate governance, or social and environmental issues.

Chart 4

**Shareholder Proposal Volume by Index (2015–2018)**

Number of shareholder proposals




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

Large-capitalization companies continue to be the primary focus of shareholder proposals. However, the number of resolutions sponsored by investors decreased significantly even in the S&P 500, from 550 in 2017 to 486 in 2018 (or 11.6 percent). It is the first time since the introduction of this annual study that The Conference Board observes a two-digit decline in shareholder proposal volume in the S&P 500 (in fact, last year there had been a slight uptick in both indexes). A confluence of events may help explain the observed rapidly declining numbers.

These factors are discussed more in detail in several sections of the report and include:

- Following the introduction of "say on pay," the advisory vote of shareholders on executive pay, the AGM is no longer the main venue to debate adjustments to the company's compensation structure, especially when it comes to issues of pay for performance and pay equity. Boards of directors and management have been proactively pursuing forms of engagement with shareholders, especially the large institutions that can make or break the advisory vote. While some shareholders felt energized by the reform and are innovating the formulation of shareholder proposals on this subject by pushing for new topics such as equity retention and limits to golden parachutes, hardly any company can afford to walk into an AGM without having spent the preceding months gaining assurance of the broad consensus on its compensation policy. Pension funds affiliated with trade unions, once fervent proponents of resolutions on executive compensation, have precipitously reduced their submissions this year.

- Most companies in the S&P 500 and the segment of larger companies that comprise the Russell 3000 have already transitioned to (or are in the process of voluntarily doing so) the governance best practices heralded by many proponents of these resolutions. The adoption of majority voting and of destaggered board structures, the separation of CEO and board chairman position (or the appointment of a lead independent director), and the repealing of poison pills are the main examples of the transformation that has taken place in the governance practices of many public companies and are documented in *Director Compensation and Board Practices*, another periodic benchmarking report by The Conference Board.

- Revisions to voting guidelines on board responsiveness by ISS are propelling a new wave of corporate changes, in this case following proposals voluntarily submitted by management to preempt the reputational impact that a negative voting recommendation by the proxy advisory firm would produce on the company's director election process. A number of investor-sponsored proposals likely to receive wide support——especially those pertaining to corporate governance practices that are increasingly viewed as a baseline by many institutional investors——no longer make it to the AGM because the company chooses to address the concern ahead of the shareholder vote. Considering the likelihood of approval of a certain shareholder request, boards may conclude that they have little to gain from letting the proposal go to a vote rather than proactively taking action.

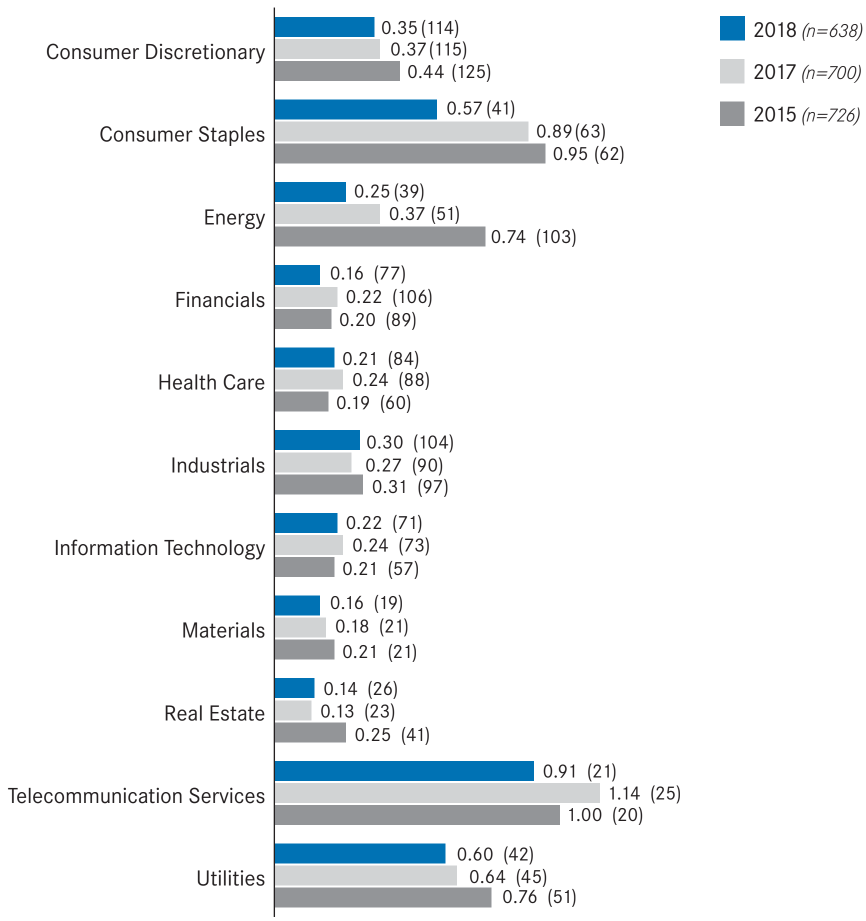
## By industry

As shown in Chart 5, proposal volume varies considerably from industry to industry, with the highest concentration of shareholder proposals in the telecommunications services industry (0.91 proposal per company, on average) and the real estate industry the least exposed to shareholder proposals (0.14 proposal per company). The average was calculated by dividing the number of shareholder proposals submitted in each industry category during the sample period by the number of shareholder meetings held by index companies in each industry during the same period (Chart 2, on p. 24).

Chart 5

**Shareholder Proposal Volume—by Industry (2015, 2017, and 2018)**

Average number of shareholder proposals per company (number of shareholder proposals)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By sponsor

There were two major highlights from the analysis of the 2018 proxy season by sponsor type.

The first one is the slow rise to prominence of a category of proponents of resolutions that had traditionally played a marginal role at AGMs: that of nonfinancial firms, which try to foster corporate changes in the interest of stakeholder groups rather than investors. They include organizations such as the National Center for Public Policy Research, the People for Ethical Treatment of Animals (PETA), and the Humane Society of the United States. Nonfinancial firms were the major sponsors of proposals in the environmental and social policy area (for the purpose of this report, they are labeled as "Other Stakeholders"). Collectively, as Chart 6 shows, they submitted 59 proposals this year (or 9.25 percent of the total), down from the record registered in 2017 (88 proposals) but still at a level that was unimaginable only a few years ago.

A second important observation about the 2018 season is that it marked another sharp year-on-year decline in the number of shareholder resolutions submitted by multiemployer investment funds affiliated with labor unions such as the United Brotherhood of Carpenters and Joiners of America or the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). There were only 45 resolutions filed by this type of proponent in 2018 (7.05 percent of the total), down from the 80 resolutions (11.02 percent) of 2015. By way of comparison, an earlier edition of this study had reported 151 proposals submitted by this type of funds in 2010. This means that, in total, proposal volume by labor-affiliated funds dropped 70.2 percent from 2010 levels, a phenomenon that is partially responsible for the lower aggregate volume of shareholder proposals recorded in 2018. Most commentators agree that the decline is mostly due to the introduction of the say-on-pay vote and the federal regulation imposing more widespread executive compensation disclosure, which had been main topics of concern for labor unions. Some of these investment funds, including the Sheet Metal Workers' National Pension Fund, have completely exited the activism scene in the last few years, while others have scaled back their involvement. Almost as markedly, reduced activity can be seen even among public pension funds (45 proposals in 2018, down from 66 in 2017 and 99 in 2015).

Hedge funds activity by means of shareholder proposals has also abated. It is quite apparent if current volume is compared with the one recorded only a few years ago, when hedge funds seemed to be on a trajectory to dominance of the proxy voting season, often using precatory resolutions as a means to publicize their view on critical issues at their target companies and to galvanize fellow shareholders around activism campaigns aimed at obtaining board representation. Also see Part IV, on p. 141, for an analysis of the reasons that prompt hedge fund campaigns. In the examined 2018 period, hedge funds filed only 18 proposals, down from the 28 registered in 2017. By way of comparison, according to an earlier edition of this report, in the 2014 period hedge funds filed 39 proposals (5.2 percent of the total), up from 24 proposals (3.1 percent) in 2013 and from 11 proposals in 2010.

Individuals remain, by far, the most frequent sponsor of shareholder proposals for all of the years examined, but this is no news and has been the case for decades. In fact, of all shareholder proposals submitted in 2018 for which the sponsor was disclosed, individuals initiated 263.

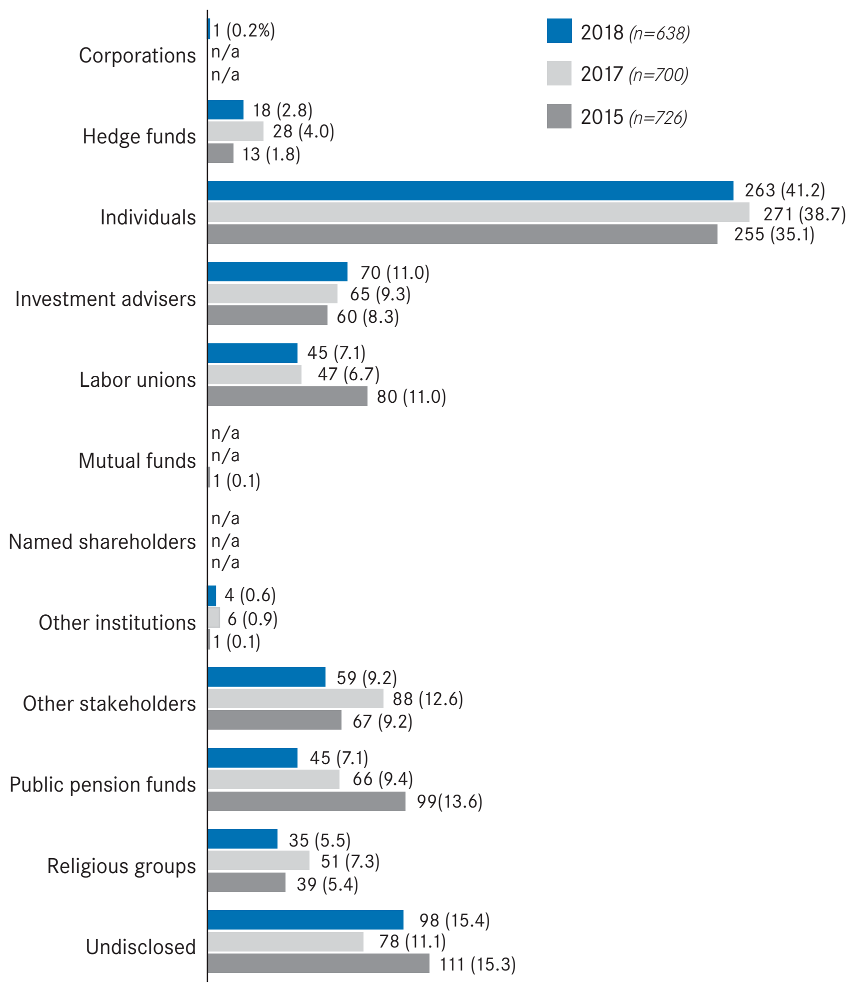
For proposals with multiple sponsors, the breakdown by sponsor displayed in Chart 6 is based on the sponsor listed in the filing as the main proponent.

See "Sponsors" on p. 32 for more information on the categorization of proposal sponsors used for the purpose of this report.

Chart 6

**Shareholder Proposal Volume—by Sponsor (2015, 2017, and 2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By subject

Investors continue to submit numerous governance-related proposals: There were 298 in 2018, or 46.7 percent of the total, a level that has remained fairly consistent over the last few years (it was 45.2 percent in 2010 according to an earlier edition of this study). Even this year, shareholders filed a high number of resolutions on topics of social and environmental policy. The increasing interest shown by investors, not only socially-responsible ones but also mainstream mutual funds, in a variety of issues of corporate political spending, climate change risk, workforce and leadership diversity, and compliance with human rights, has catapulted this category from representing 29.2 percent of total shareholder resolutions in 2010 to this year's 38.7 percent share. The number did not, however, match the record registered in 2017, of 302 resolutions or 43.1 percent of the total (Chart 7).

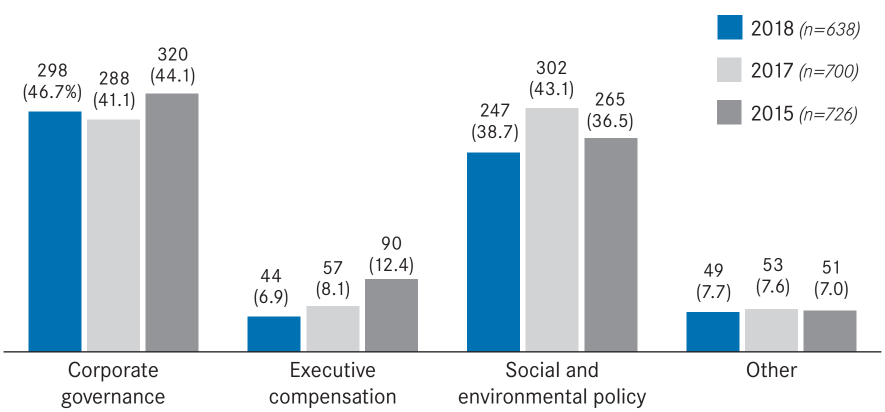
On the other hand, in 2018, the volume of executive compensation proposals continued the steady decline prompted by the introduction of the advisory, say-on-pay vote in 2010. Investors filed only 44 in the first half of the year, down from 57 in 2017, 90 in 2015 and, according to an earlier edition of this report, 144 in 2013.

See "Subjects" on p. 42 for more information on the categorization of proposal subjects used for the purpose of this report.

Chart 7

**Shareholder Proposal Volume—by Subject (2015, 2017, and 2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Sponsors

The categorization of proposal sponsors used for the purpose of this report was made by FactSet.

The following sponsor types are considered:

**Corporations** While a business company is not typically a sponsor, a shareholder proposal could be filed by a (public or private) corporation attempting to take over another company via a proxy fight.

**Hedge funds** Investment funds that resort to hedging techniques such as derivative securities and short-selling to reduce their risk exposure are included. As part of their investment strategies, some hedge funds (e.g. Pershing Square Capital Management or Icahn Associates Corp.) may also adopt activist tactics and request that a certain matter be put to a vote at the annual shareholder meeting.

**Individuals** This category includes individual shareholders or family owners, including family trusts. They are also commonly referred to as "corporate gadflies," for their practice of actually attending AGMs in person and vociferously criticizing management. Some of them, John Chevedden, Kenneth and William Steiner, and Evelyn Y. Davis have been relentless proponents of a flow of shareholder resolutions for many years.

**Investment advisers** For the purpose of this report, a private investment firm is considered an investment adviser if it does not have the majority of its investments in mutual funds and is not a hedge fund nor a subsidiary (or an affiliate) of a bank, brokerage firm, or insurance company. An investment adviser registered under the Investment Advisers Act of 1940 may manage a portfolio of securities (e.g., Franklin Mutual Advisors) as well as provide investment advice to other funds (including, as in the case of GAMCO Asset Management, activist hedge funds).

**Labor unions** This category comprises pension funds affiliated with labor unions spanning multiple private companies across one or more industries (e.g., the United Brotherhood of Carpenters and Joiners of America or The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)) as well as investment vehicles of workers' associations at individual large companies (e.g. the International Brotherhood of DuPont workers). This category also includes unions of public-sector workers (such as the American Federation of State, County and Municipal Employees (AFSCME)), whereas funds established directly by states and municipalities to benefits their retired employees are categorized for the purpose of this report as "public pension funds".

**Mutual fund managers** For the purpose of this report, an investment firm is considered a mutual fund manager if the majority of its investments are allocated to mutual funds. A mutual fund raises money from individuals and reinvests it in securities (e.g., Fidelity Investment or The Vanguard Group). Due to its passive investment strategies, it rarely submits shareholder proposals or publicly dissents from management of portfolio companies.

**Named shareholder groups** This category refers to activist groups established as part of a specific shareholder activism campaign promoted by other shareholders (e.g., the Concerned Rentech Shareholders group, comprising activist hedge funds Engaged Capital LLC and Lone Star Value Management, LLC).

**Public pension funds** This category comprises funds established to pay the benefits of retired public-sector workers, either by a state (e.g., the New York State Common Retirement Fund, the California Public Employees' Retirement System (CalPERS) or the Florida State Board of Administration) or by a city or municipality (e.g., the New York City Employees' Retirement System and the Miami Firefighters' Relief and Pension Fund).

**Religious groups** This category includes investment vehicles affiliated with religious organizations (e.g., Interfaith Center on Corporate Responsibility or the Province of St. Joseph of the Capuchin Order).

**Other institutions** Institutional investors not otherwise categorized——including commercial banks and private banking portfolio managers, broker/dealer firms, investment banks, foundations and endowments, holding companies, insurance companies, corporate pension funds, and venture capital firms——are included in this category.

**Other stakeholders** This category comprises other nonindividual and investment entities not categorized as an institution by FactSet. It includes environmental, social, and corporate governance activist groups such as People for the Ethical Treatment of Animals Inc. (PETA), The Humane Society of the United States, As You Sow, Nathan Cummings Foundation, and Amnesty International.

## By index

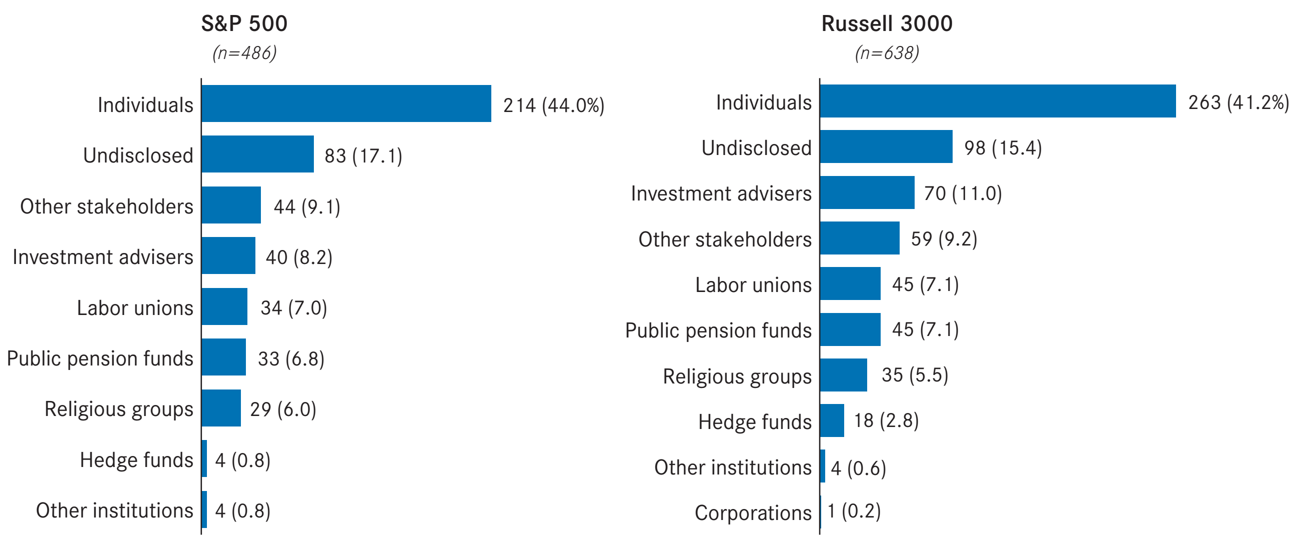
Individual investors sponsored more than a third of the shareholder proposals submitted at Russell 3000 companies (specifically, 263 proposals for AGMs held from January 1 to June 30, 2018). As shown in Chart 8, an even higher share was found in the S&P 500 analysis. Traditionally the second most prolific proponent type, in 2018 public pension funds filed only 7.05 percent of the total number of shareholder resolutions introduced at Russell 3000 companies and were surpassed by other stakeholders, an eclectic category of interest groups that used investment in public company equity to pursue their social and environmental policy agendas (9.25 percent, also in the Russell 3000).

Only four of the proposals submitted at S&P 500 companies were sponsored by hedge funds, which filed 18 proposals in the Russell 3000 sample inclusive of smaller-cap companies. In cases where the main proponent was disclosed, none of the proposals submitted in either index in 2018 were sponsored by mutual fund managers. Large mutual funds such as Vanguard Group, State Street Global Advisors and BlackRock have become increasingly vocal about their expectations from the leadership of portfolio companies on a range of governance, pay, and social practices (among others: gender diversity on boards, the adoption of pay-for-sustainability performance metrics, and the disclosure of climate change risk), but they typically do not initiate voting proposals.

Chart 8

**Sponsor Type—by Index (2018)**

Number of shareholder proposals (percentage of total)




Percentages do not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By industry

Individuals filed most of their shareholder proposals at companies in business industries such as financials, information technology, industrials and consumer discretionary, while only 1.9 percent of their submission was in the real estate sector (Chart 9). Consumer discretionary companies were also the target of the largest share (25.4 percent) of resolutions filed by non-investment firms ("Other stakeholders").

Of the 18 proposals filed by hedge funds, seven (or 38.9 percent) were addressed at energy companies, while three (or 16.7 percent) were filed at consumer discretionary companies—a business sector with several retail segments (apparel, footwear, and household items, among others) that have been underperforming through most of the economic growth cycle, in particular due to their vulnerability to disrupting e-commerce offerings by giants of the caliber of Amazon and Walmart.

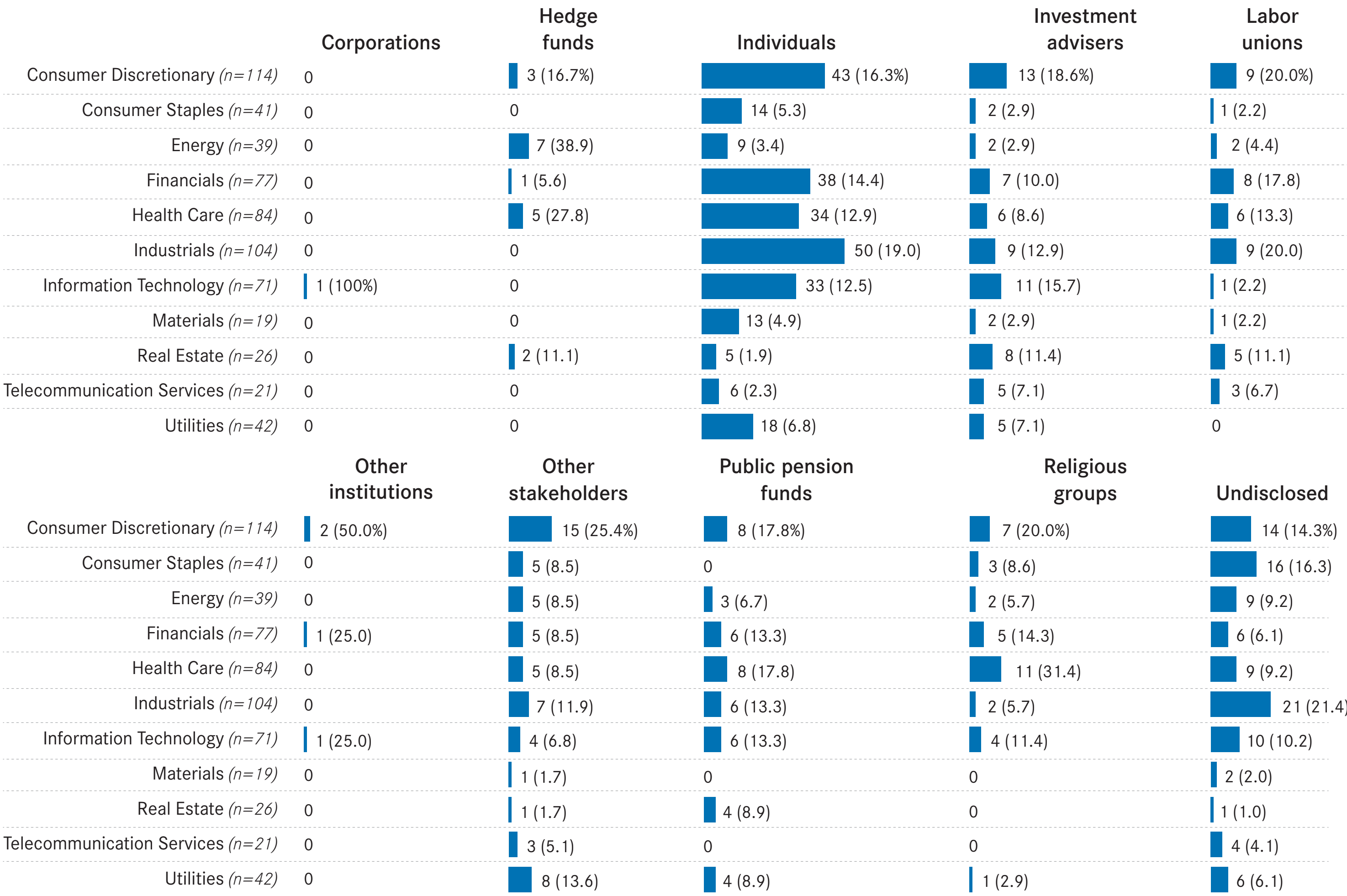
Labor union-affiliated investment funds are not the active proponents they used to be only a few years ago: Their 2018 proposals are concentrated, as expected, in business industries were workers are frequently unionized such as the industrials and the consumer discretionary sectors. Each of those industries received 20 percent of the submissions from these sponsors.

Most of the proposals submitted by religious groups were in the healthcare, financials and consumer discretionary industries.

Chart 9

## Sponsor Type–by Industry (2018)

Number of shareholder proposals (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By subject

As discussed, investment funds affiliated with labor unions have had a less prominent role in the 2018 proxy season, when they filed a significantly lower number of proposals. The analysis by subject type of Chart 10 confirms that the decline is essentially attributable to a reduced interest by these funds in executive compensation issues. Labor unions filed only 17 executive compensation proposals in 2018, compared to the 28 of those reported in a previous edition of this report for the 2014 proxy season and the 57 of the 2013 proxy season. The volume of their proposals on corporate governance also dropped in 2018 (they were 35 in 2014, and went down to 11 this year), while they too have chosen to shift their focus to the social and environmental policy-related areas (17 filed resolutions). For many labor union organizations, advocacy around issues of pay has transferred almost entirely to less public corporate-investor engagement settings. However, this data shows that, rather than exiting the proxy season scene altogether, they are reallocating their resources and expanding their voting policies to a new range of social issues.

In 2018, submissions in the area of corporate governance by public pension funds diminished to a trickle. For many years the stalwarts of majority voting and board declassifications, pension funds too have moved their attention to emerging social and environmental policy matters. The decline was first registered by The Conference Board in 2014, when pension funds filed 35 corporate governance-related proposals in the Russell 3000, compared to 61 in the prior season (a 42.6 percent drop); in 2018, their volume was down to a mere 14. With management making periodic overtures to large institutional investors in the last few years, these investment plans organized by state and local municipalities have increasingly found more informal alternatives to the Rule 14a-8 shareholder proposal channel to engage with their portfolio companies on issues related to director election and board organization and oversight.

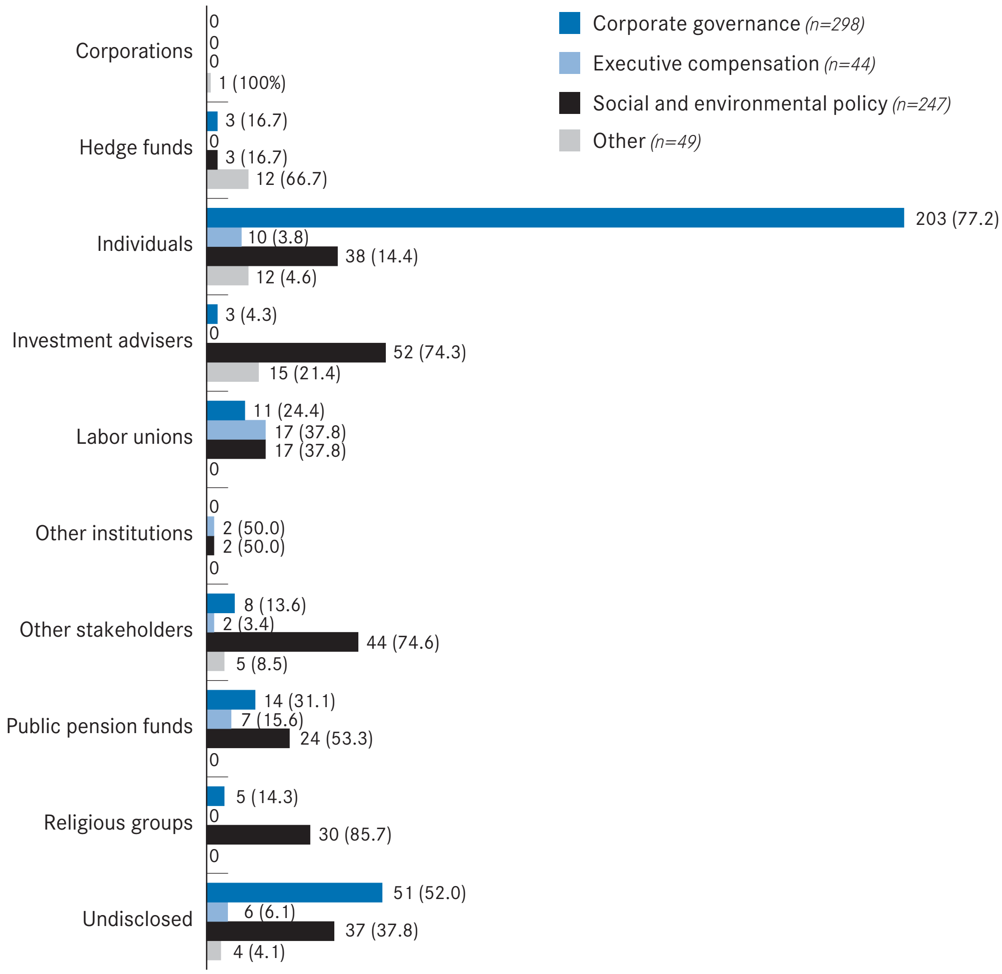
In general, in 2018 shareholder requests regarding social and environmental practices have become prevalent across most shareholder types. The notable exception is the individual category, which continues to press primarily for corporate governance reforms. In fact, the largest shares of resolutions filed on corporate sustainability and social responsibility matters are seen among non-traditional investment firms such as religious groups (30 of 35 proposals, or 85.7 percent) and other stakeholders (44 of 59 proposals, or 74.6 percent).

See "Subjects" on p. 42 for more information on the categorization of proposal subjects used for the purpose of this report.

Chart 10

## Sponsor Type–by Subject (2018)

Number of shareholder proposals (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent sponsors—by sponsor type

Table 1 ranks, by type, up to 10 of the most frequent sponsors of shareholder proposals. The sponsor name is followed by the number of proposals submitted. In those situations where more than one sponsor filed the same number of proposals, sponsors are ranked equally; as a result, more than 10 sponsor names may be listed under a single category.

John Chevedden was the most active sponsor of shareholder proposals at Russell 3000 companies that held AGMs during the first half of 2018, submitting nearly 17 percent of the 638 proposals tracked during the period, followed by Kenneth Steiner, who submitted 34 proposals in the examined period (or 5.33 percent of the total), and James McRitchie, the publisher of the CorpGov.net portal, who submitted 32 proposals (5 percent of the total).

The next most active sponsors across all types were investment adviser Trillium Asset Management (23 proposals), two public pension funds: the New York State Common Retirement Fund, under the management of the state's comptroller (17 filed proposals in 2018), and New York City Employees' Retirement System, under the management of the city's comptroller (16 resolutions) and the policy institute National Center for Public Policy Research (11 proposals). While other public pension funds significantly reduced their shareholder proposals in 2018 (CalSTRS, for example, only filed one resolution this year, compared to the double-digit figures reported nearly a decade ago) or even exited the list of most frequent sponsors (e.g., the Pension Reserves Investment Management Board), the public employee pension funds of New York State and New York City remained fairly prolific proponents.

The decline in shareholder activity was equally if not more widespread across the labor union category. Once frequent proponents in this group, the United Brotherhood of Carpenters and Joiners of America and the American Federation of State, County and Municipal Employees (AFSCME), did not make the list in 2018. Among funds affiliated to trade unions, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) had 14 filings made in the January 1-June 30, 2018 period (a number consistent with figures recorded by The Conference Board in prior years), while the International Brotherhood of Teamsters increased the volume of its submissions from five to eight. All other labor-union affiliated funds reduced their proxy-related activity.

Carl Icahn and his affiliated funds filed seven shareholder resolutions in the 2018 period, leading the most-frequent-sponsor list for the hedge fund category. Mercy Investment Services, the socially responsible asset management program for the Sisters of Mercy and its ministries, led shareholder proposal activity among religious groups, with nine filed resolutions.

Table 1 **Most Frequent Sponsors—by Sponsor Type (2018)**

| Rank | Sponsor name | Number of proposals |
|---|---|---|
| | **Corporations** | |
| 1 | Broadcom Limited | 1 |
| | **Hedge funds** | |
| 1 | Carl C. Icahn | 7 |
| 2 | Voce Capital Management LLC | 4 |
| 3 | Claire L. Bateman 1991 Trust | 2 |
| | Land & Buildings Investment Management LLC | 2 |
| 4 | Portfolio 21 Global Equity Fund | 1 |
| | Sarissa Capital Domestic Fund LP | 1 |
| | Starboard Value LP | 1 |
| | **Individuals** | |
| 1 | John Chevedden | 107 |
| 2 | Kenneth Steiner | 34 |
| 3 | James McRitchie | 32 |
| 4 | Myra K. Young | 16 |
| 5 | William Steiner | 7 |
| 6 | Jing Zhao | 6 |
| 7 | Christine Jantz | 3 |
| | Martin Harangozo | 3 |
| 8 | Alex Friedmann | 2 |
| | Andrew Behar | 2 |
| | Ann Alexander | 2 |
| | Dale Wannen | 2 |
| | Jeanne Miller | 2 |
| | Thomas Strobhar | 2 |
| 9 | Andrew Dale | 1 |
| | Ann Testa | 1 |
| | Anthony Slomkoski | 1 |
| | Antonio Avian Maldonado, II | 1 |
| | Carol A. Reisen | 1 |
| | David Fenton | 1 |
| | Dennis Rocheleau | 1 |
| | Edith D. Neimark | 1 |
| | Elizabeth S. Bowles | 1 |
| | Emily K. Johnson | 1 |
| | Eve S. Sprunt | 1 |
| | Francis Don Schreiber | 1 |
| | GLADSTEIN NEIL | 1 |
| | Gwendolen Noyes | 1 |
| | Inge Vecht Prenzlau | 1 |
| | Jack K. Cohen | 1 |
| | Jeannie Scheinin | 1 |
| | Jeffrey L. Doppelt | 1 |
| | Jennifer McDowell | 1 |
| | Jessica Creighton | 1 |
| | John B. Mason | 1 |
| | John P. Fishwick | 1 |
| | Jonathan M. Beall | 1 |
| | Kathleen Dennis | 1 |
| | Keith Schnip | 1 |
| | Kelly Dean Warfield | 1 |
| | Lisa Sala | 1 |
| | Lowell Miller | 1 |
| | Marcella C. Calabi | 1 |
| | Margaret E. Jacobs | 1 |
| | Michael Ayers | 1 |
| | Michael C. Salzhauer | 1 |
| | Norman Dudley Fulton | 1 |
| | Richard M. Brown | 1 |
| | Robert Andrew Davis | 1 |
| | Ronald M. Friedman | 1 |
| | Sarah Elizabeth Moore | 1 |
| | Stephen Sacks | 1 |
| | Steven J. Milloy | 1 |
| | Stewart W. Taggart | 1 |
| | Thomas P. Swiler | 1 |
| | Timothy Robert | 1 |
| | Wayne E. Lipski | 1 |
| | **Investment advisers** | |
| 1 | Trillium Asset Management, LLC | 23 |
| 2 | GAMCO Asset Management Inc. | 12 |
| 3 | Walden Asset Management | 6 |
| 4 | Boston Trust & Investment Management Company | 5 |
| 5 | John Harrington | 4 |
| | NorthStar Asset Management, Inc. | 4 |
| 6 | KBS Strategic Opportunity REIT | 3 |
| | Wintergreen Advisers, LLC | 3 |
| 7 | Azzad Asset Management, Inc. | 2 |
| | Green Century Equity Fund | 2 |
| 8 | Calvert Investment Management, Inc. | 1 |
| | Domini Social Investments LLC | 1 |
| | Pax World Mutual Funds | 1 |
| | Robeco Institutional Asset Management BV | 1 |
| | SustainVest Asset Management LLC | 1 |
| | Zevin Asset Management, LLC | 1 |
| | **Labor unions** | |
| 1 | AFL-CIO | 14 |
| 2 | International Brotherhood of Teamsters | 8 |
| 3 | UNITE HERE | 4 |
| 4 | Amalgamated Bank of New York | 3 |

continued on next page

Table 1 **Most Frequent Sponsors—by Sponsor Type (2018)** (continued)

| Rank | Sponsor name | Number of proposals |
|---|---|---|
| | Teamsters General Fund | 3 |
| 5 | CtW Investment Group | 2 |
| | Services Employees International Union | 2 |
| | UAW Retiree Medical Benefits Trust | 2 |
| | United Steelworkers | 2 |
| 6 | International Brotherhood of DuPont Workers | 1 |
| | International Brotherhood of Electrical Workers | 1 |
| | Laborers' District Council and Contractors' Pension Fund | 1 |
| | Southwest Regional Council of Carpenters Pension Fund | 1 |
| | Teamster Affiliates Pension Plan | 1 |
| | **Other institutions** | |
| 1 | Baldwin Brothers, Inc. | 2 |
| 2 | Comerica Bank & Trust | 1 |
| | Friends Fiduciary Corporation | 1 |
| | **Other stakeholders** | |
| 1 | National Center for Public Policy Research | 11 |
| 2 | As You Sow | 5 |
| | People for Ethical Treatment of Animals ("PETA") | 5 |
| 3 | Humane Society of United States | 4 |
| 4 | David A. Ridenour | 3 |
| | Flyers Rights Education Fund | 3 |
| 5 | Heartland Initiative, Inc. | 2 |
| | Nathan Cummings Foundation | 2 |
| | Park Foundation Inc. | 2 |
| | Sidus Investment Partners LP | 2 |
| 6 | Amnesty International | 1 |
| | Association of BellTel Retirees Inc. | 1 |
| | Edith P Homans Family Trust | 1 |
| | Emma Creighton Irrevocable Trust | 1 |
| | Graphic Communications Conference IBT Benevolent Trust Fund U.S. | 1 |
| | Gun Denhart Living Trust | 1 |
| | Hammerman | 1 |
| | James T. Campen Trust | 1 |
| | Kestrel Foundation | 1 |
| | Marco Consulting Group Trust | 1 |
| | Max and Anna Levinson Foundation | 1 |
| | Missouri Coalition For The Environment | 1 |

| Rank | Sponsor name | Number of proposals |
|---|---|---|
| | Oxfam America, Inc. | 1 |
| | Sam and Wendy Hitt Family Trust | 1 |
| | Sierra Club | 1 |
| | Singing Field Foundation | 1 |
| | Trust R UA | 1 |
| | Ute Holdings LLC | 1 |
| | Wallace Global Fund | 1 |
| | William L. Rosenfeld | 1 |
| | **Public pension funds** | |
| 1 | New York State Common Retirement Fund | 17 |
| 2 | New York City Employees' Retirement System | 16 |
| 3 | California Public Employees' Retirement System | 4 |
| | City of Philadelphia Public Employees Retirement System | 4 |
| 4 | New York City Board of Education Retirement System | 2 |
| 5 | California State Teachers' Retirement System | 1 |
| | New York City Teachers' Retirement System | 1 |
| | **Religious groups** | |
| 1 | Mercy Investment Services, Inc. | 9 |
| 2 | Sisters of St. Francis of Philadelphia | 6 |
| | Unitarian Universalist Association | 6 |
| 3 | Trinity Health | 2 |
| 4 | Benedictine Sisters of Baltimore | 1 |
| | Benedictine Sisters of Mount St. Scholastica | 1 |
| | Congregation of Benedictine Sisters | 1 |
| | Congregation of Sisters of St. Agnes | 1 |
| | Daughters of Charity, Inc. | 1 |
| | Domestic and Foreign Missionary Society of Protestant Episcopal Church in United States of America | 1 |
| | Dominican Sisters of Grand Rapids | 1 |
| | Episcopal Church | 1 |
| | Holy Land Principles, Inc. | 1 |
| | Jesus and Mary | 1 |
| | Sisters of Presentation of Blessed Virgin Mary | 1 |
| | Sisters of St. Francis Charitable Trust | 1 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Subjects

For the purpose of this report, shareholder proposals are categorized based on four main subjects:

**Executive compensation** This subject category includes shareholder proposals seeking requirements for executives and/or directors to retain equity for a specified period, requesting limits on tax "gross-ups" and severance agreements, or asking for the clawback of incentives. For a description of specific topics under this subject category, see p. 67.

**Corporate governance** This subject category includes shareholder proposals requesting to change the director election system from plurality to majority voting, declassify the board, introduce restriction to multiple directorships, and separate the CEO/chairman positions. For a description of specific topics under this subject category, see p. 74.

**Social and environmental policy** This subject category includes shareholder proposals requesting a board diversity policy or periodic sustainability reporting as well as proposals addressing environmental, health-related, labor, or political issues. For a description of specific topics under this subject category, see p. 84

**Other shareholder proposals** This subject category includes shareholder proposals on asset divestiture, capital distributions, the election of dissidents' director nominees, or the removal of board members. For a description of specific topics under this subject category, see p. 92.

## By index

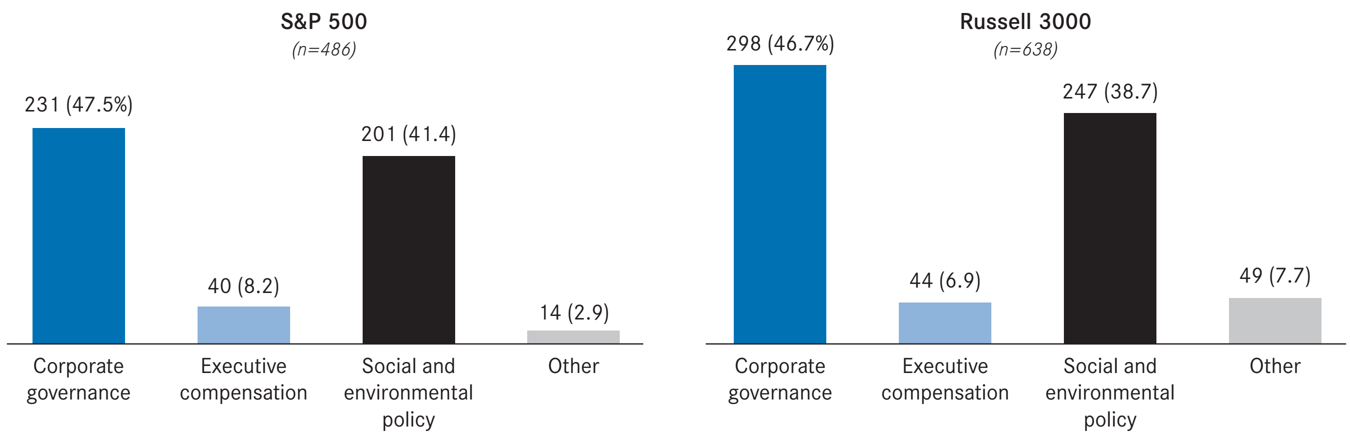
Chart 11 illustrates the subject analysis of shareholder proposals by market index. Companies in the S&P 500 index received in 2018 an only slightly higher proportion of proposals on social and environmental policy issues (41.4 percent, compared to 38.7 percent in the Russell 3000). Considering that most companies in the S&P 500 are also included in the Russell 3000 sample, the finding confirms that most requests for evidence of a commitment to sustainability are targeting larger, multinational corporations with significant environmental impact and social responsibility.

In general, larger companies are traditionally more likely than smaller ones to receive shareholder proposals. However, this has slowly started to change in the last couple of years as shareholders increasingly turn their attention to social and environmental proposals across a broader spectrum of business organizations and proponents of corporate governance resolutions redirect their efforts toward smaller firms.

Chart 11

**Shareholder Proposal Subject–by Index (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

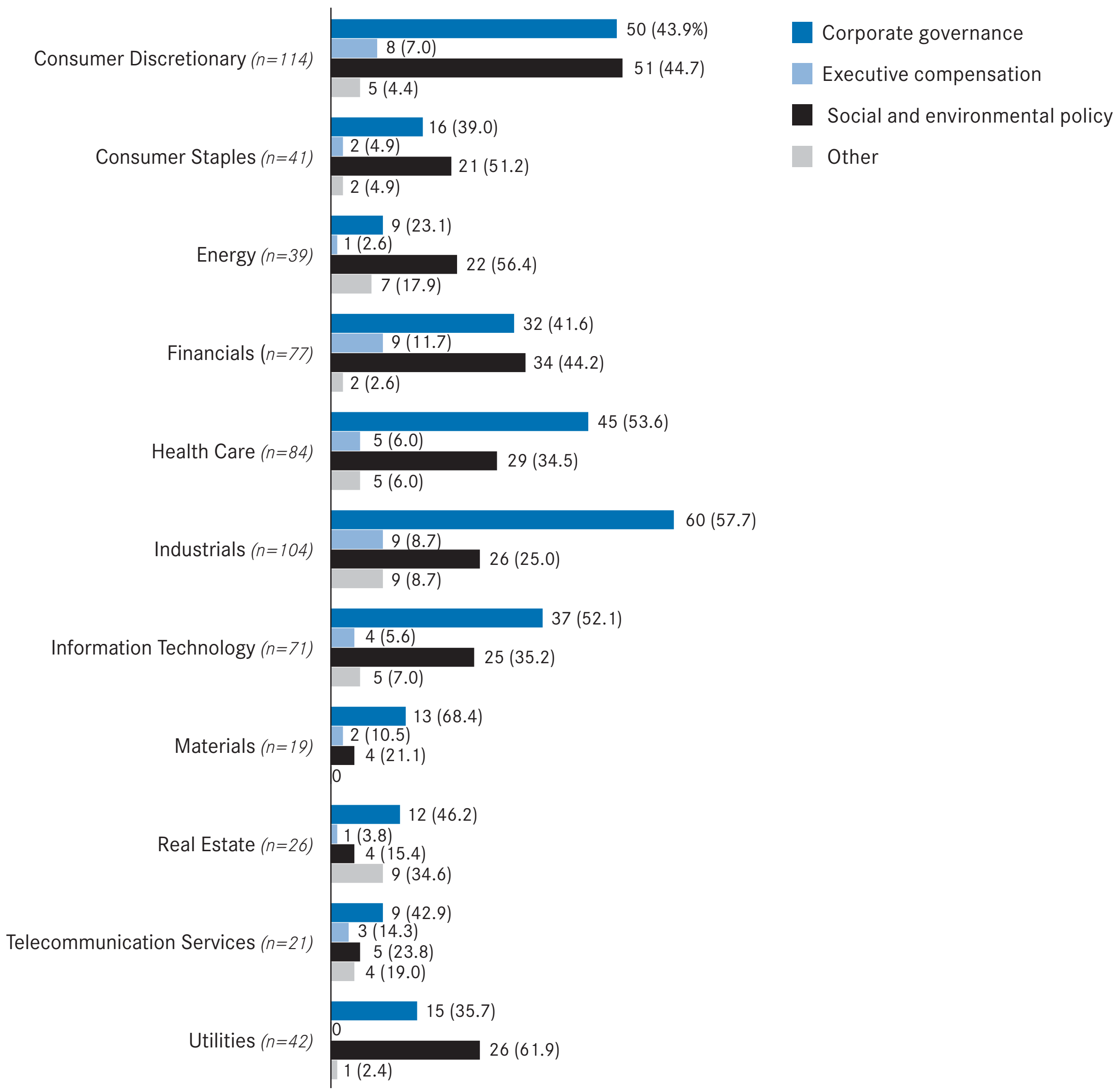
## By industry

Chart 12 illustrates the distribution of shareholder proposal subjects within each industry. For example, the highest proportion of shareholder proposals on issues of corporate governance was registered in the materials sector (68.4 percent). In 2018, not surprisingly, social and environmental policy requests were the most prevalent among energy and utilities companies (61.9 and 56.4 percent, respectively).

Chart 12

**Shareholder Proposal Subject–by Industry (2018)**

Number of shareholder proposals (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By sponsor

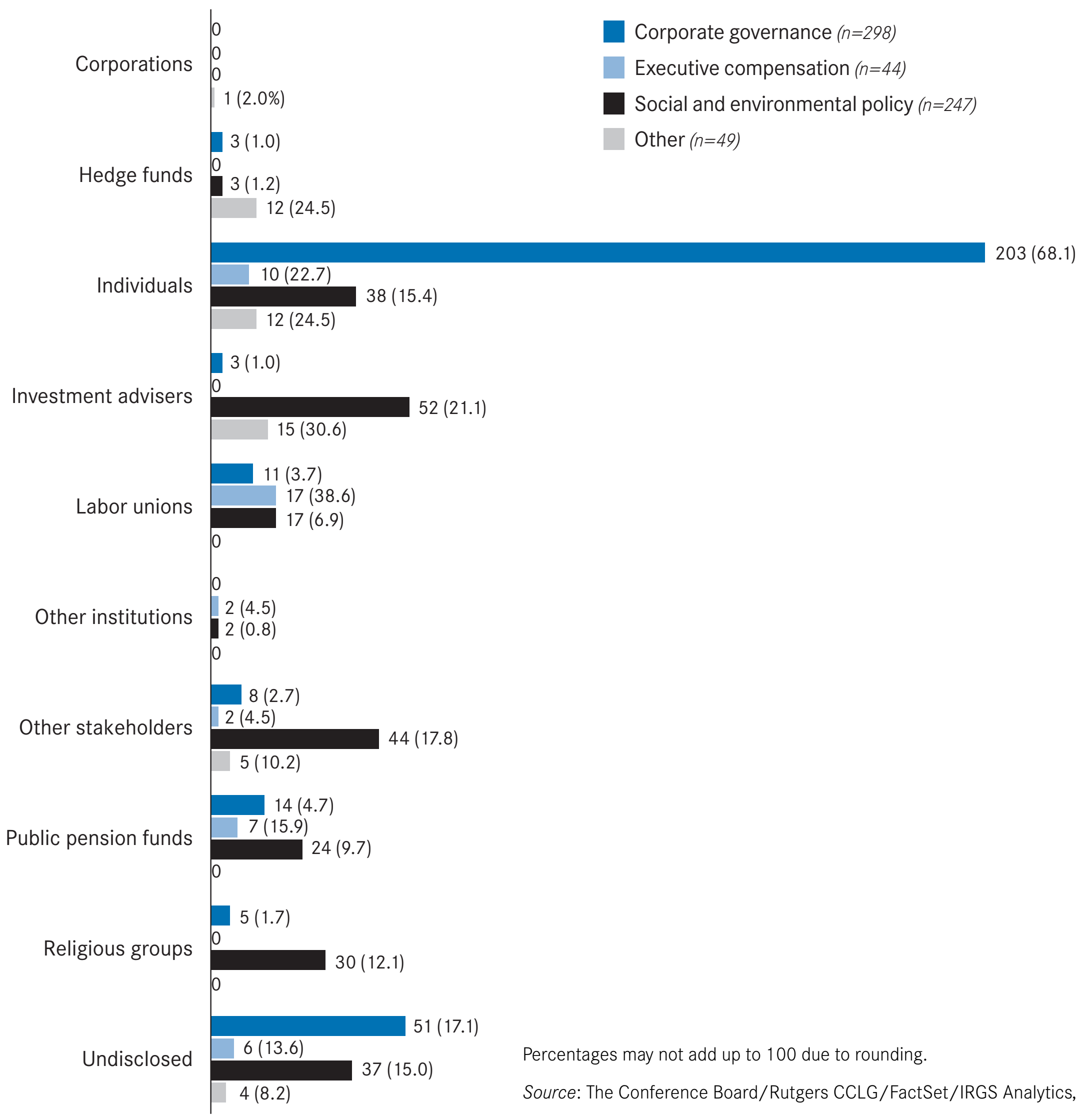
The subject analysis by sponsor highlights interest in social and environmental policy issues by multiple investor types, with the highest concentration among individuals, investment advisers, and other stakeholders (Chart 13).

Individuals were overwhelmingly the main proponents of corporate governance resolutions, submitting more than 68 percent of those proposals during the period. As mentioned, the number of executive compensation proposals has lowered significantly over the last few years; however, when submitted, they continue to be sponsored by individual investors, labor unions, and public pension funds, as it has traditionally been the case. Submissions in the "other shareholder proposals" category came from three types of sponsors—individuals, hedge funds, and investment advisers.

Chart 13

**Shareholder Proposal Subject–by Sponsor (2018)**

Number of shareholder proposals (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent sponsors—by subject

Table 2 ranks by subject up to 10 of the most frequent sponsors of shareholder proposals, including the sponsor name, information on the sponsor type, and number of proposals submitted. In those situations where more than one sponsor filed the same number of proposals, sponsors are ranked equally; as a result, more than 10 sponsor names may be listed under a single category. When numerous, sponsors with only one filed proposal were omitted from the ranking.

The investment fund affiliated with AFL-CIO (American Federation of Labor and Congress of Industrial Organizations) filed the highest number of compensation-related proposals during the period (six), most of which sought to limit (or a require a shareholder vote on) golden parachute-type severance agreements. The second most prolific sponsor of compensation proposals during the period was New York City Employees' Retirement Fund, which is managed by the city's comptroller office: It filed four proposals, all seeking to recoup incentive pay through clawback policies.

In addition to being the most prolific of gadfly investors, Chevedden was also the most frequent sponsor of proposals related, specifically, to issues corporate governance, submitting 106 proposals—more than three time the second-ranked sponsor for that subject, Kenneth Steiner (32 proposals). Investment adviser firm Trillium Asset Management led in the submission of proposals related to social and environmental policy issues (23 proposals in 2018), followed by the 14 proposals of the New York State Common Retirement Fund, a public pension fund, and the 11 proposals filed by the National Center for Public Policy Research. In the catch-all "other" category, the leading proponents in 2018 were investment adviser GAMCO Asset Management (10 filed resolutions, including one requesting a non-binding advisory vote to spin-off a division of Kaman Corporation, which did not pass) and Carl C. Icahn (seven filings), followed by a stakeholder group, Flyers Right Education Fund (three proposals, including one at Delta Airlines requesting a report analyzing the impact of smaller cabin seats on the company's profit margin and stock price; the proposal was omitted from the voting ballot by management, pursuant to a no-action letter granted by the SEC ).

Table 2 **Most Frequent Sponsors—by Subject (2018)**

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | **Executive compensation** | | |
| 1 | AFL-CIO | Labor unions | 6 |
| 2 | New York City Employees' Retirement System | Public pension funds | 4 |
| 3 | Ann Alexander | Individuals | 2 |
| | City of Philadelphia Public Employees Retirement System | Public pension funds | 2 |
| | International Brotherhood of Teamsters | Labor unions | 2 |
| | Jing Zhao | Individuals | 2 |
| 4 | Andrew Behar | Individuals | 1 |
| | Association of BellTel Retirees Inc. | Other stakeholders | 1 |
| | Baldwin Brothers, Inc. | Other institutions | 1 |
| | Comerica Bank & Trust | Other institutions | 1 |
| | CtW Investment Group | Labor unions | 1 |
| | David Fenton | Individuals | 1 |
| | International Brotherhood of DuPont Workers | Labor unions | 1 |
| | International Brotherhood of Electrical Workers | Labor unions | 1 |
| | Jack K. Cohen | Individuals | 1 |
| | James T. Campen Trust | Other stakeholders | 1 |
| | Kenneth Steiner | Individuals | 1 |
| | Laborers' District Council and Contractors' Pension Fund | Labor unions | 1 |
| | Margaret E. Jacobs | Individuals | 1 |
| | Michael Ayers | Individuals | 1 |
| | New York State Common Retirement Fund | Public pension funds | 1 |
| | Services Employees International Union | Labor unions | 1 |
| | Teamster Affiliates Pension Plan | Labor unions | 1 |
| | Teamsters General Fund | Labor unions | 1 |
| | UAW Retiree Medical Benefits Trust | Labor unions | 1 |
| | United Steelworkers | Labor unions | 1 |

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | **Corporate governance** | | |
| 1 | John Chevedden | Individuals | 106 |
| 2 | Kenneth Steiner | Individuals | 32 |
| 3 | James McRitchie | Individuals | 29 |
| 4 | Myra K. Young | Individuals | 13 |
| 5 | William Steiner | Individuals | 7 |
| 6 | New York City Employees' Retirement System | Public pension funds | 6 |
| 7 | California Public Employees' Retirement System | Public pension funds | 4 |
| | Humane Society of United States | Other stakeholders | 4 |
| 8 | AFL-CIO | Labor unions | 3 |
| | Jing Zhao | Individuals | 3 |
| | Sisters of St. Francis of Philadelphia | Religious groups | 3 |
| | UNITE HERE | Labor unions | 3 |
| 9 | New York State Common Retirement Fund | Public pension funds | 2 |
| | Teamsters General Fund | Labor unions | 2 |
| 10 | Alex Friedmann | Individuals | 1 |
| | Andrew Dale | Individuals | 1 |
| | Anthony Slomkoski | Individuals | 1 |
| | Boston Trust & Investment Management Company | Investment advisers | 1 |
| | California State Teachers' Retirement System | Public pension funds | 1 |
| | City of Philadelphia Public Employees Retirement System | Public pension funds | 1 |
| | David A. Ridenour | Other stakeholders | 1 |
| | Domestic and Foreign Missionary Society of Protestant Episcopal Church in United States of America | Religious groups | 1 |
| | Edith D. Neimark | Individuals | 1 |
| | Emily K. Johnson | Individuals | 1 |
| | Episcopal Church | Religious groups | 1 |

continued on next page

Table 2 **Most Frequent Sponsors—by Subject (2018)** (continued)

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | GAMCO Asset Management Inc. | Investment advisers | 1 |
| | GLADSTEIN NEIL | Individuals | 1 |
| | Graphic Communications Conference IBT Benevolent Trust Fund U.S. | Other stakeholders | 1 |
| | International Brotherhood of Teamsters | Labor unions | 1 |
| | KBS Strategic Opportunity REIT | Investment advisers | 1 |
| | Kestrel Foundation | Other stakeholders | 1 |
| | Land & Buildings Investment Management LLC | Hedge funds | 1 |
| | Lisa Sala | Individuals | 1 |
| | Marco Consulting Group Trust | Other stakeholders | 1 |
| | Martin Harangozo | Individuals | 1 |
| | Robert Andrew Davis | Individuals | 1 |
| | Ronald M. Friedman | Individuals | 1 |
| | Sarah Elizabeth Moore | Individuals | 1 |
| | Sarissa Capital Domestic Fund LP | Hedge funds | 1 |
| | Services Employees International Union | Labor unions | 1 |
| | Southwest Regional Council of Carpenters Pension Fund | Labor unions | 1 |
| | Thomas P. Swiler | Individuals | 1 |
| | Timothy Robert | Individuals | 1 |
| | Voce Capital Management LLC | Hedge funds | 1 |
| | **Social and environmental policy** | | |
| 1 | Trillium Asset Management, LLC | Investment advisers | 23 |
| 2 | New York State Common Retirement Fund | Public pension funds | 14 |
| 3 | National Center for Public Policy Research | Other stakeholders | 11 |
| 4 | Mercy Investment Services, Inc. | Religious groups | 9 |
| 5 | New York City Employees' Retirement System | Public pension funds | 6 |

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | Unitarian Universalist Association | Religious groups | 6 |
| | Walden Asset Management | Investment advisers | 6 |
| 6 | AFL-CIO | Labor unions | 5 |
| | As You Sow | Other stakeholders | 5 |
| | International Brotherhood of Teamsters | Labor unions | 5 |
| | People for Ethical Treatment of Animals ("PETA") | Other stakeholders | 5 |
| 7 | Boston Trust & Investment Management Company | Investment advisers | 4 |
| | John Harrington | Investment advisers | 4 |
| | NorthStar Asset Management, Inc. | Investment advisers | 4 |
| 8 | Amalgamated Bank of New York | Labor unions | 3 |
| | Christine Jantz | Individuals | 3 |
| | Sisters of St. Francis of Philadelphia | Religious groups | 3 |
| 9 | Azzad Asset Management, Inc. | Investment advisers | 2 |
| | Claire L. Bateman 1991 Trust | Hedge funds | 2 |
| | Dale Wannen | Individuals | 2 |
| | David A. Ridenour | Other stakeholders | 2 |
| | Green Century Equity Fund | Investment advisers | 2 |
| | Heartland Initiative, Inc. | Other stakeholders | 2 |
| | James McRitchie | Individuals | 2 |
| | Jeanne Miller | Individuals | 2 |
| | Myra K. Young | Individuals | 2 |
| | Nathan Cummings Foundation | Other stakeholders | 2 |
| | New York City Board of Education Retirement System | Public pension funds | 2 |
| | Park Foundation Inc. | Other stakeholders | 2 |
| | Thomas Strobhar | Individuals | 2 |
| | Trinity Health | Religious groups | 2 |

continued on next page

Table 2 **Most Frequent Sponsors—by Subject (2018)** (continued)

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| 10 | Alex Friedmann | Individuals | 1 |
| | Amnesty International | Other stakeholders | 1 |
| | Andrew Behar | Individuals | 1 |
| | Ann Testa | Individuals | 1 |
| | Antonio Avian Maldonado, II | Individuals | 1 |
| | Baldwin Brothers, Inc. | Other institutions | 1 |
| | Benedictine Sisters of Baltimore | Religious groups | 1 |
| | Benedictine Sisters of Mount St. Scholastica | Religious groups | 1 |
| | Calvert Investment Management, Inc. | Investment advisers | 1 |
| | Carol A. Reisen | Individuals | 1 |
| | City of Philadelphia Public Employees Retirement System | Public pension funds | 1 |
| | Congregation of Benedictine Sisters | Religious groups | 1 |
| | Congregation of Sisters of St. Agnes | Religious groups | 1 |
| | CtW Investment Group | Labor unions | 1 |
| | Daughters of Charity, Inc. | Religious groups | 1 |
| | Domini Social Investments LLC | Investment advisers | 1 |
| | Dominican Sisters of Grand Rapids | Religious groups | 1 |
| | Edith P Homans Family Trust | Other stakeholders | 1 |
| | Elizabeth S. Bowles | Individuals | 1 |
| | Emma Creighton Irrevocable Trust | Other stakeholders | 1 |
| | Eve S. Sprunt | Individuals | 1 |
| | Francis Don Schreiber | Individuals | 1 |
| | Friends Fiduciary Corporation | Other institutions | 1 |
| | GAMCO Asset Management Inc. | Investment advisers | 1 |
| | Gun Denhart Living Trust | Other stakeholders | 1 |
| | Gwendolen Noyes | Individuals | 1 |
| | Hammerman | Other stakeholders | 1 |
| | Holy Land Principles, Inc. | Religious groups | 1 |
| | Jeannie Scheinin | Individuals | 1 |
| | Jennifer McDowell | Individuals | 1 |
| | Jessica Creighton | Individuals | 1 |
| | Jesus and Mary | Religious groups | 1 |
| | John B. Mason | Individuals | 1 |
| | John Chevedden | Individuals | 1 |
| | John P. Fishwick | Individuals | 1 |
| | Jonathan M. Beall | Individuals | 1 |
| | Kathleen Dennis | Individuals | 1 |
| | Keith Schnip | Individuals | 1 |
| | Lowell Miller | Individuals | 1 |
| | Marcella C. Calabi | Individuals | 1 |
| | Martin Harangozo | Individuals | 1 |
| | Max and Anna Levinson Foundation | Other stakeholders | 1 |
| | Missouri Coalition For The Environment | Other stakeholders | 1 |
| | New York City Teachers' Retirement System | Public pension funds | 1 |
| | Norman Dudley Fulton | Individuals | 1 |
| | Oxfam America, Inc. | Other stakeholders | 1 |
| | Pax World Mutual Funds | Investment advisers | 1 |
| | Portfolio 21 Global Equity Fund | Hedge funds | 1 |
| | Robeco Institutional Asset Management BV | Investment advisers | 1 |
| | Sam and Wendy Hitt Family Trust | Other stakeholders | 1 |
| | Sierra Club | Other stakeholders | 1 |
| | Singing Field Foundation | Other stakeholders | 1 |
| | Sisters of Presentation of Blessed Virgin Mary | Religious groups | 1 |
| | Sisters of St Francis Charitable Trust | Religious groups | 1 |
| | Stephen Sacks | Individuals | 1 |

continued on next page

Table 2 **Most Frequent Sponsors—by Subject (2018)** (continued)

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | Steven J. Milloy | Individuals | 1 |
| | Stewart W. Taggart | Individuals | 1 |
| | SustainVest Asset Management LLC | Investment advisers | 1 |
| | Trust R UA | Other stakeholders | 1 |
| | UAW Retiree Medical Benefits Trust | Labor unions | 1 |
| | UNITE HERE | Labor unions | 1 |
| | United Steelworkers | Labor unions | 1 |
| | Ute Holdings LLC | Other stakeholders | 1 |
| | Wallace Global Fund | Other stakeholders | 1 |
| | William L. Rosenfeld | Other stakeholders | 1 |
| | Zevin Asset Management, LLC | Investment advisers | 1 |
| | **Other** | | |
| 1 | GAMCO Asset Management Inc. | Investment advisers | 10 |
| 2 | Carl C. Icahn | Hedge funds | 7 |
| 3 | Flyers Rights Education Fund | Other stakeholders | 3 |
| | Voce Capital Management LLC | Hedge funds | 3 |
| | Wintergreen Advisers, LLC | Investment advisers | 3 |
| 4 | KBS Strategic Opportunity REIT | Investment advisers | 2 |
| | Sidus Investment Partners LP | Other stakeholders | 2 |
| 5 | Broadcom Limited | Corporations | 1 |
| | Dennis Rocheleau | Individuals | 1 |
| | Inge Vecht Prenzlau | Individuals | 1 |
| | James McRitchie | Individuals | 1 |
| | Jeffrey L. Doppelt | Individuals | 1 |
| | Jing Zhao | Individuals | 1 |
| | Kelly Dean Warfield | Individuals | 1 |
| | Kenneth Steiner | Individuals | 1 |
| | Land & Buildings Investment Management LLC | Hedge funds | 1 |
| | Martin Harangozo | Individuals | 1 |
| | Michael C. Salzhauer | Individuals | 1 |
| | Myra K. Young | Individuals | 1 |
| | Richard M. Brown | Individuals | 1 |
| | Starboard Value LP | Hedge funds | 1 |
| | Wayne E. Lipski | Individuals | 1 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Voted, Omitted, and Withdrawn Proposals

This section integrates the shareholder proposal analysis by examining voted proposals as well as the extent of withdrawals and omissions.

Sponsors typically withdraw their proposal if the company effects the requested change prior to the AGM, either voluntarily or as a result of a private negotiation with shareholders. In addition, some investor types (e.g., religious groups) are frequent proponents of resolutions but rarely elevate their discontent to an outright proxy solicitation. Instead, they prefer to use the precatory proposal as a tool to get the attention of management or to promote a public debate on the issue that concerns them and withdraw it soon afterward.

Omissions indicate that the company was granted no-action relief by the staff of the SEC to exclude a shareholder proposal from its proxy materials, under Rule 14a-8 of the Securities Exchange Act of 1934.

Pending or undisclosed proposals are excluded from the results shown in this section, as noted below the corresponding charts; therefore, the number of proposals reflected in Charts 14 to 17 differs from the total number of proposals filed.

### By index

The analysis by index (Chart 14) shows that the proportion of proposals that made it onto corporate ballots among Russell 3000 companies was slightly higher in 2018 than 2017 (67.7 percent, compared to 64.4 percent) but still lower than the 72.3 percent registered in 2015. In the S&P 500, 66.5 percent of proposals filed at companies that held meetings during the period went to a vote, an uptick from the 62.5 percent recorded in 2017.

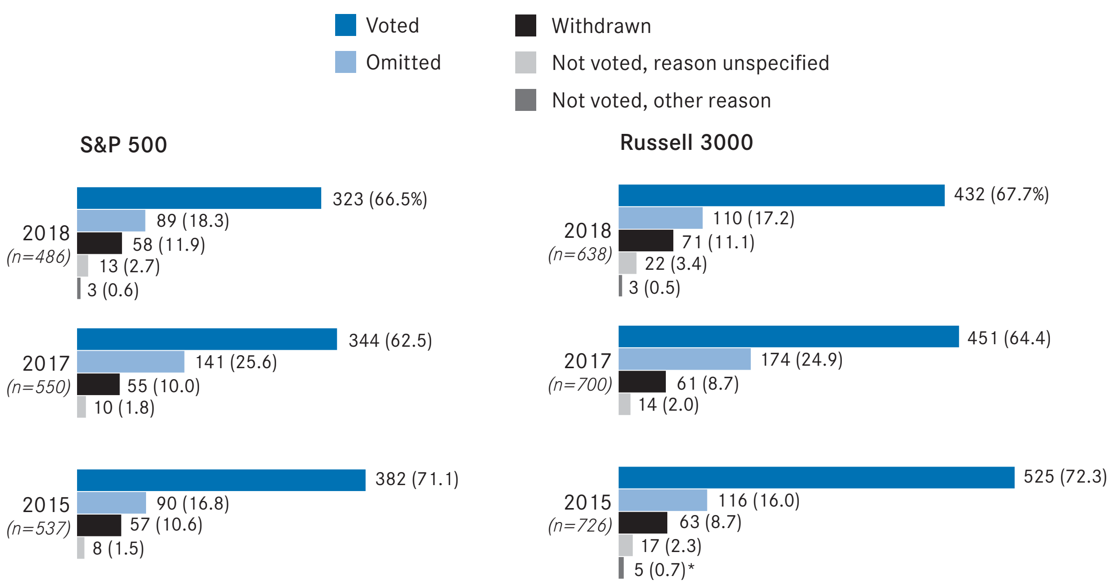
The percentage of proposals omitted by management declined from 2017 levels, from 24.9 percent to 17.2 percent in the Russell 3000 and from 25.6 percent to 18.3 percent in the S&P 500. In both indexes, there was a corresponding increase in the percentage of proposals withdrawn—from 8.7 percent to 11.1 percent among the Russell 3000 sample, and from 10 to 11.9 percent in the S&P 500 sample. (As noted previously, data on withdrawn proposals presented in the report are limited to publicly available information or information provided to FactSet by the proponent or issuer.)

In 2018, the sum of omissions and withdrawals far exceeded the number of granted SEC no-action letters to companies seeking exclusions. This finding is indicative of the fact that companies and investors are more engaged and find new opportunities to settle their differences ahead of a shareholder meeting (see "Statistics on SEC No-Action Letters," on p. 53). However, guidelines on board responsiveness from proxy advisory firm ISS are also likely to share the responsibility for withdrawn proposals. Under its current voting policy, ISS recommends that institutions voting on director elections exercise close scrutiny in those situations where a company failed to implement a precatory shareholder proposal that had received majority support of votes cast at a prior AGM (see "Board Responsiveness," on p. 61). Therefore, in some cases, withdrawals may result not from the dialogue that the investor could establish with management or the board but from the decision of the company to either voluntarily implement the requested change or to submit its own proposal on the same topic so as to avoid the risk of wide opposition to management's nominees to the board of directors.

Chart 14

**Voted, Omitted, and Withdrawn Shareholder Proposals– by Index (2015, 2017, and 2018)**

Number of shareholder proposals (percentage of total)




* Proposals at Ashford Hospitality Trust, Inc. were not voted because proposals did not comply with the company's advance notice requirements and were inconsistent with the Maryland General Corporation Law; hence such proposals could not be brought before the annual meeting.

Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Statistics on SEC No-Action Letters

Between October 1, 2017. and May 31, 2018, the SEC staff issued 244 responses to no-action requests made by registered companies, down from 282 during the same period in 2016-2017 (a 13.4 percent decline). Of those, 196 responses explicitly granted or denied the excludability of a shareholder proposal under Securities Exchange Act Rule 14a-8.

Exclusions were granted in 104 of those responses, or 53.1 percent of the total, down from 65 percent the previous season. In 2018, as in recent years, many companies chose to implement in advance of the AGM the change requested by a shareholder proposal, therefore negotiating a withdrawal of the proposal or its exclusion under Exchange Act Rule 14a-8(i)(10) as substantially implemented (there were 39 such cases in 2018, where the SEC no-action letter was granted on the ground of substantial implementation). In some cases, companies opted for the introduction of a management proposal on the same topic as a shareholder proposal and excluded the shareholder proposal under Exchange Act Rule 18a-8(i)(9), as directly conflicting with one of the company's own proposals (there were seven such cases for which the SEC granted a no-action letter in 2018). Moreover, many companies and activist investors made an effort to engage and seek an agreement prior to a shareholder vote, as reflected by the fact that, in the examined time period between the fall of 2017 and the end of May 2018, the sum of omissions and withdrawals (167 proposals) exceeded the number of granted no-action requests (on 117 shareholder proposals). (See **Exhibit 2**.)

By way of example, under Exchange Act Rule 14a-8(i)(9), Capital One Financial Corporation (NYSE: COF) obtained no-action relief to exclude from its 2018 AGM vote a proposal to give holders in the aggregate of 10 percent of outstanding common stock the power to call a special shareowner meeting by John Chevedden, as conflicting with a concurrent company proposal. Under Rule 14a-8(i)(10), PNM Resources, Inc. (NYSE: PNM) was authorized by the SEC to exclude a proposal on environmental issue by Edith P. Homans Family Trust, as substantially implemented. The proposal requested the company to take steps necessary to establish more effective board oversight of policies and programs addressing climate change and report to shareholders on steps taken or planned.

A review of the requests for which no-action relief was granted shows that the following reasons were used to exclude shareholder proposals—based on procedural arguments (had already been substantially implemented: 38 percent); proposal deals with a matter relating to the company's ordinary business operations (30 percent); timeliness or defects in the proponent's proof of ownership (16 percent); because of a conflict with a company proposal to be submitted for a vote at the same meeting (7 percent); because the proposal was deemed vague or false and misleading (2 percent).

No-action letters issued by the SEC staff offer useful interpretive guidance for investors to refine their activism tactics. In many cases, shareholder benefited from this learning process and used it to remedy proposal defects in subsequent submissions, which helps explain the decline in the volume of no-action requests. This was observed, in particular, in the years following the introduction of the first generation of proxy access proposals: While several companies were able to exclude proxy access proposals in 2012 because of their defective formulation, the staff did not grant any of the requests for exclusions submitted in 2013 and 2014, and many companies chose not to submit a no-action request in the first place.

Exhibit 2

## Granted SEC No-Action Letters (2017–2018)

| Exclusion Rule | Exclusion Type | Number of Shareholder Proposals with Granted SEC No-Action Letter 10/1/2017 to 5/31/2018 | Number of Shareholder Proposals with Granted SEC No-Action Letter 10/1/2016 to 5/31/2017 |
|---|---|---|---|
| Rule 14a-8(i)(3) | The proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. | 2 | 4 |
| Rule 14a-8(i)(5) | The proposal relates to operations that account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business. | 1 | 0 |
| Rule 14a-8(i)(7) | The proposal deals with a matter relating to the company's ordinary business operations. | 31 | 58 |
| Rule 14a-8(i)(9) | The proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting. | 7 | 1 |
| Rule 14a-8(i)(10) | The company has already substantially implemented the proposal. | 39 | 54 |
| Rule 14a-8(i)(11) | The proposal substantially duplicates another proposal previously submitted to the company by another shareholder that will be included in the company's proxy materials for the same meeting. | 5 | 5 |
| Rule 14a-8(i)(12) | The proposal deals with substantially the same subject matter as another proposal or proposals that previously has or have been included in the company's proxy materials within a specified time frame and did not received a specified percentage of the vote. | 1 | 5 |
| Rule 14a-8(b) | The proponent did not meet the qualifying ownership requirements to have continously held at least $2,000 in market value, or 1 percent of, the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date of submitting the proposal. Also, the shareholder must continue to hold those securities through the date of the meeting. | 16 | 19 |
| Rule 14a-8(f) | The company notified the proponent of the defect of the proposal in terms of eligibility or procedural requirements, and the proponent failed to correct the proposal. | 12 | 18 |
| Rule 14a-8(e)(2) | The proposal for a regularly scheduled meeting was not received at the company's principal executive offices by a date not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. | 2 | 6 |

Note: The total exceeds 104 shareholder proposals as some exclusions fell into more than one of the bases for exclusions provided by SEC Rules.

Source: SEC Division of Investment Management Staff No-Action and Interpretive Letters.

## By industry

As shown in Chart 15, the telecommunications services, industrials, and consumer staples sectors had the highest proportion of voted proposals (85.7, 75, and 64.1 percent, respectively). The rate of omissions was highest in the information technology, consumer discretionary, and real estate industries (21.1, 20.2 and 19.2 percent, respectively), while financial companies had among the highest rate of withdrawals (19.5 percent). Shareholders withdrew proposals across all industries, with the smallest percentage among telecommunication services and industrials companies (4.8 percent in each).

## By sponsor

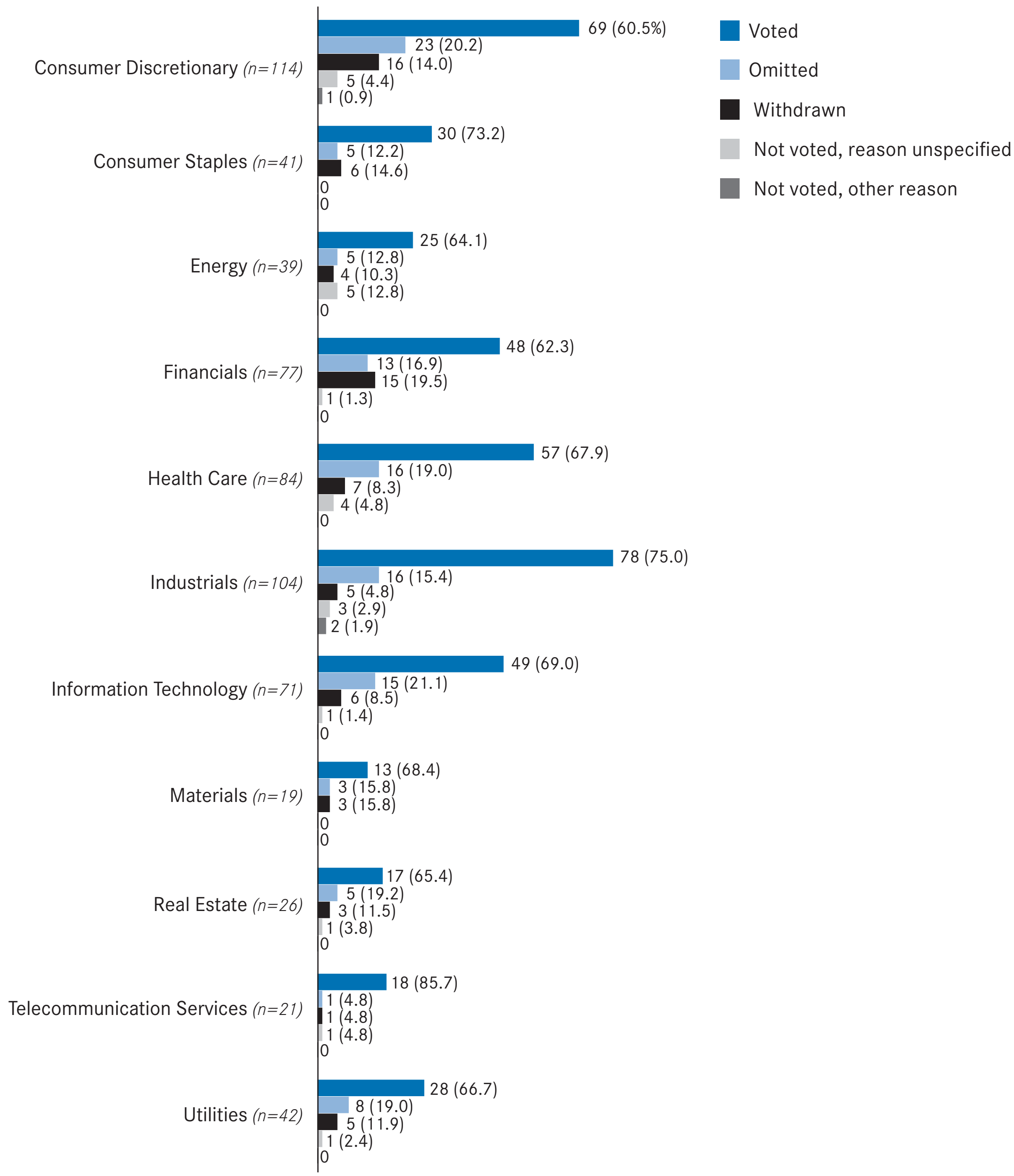
The analysis by sponsor type highlights the large share of proposals submitted by other stakeholders and individual investors that were ultimately omitted by management. About 40 percent of the resolutions filed by non-investment firms representing the interests of certain groups of stakeholders and 25.1 percent of the proposals submitted by individuals were excluded from the voting ballot based on provisions included in federal securities laws. Of the proposals submitted by labor union-affiliated investment funds, 82.2 percent went to a vote, as did all four of the proposals submitted by other (financial) institutions.

Moreover, Chart 16 shows the degree to which sponsors withdrew their proposals: 32.9 percent of the proposals submitted by investment advisers and 17.1 percent of those submitted by religious groups and other stakeholders were reported as withdrawn. These are categories of owners that rarely elevate these matters to an outright proxy solicitation and would rather use the precatory proposal as a tool to receive the attention of their portfolio companies on issues of concern.

Chart 15

## Voted, Omitted, and Withdrawn Shareholder Proposals—by Industry (2018)

Number of shareholder proposals (percentage of total)



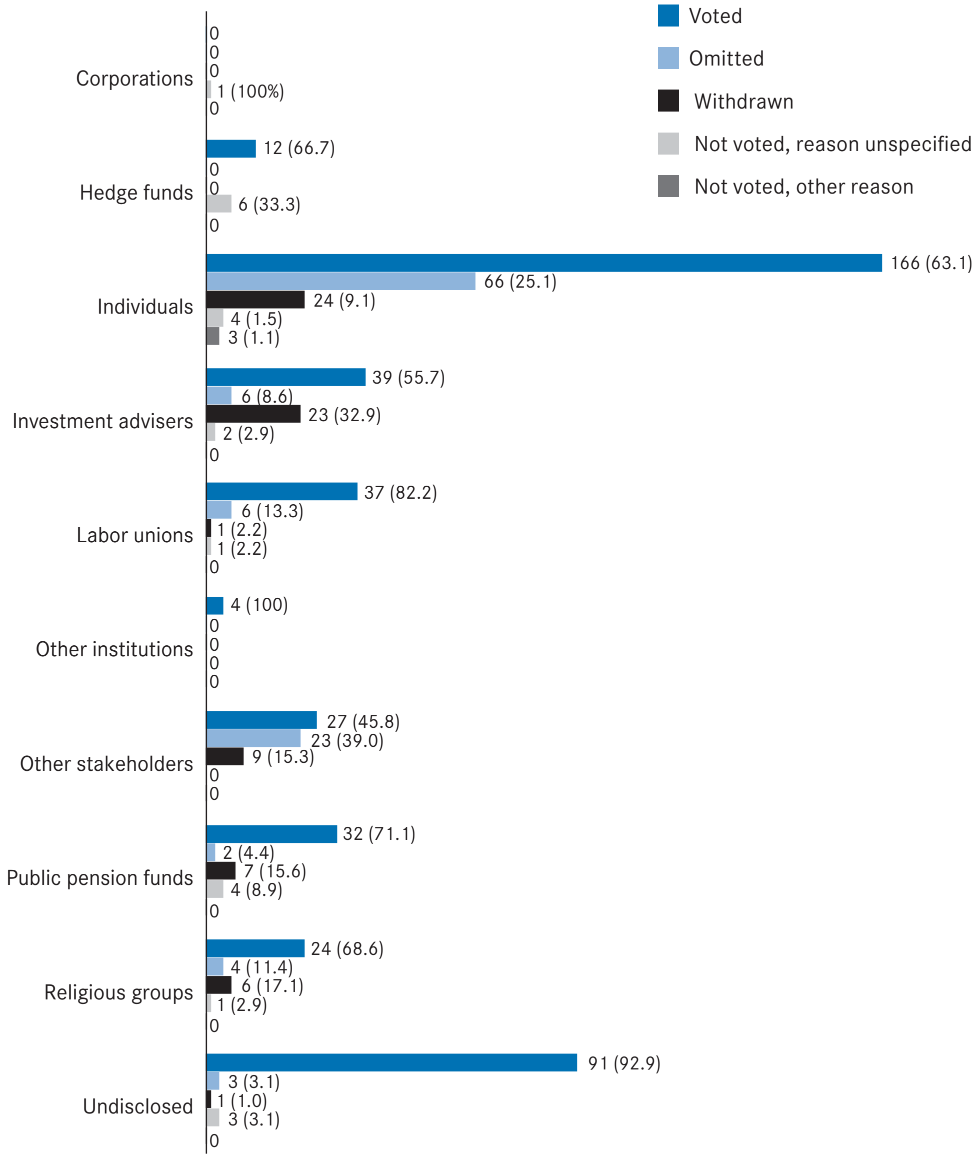

Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

Chart 16

## Voted, Omitted, and Withdrawn Shareholder Proposals—by Sponsor (2018)

Number of shareholder proposals (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By subject

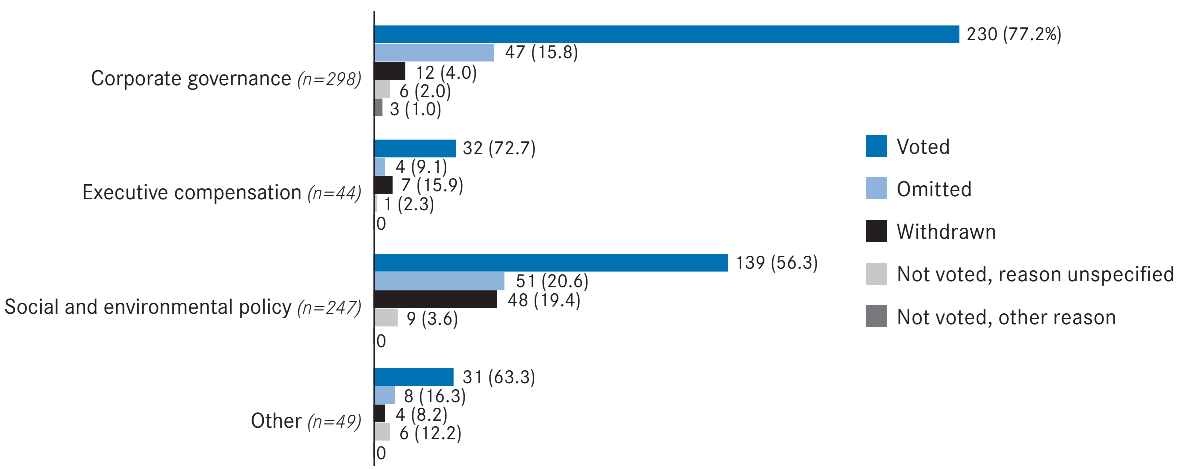
Roughly 77 percent of shareholder proposals on corporate governance and 72.2 percent of those related to issues of executive compensation were put to a vote in the 2018 proxy season, compared to 56.3 percent of those on social and environmental policy. Over the last few years, social and environmental policy resolutions have grown in number and expanded in range of topics. (Think, for example, of the resolution submitted to Amazon requesting that it not advertise on media outlets that disseminate content discriminating on the basis of sexual orientation, or the proposal filed at Apple demanding policies to keep store doors closed when climate control is in use.) Nevertheless, the percentage of these resolutions that actually ends up on the voting ballot has declined (it was 67.4 percent in 2014, according to an earlier edition of this study) (Chart 17).

For the same reason, the highest proportions of omitted and withdrawn proposals were seen in the social and environmental policy category (20.6 percent of the total number of proposals classified by The Conference Board as omitted and 19.4 percent as withdrawn).

Chart 17

**Voted, Omitted, and Withdrawn Shareholder Proposals—by Subject (2018)**

Number of shareholder proposals (percentage of total)




Note: Percentages may not add to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Voting Results

This section extends the shareholder proposal analysis to the average voting results, with a focus on those that received majority support. For purposes of this report, majority support is calculated based on votes for as a percentage of votes cast, including abstentions and excluding broker nonvotes. As noted in the corresponding tables and charts, data on majority support do not include "elect dissident's director nominee" proposals, since results as a percentage of votes cast are not reported for those proposals. Further details on shareholder proposals to elect dissident's director nominee can be found in "Part IV: Proxy Contests and Other Shareholder Activism Campaigns" on p. 141 and in "Part V: Issues in Focus" on p. 197.

The commentary on voting results refers primarily to votes *for* or against a certain proposal as a percentage of votes cast, including abstentions and excluding broker nonvotes; an analysis of results as a percentage of shares outstanding, with data on nonvotes, is offered in the corresponding tables.

### By index

Table 3 displays average voting results by index. As mentioned earlier, for and against votes and abstention levels are calculated both as a percentage of votes cast and as a percentage of shares outstanding (except for results for proposals related to the election of a dissident's director nominee, which are shown only as a percentage of shares outstanding).

In both indexes, the vast majority of voted shareholder proposals in the examined 2018 period failed to win majority support. The average percentage of *for* votes (32 percent) was higher in the Russell 3000 sample. The levels of abstentions and nonvotes were similar in both indexes.

Table 3

**Shareholder Proposal Average Voting Results—by Index (2018)**

| Index | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Russell 3000 | 432 | 32.0% | 66.4% | 1.6% | 25.8% | 51.5% | 1.2% | 11.3% |
| S&P 500 | 323 | 30.2 | 68.4 | 1.4 | 24.6 | 52.5 | 1.0 | 11.8 |

Note: Results shown as a percentage of votes cast do not include proposals related to the election of a dissident's director nominee. Percentages may not add to 100 due to rounding.

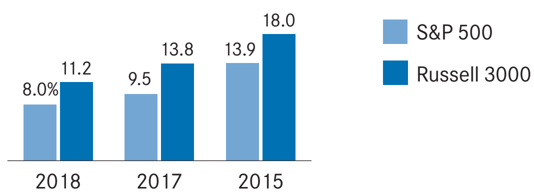
*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

Chart 18 illustrates the evolution over time in the percentage of shareholder proposals receiving majority support and corroborates the index-based analysis. The percentage of shareholder proposals receiving majority support has declined steadily and inexorably since 2010, from roughly 20 percent to less than 11.2 percent in the Russell 3000 sample and from 17.3 percent to eight percent in the S&P 500. This downward trend is the result of both a decline in the volume of proposals on topics that are traditionally widely supported by shareholders (for example, majority voting and board declassification) and an increase in the share of a new type of shareholder resolutions (including those on environmental and political issues) that do spark a debate on emerging corporate policies but that fail to obtain majority support.

Chart 18

**Shareholder Proposals Receiving Majority Support—by Index (2015, 2017, and 2018)**

Percentage of voted shareholder proposals receiving majority support




Majority support is calculated based on votes *for* as a percentage of votes cast, including abstentions and excluding broker nonvotes. Results do not include "elect dissident director nominee" proposals.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Board Responsiveness

First introduced in 2014, proxy advisor ISS's US Proxy Voting Guidelines on board responsiveness have magnified the implications for incumbent board members of precatory proposals supported by a majority of votes cast at AGMs. According to the guidelines, ISS recommends evaluating on a case-by-case basis the vote on individual directors, committee members, or the entire board, as appropriate, if the board failed to act on a shareholder proposal that received the majority of shares cast in the previous year.

Under the voting policy, a company is deemed to have failed to act if it does not fully implement the shareholder proposal or, if the matter requires a vote by shareholders, if it does not include on the next annual ballot a management proposal to implement the shareholder proposal. Factors that will be considered in the evaluation of the specific case are:

- the disclosed outreach efforts by the board to shareholders in the wake of the vote;
- the rationale provided in the proxy statement for the level of implementation;
- the subject matter of the proposal (ISS, in particular, expect management to act on and implement proposals on such widely supported matters such as board declassifications or majority vote standards);
- the level of support for and opposition to the resolution in past meetings;
- actions taken by the board in response to the majority vote and its engagement with shareholders;
- the continuation of the underlying issue as a voting item on the ballot (as either shareholder or management proposals); and
- other factors, as appropriate.
- Clear examples of non-responsiveness by the board would include: no acknowledgment at all in the proxy statement that shareholders supported the proposal; dismissal of the proposal with no reasons given; or actions taken to prevent future shareholder input on the matter altogether.

For further discussion of this policy change and its impact, see "Issues in Focus," p. 197.

In many instances where management submits a resolution on the same topic of a filed shareholder proposal, the filing shareholder ultimately withdraws its own submission and votes for the company's proposal. If the shareholder proposal is not withdrawn, management is generally authorized to omit it from the voting ballot under Exchange Act Rule 18a-8(i)(9), which contemplates the exclusion of any investor proposal directly conflicting with one of the company's own proposals to be submitted to shareholders at the same meeting.

*Source:* ISS U.S. Proxy Voting Research Procedures & Policies, ISS Institutional Shareholder Services, 2018, p. 18 (www.issgovernance.com).

## By industry

The voting result analysis by industry (Table 4) shows that the sectors with the highest average of *for* votes on shareholder proposals were real estate and industrials (on average, 51.5 and 34.7 percent of votes cast, respectively). The weakest support level was recorded among consumer staples companies (on average, 75.9 percent of votes cast against), which, together with utilities firms, as shown above (Chart 12, p. 44) have become the most frequent recipients of social and environmental proposals initiated by individuals and other stakeholders. Energy companies had the highest average level of nonvotes (16.2 percent of shares outstanding).

Table 4

**Shareholder Proposal Average Voting Results—by Industry (2018)**

| Industry | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Consumer Discretionary | 69 | 32.2 | 65.7 | 2.1 | 34.5 | 56.1 | 1.7 | 14.4 |
| Consumer Staples | 30 | 22.8 | 75.9 | 1.3 | 17.7 | 61.9 | 1.0 | 9.6 |
| Energy | 25 | 34.5 | 63.6 | 1.9 | 24.8 | 44.5 | 1.3 | 16.2 |
| Financials | 48 | 32.0 | 66.6 | 1.4 | 25.0 | 52.8 | 1.2 | 8.5 |
| Health Care | 57 | 32.3 | 66.2 | 1.5 | 25.3 | 51.2 | 1.1 | 10.0 |
| Industrials | 78 | 34.7 | 64.1 | 1.2 | 27.5 | 49.4 | 0.9 | 10.8 |
| Information Technology | 49 | 29.6 | 69.1 | 1.3 | 22.5 | 53.3 | 1.0 | 11.2 |
| Materials | 13 | 34.9 | 63.8 | 1.3 | 25.5 | 48.8 | 0.9 | 12.2 |
| Real Estate | 17 | 51.5 | 46.2 | 2.3 | 40.2 | 39.9 | 1.7 | 7.5 |
| Telecommunication Services | 18 | 31.3 | 67.0 | 1.7 | 12.6 | 30.9 | 0.7 | 11.1 |
| Utilities | 28 | 27.4 | 70.0 | 2.6 | 20.5 | 52.3 | 1.9 | 12.2 |

Note: Results shown as a percentage of votes cast do not include proposals related to the election of a dissident's director nominee. Percentages may not add to 100 due to rounding.

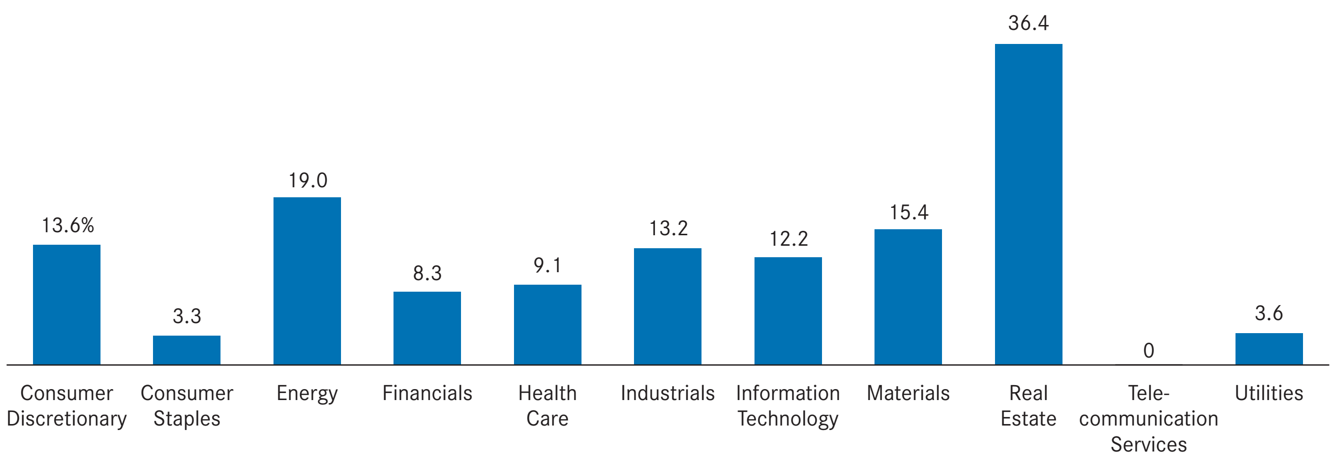
*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

In 2018, companies in the real estate sector had the highest percentage (36.4) of shareholder proposals receiving majority support, far higher than the percentages registered across other industry groups (Chart 19). None of the proposals voted during the period at companies in telecommunication services received majority support.

Chart 19

**Shareholder Proposals Receiving Majority Support—by Industry (2018)**

Percentage of voted shareholder proposals receiving majority support




Majority support is calculated based on votes *for* as a percentage of votes cast, including abstentions and excluding broker nonvotes. Results do not include “elect dissident director nominee” proposals.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By sponsor

From the voting result analysis by sponsor type it emerges that, in the examined 2018 general meeting period, on average, more than 70 percent of votes on shareholder proposals submitted by other stakeholders, other institutions, and religious groups were against the proposal (Table 5). The highest level of votes *for* was observed for proposals by public pension funds (41.4 percent), individuals (35.7 percent), and hedge funds (35.1 percent). Hedge funds and investment advisers, however, also registered the highest average levels of abstentions (2.4 and 3.5 percent of votes cast, respectively).

Chart 20 shows that, excluding proposals to elect the dissident's director nominee, public pension funds and individuals had the highest percentage of proposals receiving majority support (25 and 12 percent, respectively). For a discussion of results for proposals to elect the dissident's director nominee, see "Part IV: Proxy Contests and Other Shareholder Activism Campaigns" on p. 141 and "Part V: Issues in Focus" on p. 197. While hedge fund-sponsored proposals reported among the highest average percentage of votes for, none of their resolutions obtained majority support. This was also the case for proposals submitted by other institutions.

Table 5
### Shareholder Proposal Average Voting Results—by Sponsor (2018)

| Sponsor type | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Hedge funds | 12 | 35.1 | 62.5 | 2.4 | 25.9 | 45.3 | 1.7 | 7.3 |
| Individuals | 166 | 35.7 | 63.3 | 1.0 | 28.3 | 49.0 | 0.7 | 12.0 |
| Investment advisers | 39 | 26.7 | 69.8 | 3.5 | 20.0 | 53.3 | 2.6 | 9.4 |
| Labor unions | 37 | 31.7 | 66.7 | 1.6 | 36.7 | 58.4 | 1.3 | 12.2 |
| Other institutions | 4 | 21.5 | 77.1 | 1.4 | 17.7 | 62.5 | 1.1 | 4.9 |
| Other stakeholders | 27 | 24.0 | 74.0 | 1.9 | 17.3 | 53.1 | 1.4 | 10.6 |
| Public pension funds | 32 | 41.4 | 56.5 | 2.1 | 31.3 | 43.1 | 1.6 | 10.8 |
| Religious groups | 24 | 22.3 | 75.4 | 2.3 | 16.6 | 58.2 | 1.8 | 12.9 |
| Undisclosed | 91 | 28.7 | 69.6 | 1.7 | 22.0 | 53.3 | 1.3 | 10.7 |

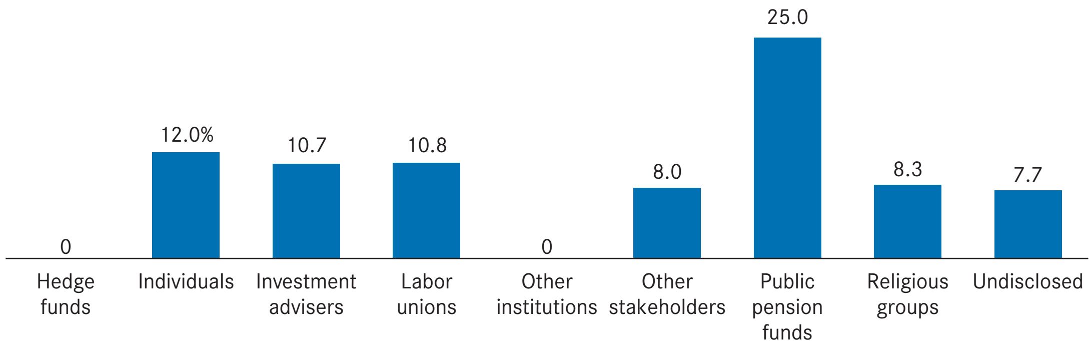
Note: Results shown as a percentage of votes cast do not include proposals related to the election of a dissident's director nominee. Percentages may not add to 100 due to rounding.

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

Chart 20

**Shareholder Proposals Receiving Majority Support–by Sponsor (2018)**

Percentage of voted shareholder proposals receiving majority support




Majority support is calculated based on votes *for* as a percentage of votes cast, including abstentions and excluding broker nonvotes. Results do not include "elect dissident director nominee" proposals.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By subject

The voting result analysis by subject of shareholder proposals (Table 6) shows that only 25.7 percent of votes cast on proposals related to social and environmental policy were in favor of the proposed change. However, proposals on this subject also reported the highest levels of abstention from voting outside of the "other" category (2.5 percent of votes cast, compared to an average of 1.05 percent for the other subjects), while the highest share of nonvotes is found in the executive compensation category (12.1 percent of shares outstanding, compared to an average of 9.8 percent for all other subjects). This finding may reflect a general view of US shareholders that the board and senior management are best suited to determine the business viability of certain sustainability activities and that one-size-fits-all policies may lead to inefficiencies or capital misallocations.

Table 6

**Shareholder Proposal Average Voting Results—by Subject (2018)**

| Subject | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Corporate governance | 32 | 22.9 | 76.0 | 1.1 | 16.6 | 56.4 | 0.8 | 9.0 |
| Executive compensation | 230 | 37.5 | 61.5 | 1.0 | 31.2 | 48.7 | 0.8 | 12.1 |
| Social and environmental policy | 139 | 25.7 | 71.8 | 2.5 | 19.6 | 54.9 | 1.9 | 10.6 |
| Other | 31 | 23.4 | 71.6 | 5.0 | 18.9 | 52.4 | 3.8 | 9.9 |

Note: Results shown as a percentage of votes cast do not include proposals to elect a dissident's director nominee. Percentages may not add to 100 due to rounding.

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

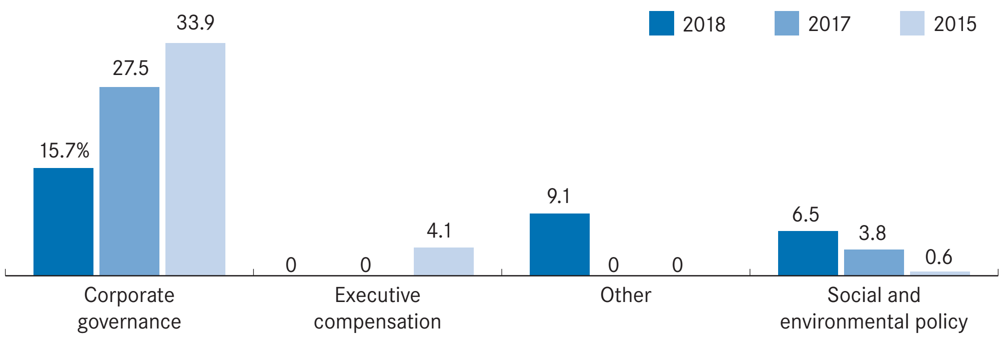
The average vote-for percentage was highest for executive compensation proposals (37.5 percent). Once the highest of all subjects, the average percentage of for votes in the corporate governance subject category was 22.9 in 2018, continuing its decline from the levels registered a few years ago due to introduction of new corporate governance topics and the saturation of the demand for widely supported practices such as majority voting and board declassification. Nonvote levels were lowest for executive compensation proposals.

Remarkably, none of the executive compensation proposals voted during the period received majority support in 2018 (Chart 21), while the highest share of proposals that did receive it was found in the corporate governance subject category (15.7 percent, or much lower than 27.5 percent of 2017 and 33.9 percent of 2015, for the reason explained above).

Chart 21

**Shareholder Proposals Receiving Majority Support—by Subject (2015, 2017, and 2018)**

Percentage of voted shareholder proposals receiving majority support




Note: Majority support is calculated based on votes for as a percentage of votes cast, including abstentions and excluding broker nonvotes. Results do not include “elect dissident director nominee” proposals.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Shareholder Proposals on Executive Compensation

The introduction of mandatory say on pay has prompted boards of directors to seek ongoing engagement opportunities with large investors so as to keep them apprised of (and obtain their feedback on) the company's compensation policy. As a result, shareholder proposals on executive compensation have become much less frequent than they used to be. But they have not entirely disappeared. To be sure, a number of shareholders continue to use the precatory proposal channel to advance new (or newly formulated) requests on CEO and NEO pay: in particular, those meant to strengthen the pay-for-performance paradigm through the adoption of equity retention policies and clawback bylaws or the use of sustainability-related metrics of performance assessment; and the requests to depart from questionable practices such as the granting of golden parachutes. Even though their average support level often remains below the majority of votes cast, The Conference Board will continue to monitor this new generation of demands as may gather interest in future proxy seasons.

For the purpose of this report, shareholder proposals on executive compensation are categorized based on the following topics:

- **Advisory vote on executive compensation ("say on pay")** Shareholder proposals requesting a policy instituting an annual advisory vote by shareholders to ratify the compensation of the company's named executive officers

  The vote is nonbinding and does not affect any compensation paid or awarded but is viewed as a tool for shareholders to express their view on the company's compensation practices. Effective January 2011, the Dodd-Frank Act requires most US companies to hold a management-sponsored say-on-pay vote at least once every three years.

- **Cap (restrict) executive compensation** Shareholder proposals seeking to limit executive compensation. Includes proposals requesting that the compensation be capped at a specific dollar amount or calculated based on a specified formula that correlates it to the compensation of other employees

  These proposals may also request prohibiting or limiting stock option grants.

- **Director compensation-related** Shareholder proposals related to the compensation of directors (typically nonemployee directors). Includes proposals to approve, limit, or specify the type of compensation

- **Expand compensation-related disclosure** Shareholder proposals seeking the adoption of more thorough compensation disclosure practices, including the disclosure of all employees making over a certain salary and the preparation of special reports (e.g., on pay disparity issues)

- **Limit tax "gross-ups"** Shareholder-sponsored proposals requesting the adoption of a corporate policy limiting or prohibiting tax gross-up payments to executives

  A gross-up reimburses an executive for tax liability (or makes payment to a taxing authority on an executive's behalf) and may be used to offset taxes on perquisites or applicable in a change-of-control situation.

- **Limit (or vote on) supplemental executive retirement plans ("SERPs")** Shareholder proposals requesting a corporate policy to limit (or require shareholder approval of) supplemental executive retirement plans (SERPs) and extraordinary retirement benefits

  SERPs provide supplemental retirement benefits beyond those permitted under a tax-qualified pension plan.

- **Limit (or vote on) death benefit payments ("golden coffins")** Shareholder-sponsored proposals first submitted in 2009 requesting that the company adopt a policy to limit (or require shareholder approval of) payments to its senior executives' estate or beneficiaries following their deaths

  Proponents generally define a "golden coffin" as any promised post-death payment of unearned salary or bonuses, accelerated vesting or the continuation in force of unvested equity grants, awards of ungranted equity, perquisites, and other payments or awards made in lieu of compensation.

- **Limit (or vote on) severance agreements ("golden parachutes")** Shareholder-sponsored proposals to require shareholder approval of future severance agreements, employment agreements containing severance provisions, and change-of-control agreements offering executives benefits in an amount exceeding a specified multiple of the executive's taxable compensation

- **Link compensation to performance ("pay for performance")** Shareholder proposals requesting a corporate policy under which executive compensation, including stock and stock option awards, is dependent upon the achievement of specified performance targets

- **Recoup incentive pay ("clawback")** Shareholder proposals requesting the adoption of a "clawback" policy or bylaw to recoup all unearned bonuses and other incentive payments made to an executive if the performance targets were later reasonably determined to have not been achieved, including as a result of the restatement of financial results or significant extraordinary write-off

- **Require equity retention period** Shareholder-sponsored proposals on the adoption of a corporate policy requiring executives and directors to retain a percentage of shares acquired through equity compensation programs during their employment

  Proponents of these proposals claim such a policy would better align management interests with those of shareholders and motivate executives and directors to focus on the company's long-term business objectives.

- **Other executive compensation issues** Any other shareholder-sponsored proposals related to director and executive compensation issues

  Topics may include linking social and environmental issues to pay, restricting the payment of dividends on grants of equity compensation that executives do not yet own, prohibiting the sale of stock during periods in which the company has announced stock buybacks, options backdating, and other compensation-related requests depending on the specific circumstances of an individual company.

For the formulation of proposals submitted under this subject category, see Appendix on p. 258.

## By topic

Following the introduction of an advisory vote of shareholders on executive compensation policies and of additional disclosure requirements, investors have limited their submissions in this area to more specific and narrowly formulated requests. The historical analysis of voted shareholder proposals on executive compensation shows the shift away from say on pay (which had dominated the proxy seasons before the Dodd-Frank Act made such votes mandatory in late 2010) to resolutions introducing limits on golden parachutes (nine of them went to a vote in 2018, representing 28.1 percent of the total volume of voted executive compensation proposals in the examined period) and demanding (clawback) policies to recoup executive pay (eight proposals in 2018, or 25 percent of the total).

In 2018, in the Russell 3000 index, shareholders voted on five proposals regarding the publication of a periodic report on compensation disparities at the company—whether based on gender, race or ethnicity. One of them was filed by the Baldwin Brothers at Google's parent company, Alphabet Inc., in the wake of a *New York Times* article on leaked employee-gathered data suggesting major gender pay gaps across the Google workforce. None of the proposals of this type, including the Alphabet one, passed.

Today's companies are more prone to investor engagement in this area and seek it proactively in the months preceding the AGM. Understanding the different investment strategies in their shareholder base, attempting to anticipate concerns, and improving communication of corporate policies have rapidly become key priorities for many business organizations. One-on-one in-person meetings with shareholders or their representatives, videoconferencing calls and online webcasts, and in some cases even large town-hall meetings are the main examples of these forms of off-season engagement, which in some cases may involve board members (specifically, the lead director). In particular, according to a survey of general counsel, corporate secretaries and investor relations officers conducted by The Conference Board in the spring of 2018, the highest percentage of companies reporting more than 10 instances of engagement in the previous 12 months is seen in the financial services sector (26.3 percent of the surveyed sample, of which about one third experienced more than 25 engagements).[1]

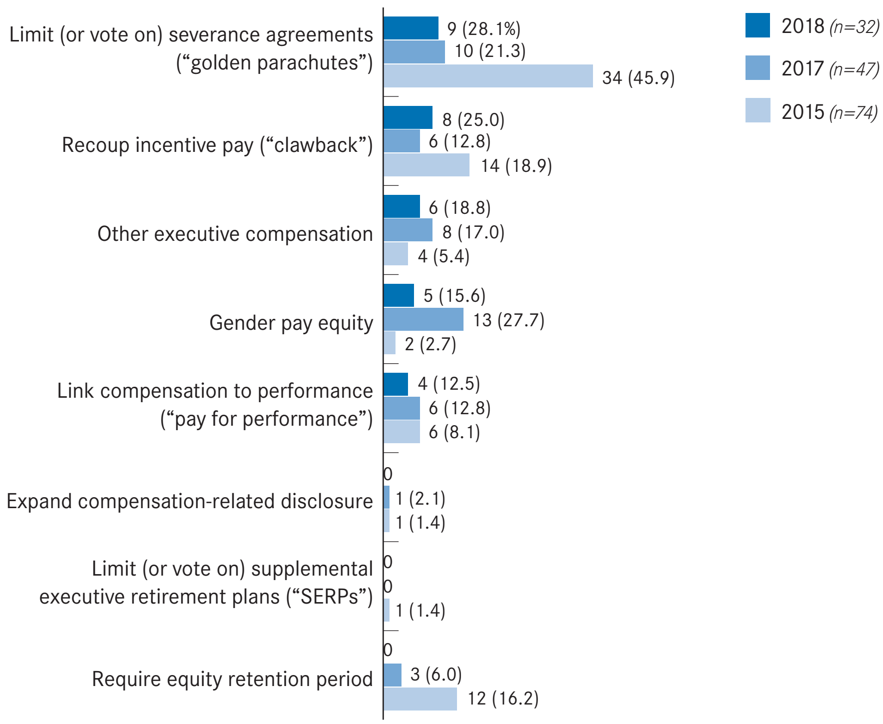
1 Matteo Tonello and Matteo Gatti, *Board-shareholder Engagement Practices: Findings from a 2018 Survey of SEC-registered Companies*, The Conference Board, Director Notes, forthcoming, 2018.

For this reason, in the situations where their concerns are not limited to questionable practices but pertain to more fundamental compensation issues (such as enhancing the pay-for performance linkage) or the fairness and transparency of the compensation policy as a whole, investors can use the new opportunities for engagement to make their voices heard without having to file a formal proposal. To be sure, the number of proposals pertaining to pay for performance alone, which was relatively high following the financial crisis (14 in 2010), was down to six in the 2015 and 2017 proxy seasons and to four in the 2018 proxy season. Similarly, there were 12 proposals on the expansion of compensation-related disclosure in 2010, one in 2015, one in 2017 and none in 2018 (Chart 22).

Chart 22

**Shareholder Proposals on Executive Compensation—by Topic (2015, 2017, and 2018)**

Number of voted shareholder proposals (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent sponsors—by topic

Table 7 ranks by topic the most frequent sponsors of shareholder proposals on executive compensation introduced in 2018. The most prolific sponsor on this subject was the New York City Employees' Retirement System, which submitted four resolutions on the adoption of clawback policies. Five of the proposals filed this year by the AFL-CIO requested limits to (or a shareholder vote on) golden parachutes, a topic for which other labor union-affiliated investment funds (such as the International Brotherhood of Teamsters and the Laborers' District Council and Contractors' Pension Fund) sought an AGM vote in 2018.

Table 7 **Shareholder Proposals on Executive Compensation—Most Frequent Sponsors, by Topic (2018)**

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | **Gender pay equity** | | |
| 1 | Arjuna Capital | Other stakeholders | 2 |
| 2 | Ann Alexander | Individuals | 1 |
| | David Fenton | Individuals | 1 |
| | Margaret E. Jacobs | Individuals | 1 |
| | New York City Employees' Retirement System | Public pension fund | 1 |
| | Organization United for Respect | Other stakeholders | 1 |
| | **Limit (or vote on) severance agreements ("golden parachutes")** | | |
| 1 | AFL-CIO | Labor unions | 5 |
| 2 | International Brotherhood of Teamsters | Labor unions | 1 |
| | Laborers' District Council and Contractors' Pension Fund | Labor unions | 1 |
| | Teamster Affiliates Pension Plan | Labor unions | 1 |
| | Teamsters General Fund | Labor unions | 1 |
| | **Link compensation to performance ("pay for performance")** | | |
| 1 | Andrew Behar | Individuals | 1 |
| | City of Philadelphia Public Employees Retirement System | Public pension funds | 1 |
| | James T. Campen Trust | Other stakeholders | 1 |

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | **Other executive compensation issues** | | |
| 1 | Jing Zhao | Individuals | 2 |
| 2 | AFL-CIO | Labor unions | 1 |
| | Association of BellTel Retirees Inc. | Other stakeholders | 1 |
| | International Brotherhood of DuPont Workers | Labor unions | 1 |
| | Michael Ayers | Individuals | 1 |
| | New York State Common Retirement Fund | Public pension funds | 1 |
| | United Steelworkers | Labor unions | 1 |
| | **Recoup incentive pay ("clawback")** | | |
| 1 | New York City Employees' Retirement System | Public pension funds | 4 |
| | City of Philadelphia Public Employees Retirement System | Public pension funds | 1 |
| | Comerica Bank & Trust | Other institutions | 1 |
| | CtW Investment Group | Labor unions | 1 |
| | International Brotherhood of Electrical Workers | Labor unions | 1 |
| | International Brotherhood of Teamsters | Labor unions | 1 |
| | Jack K. Cohen | Individuals | 1 |
| | Kenneth Steiner | Individuals | 1 |
| | Services Employees International Union | Labor unions | 1 |
| | UAW Retiree Medical Benefits Trust | Labor unions | 1 |

Note: Total number of proposals does not include 6 proposals for which sponsors were not disclosed.

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Voting results—by topic

As shown in Table 8, the average support level for all proposals related to executive compensation was 22.9 percent. None of the 32 voted proposals on this subject reached majority support at the AGM and passed. The executive compensation proposal topics that obtained the highest levels of *for* votes as a percentage of votes cast were those on clawback policies (37.8 percent support level, on average, calculated over eight proposals) and the requests to limit severance agreements/golden parachutes (25.2 percent support level, on average, calculated over nine proposals). Nearly all of the voted proposals related to golden parachutes sought a policy to prevent, upon a change in control, the acceleration of equity awards to top executives other than on a partial, pro rata basis up to the time of the termination of the executive in question. But unlike prior years, when some of these proposals were approved, none of them passed in 2018.

Other than in the "other executive compensation issues" category, the lowest support level was recorded for resolutions promoting pay-for-performance in compensation policies. There were four of this type that went to a vote in the examined (January 1-June 30, 2018) period, and they received, on average, only 14 percent of for votes.

Table 8

**Shareholder Proposals on Executive Compensation—Average Voting Results, by Topic (2018)**

| Topic | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Gender pay equity | 5 | 14.4 | 83.8 | 1.8 | 12.0 | 69.8 | 1.5 | 6.8 |
| Limit (or vote on) severance agreements ("golden parachutes") | 9 | 25.2 | 74.4 | 0.5 | 19.5 | 58.0 | 0.4 | 7.8 |
| Link compensation to performance ("pay for performance") | 4 | 14.0 | 84.4 | 1.6 | 10.4 | 62.0 | 1.1 | 10.8 |
| Other executive compensation issues | 6 | 12.5 | 86.4 | 1.1 | 6.4 | 56.6 | 0.7 | 11.3 |
| Recoup incentive pay ("clawback") | 8 | 37.8 | 60.9 | 1.3 | 27.0 | 43.2 | 0.9 | 9.1 |
| Subject average | n=32 | 22.9 | 76.0 | 1.1 | 16.6 | 56.4 | 0.8 | 9.0 |

Note: Percentages may not add to 100 due to rounding.

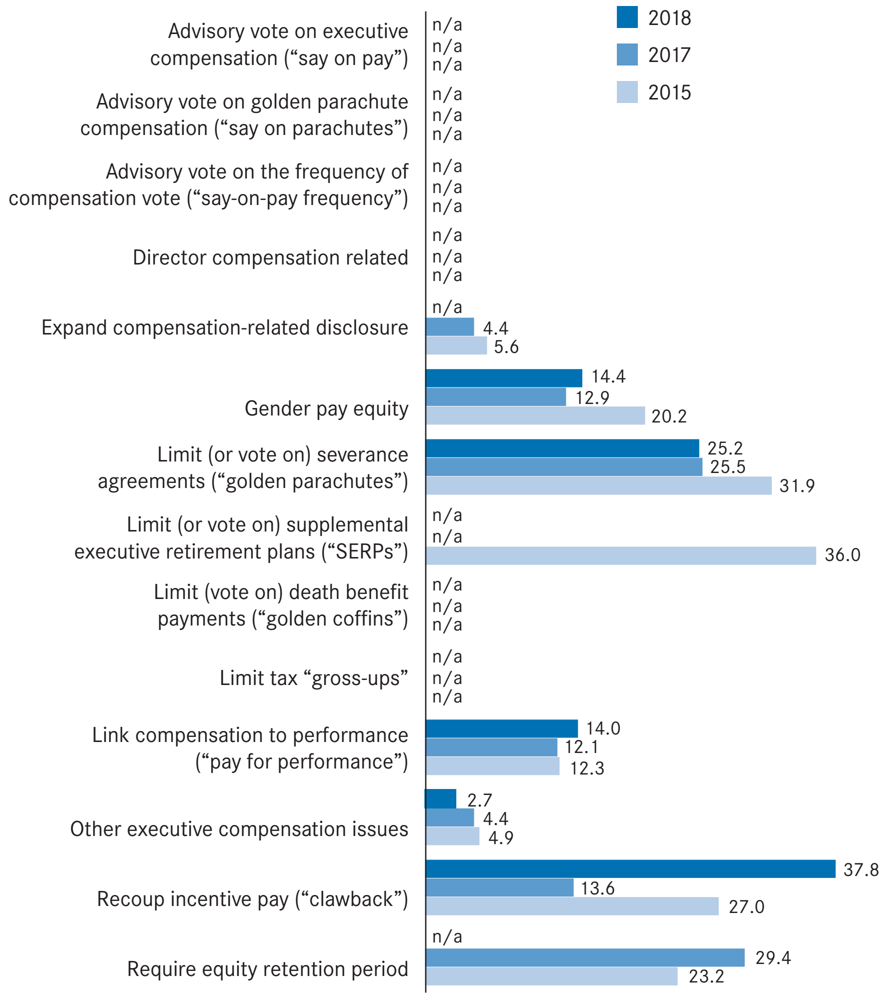
*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

As shown in Chart 23, the average support level has grown significantly in the last year for compensation clawback proposals (37.8 percent of for votes, up from 13.6 in 2017 and from 27 percent in 2015). Instead, average for votes declined for proposals to limit golden parachutes (28.1 percent of for votes, up from 21.3 in 2017 but lower than the 31.2 percent of 2015) and for resolutions requesting gender pay equity policies (14.4 percent of for votes in 2018, down from 20.2 percent in 2015). In 2018, there were no voted proposals to limit or require a shareholder vote on SERPs (a category that had found an average support level of 36 percent in 2015) or to introduce retention policies on equity awards to executives (a category for which 2017 support level was at 29.4 percent, on average).

Chart 23

**Shareholder Proposals on Executive Compensation, Average Support Level—by Topic (2015, 2017, and 2018)**

*For* votes as percentage of votes cast




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Shareholder Proposals on Corporate Governance

In recent years, the volume of resolutions related to corporate governance practices has also declined, but not to the same extent documented for the executive compensation subject category. With many large-cap companies complying with the corporate governance best practices traditionally sought by proponents in this field, efforts are being pushed down to mid- and small-cap firms, where shareholder-friendly structures are more infrequent. Similarly, new types of requests are starting to supplant those that for many years took center stage at S&P 500 AGMs.

With respect to this area, the most notable finding of 2018 is the rise in the number of requests for amendments to the company's organizational documents so as to allow shareholders to call special meetings and vote by written consent. In addition, data from this season confirm the softening demand for proxy access that had been observed even last year; while proxy access continues to be among the most popular issues in the governance category in 2018, the volume of resolutions requesting its adoption was quite lower.

The only resolution type that received average support level above the majority threshold are those on issues that are widely recognized as best practices by most investors and governance experts—specifically, the practices of board declassification, the adoption of majority voting, and the elimination of supermajority vote requirements. Average support levels for these types has in fact increased from years ago, which confirms that their decline in volume is due to the saturation of investor demand, not the waning support received by the proposals among the investment community.

For the purpose of this report, shareholder proposals on corporate governance are categorized based on the following topics:

- **Adopt director nominee qualifications** To request the institution of additional requirements to serve as a member of the board of directors

  These requirements may include stock ownership guidelines, industry experience, director independence standards, and limiting service in the event of significant change in personal circumstances or principal job responsibilities.

- **Adopt term limits for directors** To create a policy or charter/bylaw provision that directors shall not serve on the board for more than a specified number of years

- **Allow cumulative voting** To provide for cumulative voting in the election of directors

  Cumulative voting permits shareholders in the election of directors to cast as many votes as the number of shares held, multiplied by the number of directors to be elected. A shareholder can cast all of its votes *for* one candidate or distribute them liberally among multiple candidates. Cumulative voting gives minority shareholders more opportunity for board representation since they can cast all of their votes *for* one candidate.

- **Allow for (or ease requirement to) act by written consent** To allow shareholders to act by written consent or to reduce the requirement to take action by written consent (e.g., a majority of the shares outstanding instead of a supermajority or unanimous requirement)

- **Allow for (or ease requirement to) call special meetings** To grant shareholders the power to call special meetings or to reduce the ownership threshold required to do so (e.g., from 50 percent to 25 percent or, in some cases, as low as 10 percent of shares outstanding)
- **Approve dissident expense reimbursement** For the adoption of a corporate policy requiring the reimbursement of the reasonable expenses (e.g., legal, advertising, solicitation, printing, and mailing costs) incurred by a shareholder or group of shareholders in a contested election of directors if certain conditions are met (e.g., seeking less than a majority of the board seats, board seats won, certain percentage of votes *for* the dissident nominees)
- **Change from plurality to majority voting** First filed in 2004 to change the director election system from plurality to majority voting

  Under the plurality voting system, nominees with the highest number of votes are elected as directors, up to the number of directors to be chosen at the election, without regard to votes withheld or not cast. The benefit of plurality voting is that someone always wins——all vacant seats are filled; however, the system deprives dissenting shareholders of any substantial role in the election since their vote against a nominee is not taken into consideration. Unlike plurality voting, the majority voting system requires the director nominee to receive a majority of the votes cast to be elected.
- **Declassify board** To eliminate classified board structures (where board members are divided into classes and directors in each class serve staggered terms, typically running three years, so only one class of the board stands for election each year) in favor of annually elected directors

  Classification is used as a defensive measure from hostile takeovers: when a board is staggered, hostile bidders must win more than one proxy contest at successive shareholder meetings to exercise control of the target.
- **Decrease vote requirement to amend charter/bylaws (eliminate supermajority)** To reduce the voting requirement for shareholders to amend the charter or bylaws (e.g., to eliminate supermajority requirement)
- **Decrease board size** To reduce the current number or the minimum number (where a range is established) of members of the board of directors
- **Eliminate dual class structure (unequal voting)** To eliminate dual class/unequal voting share structure

  This may be accomplished through a recapitalization designed so that all outstanding stock has one vote per share or by eliminating any time-phased voting (where shareholders who have held the stock for a given period of time are assigned more votes per share than recent purchasers).
- **Eliminate supermajority vote requirements** Requesting that the company eliminate all supermajority vote requirements and apply a simple majority standard in the voting on any matter by shareholders

- **Establish committee or protocol for shareholder proposals receiving majority vote** Requesting that the board adopt an engagement process with the proponents of shareholder proposals supported by a majority of votes cast in order to discuss potential company action in response
- **Filling board vacancies related (reduce defense)** To limit the board of directors' ability to fill vacancies on the board or allow (or require) vacancies to be filled by shareholders
- **Fix the number of directors at specified number** To set the number of directors at a specified number
- **Include shareholder nominee in company proxy (proxy access)** Requesting the inclusion in proxy materials of director candidate(s) nominated by shareholders
- **Increase board size** To increase the current number or the maximum number (where a range is established) of members of the board of directors
- **Other nontakeover defense-related charter/bylaw amendment** Any other nontakeover defense-related proposals to amend the charter and/or bylaws (e.g., indemnification provisions)
- **Redeem (or require shareholder vote on) "poison pill"** To redeem a shareholder rights plan ("poison pill") or to require that any future poison pill be approved by a shareholder vote

  Poison pills generally discourage the acquisition of a significant ownership interest in a corporation for the purpose of launching a hostile takeover of the board by granting existing shareholders the right to purchase additional shares at a very favorable price, therefore diluting the acquirer's ownership stake.
- **Reduce difficulty to remove directors (with/without cause)** To allow shareholders to remove a director either with or without cause (i.e., eliminate the requirement that directors may be removed only for cause)
- **Reincorporate in another state** Requesting that the company reincorporate in any US state

  These proposals may be used against companies that reincorporated in tax havens (e.g., Bermuda).
- **Report on management succession plans** Requesting that the board adopt, periodically review, and disclose a written and detailed management (CEO) succession planning policy
- **Require an independent lead director** For a policy requesting that, in the absence of an independent board chairman, the company appoint an independent lead director (with clearly delineated duties)

  The lead director coordinates the activities of the other independent directors and presides over board meetings where the (nonindependent) chairman is absent.
- **Require an independent director on board committee** To create a policy, bylaw, charter, or committee charter provision requiring members of key board committees to be independent directors

  This proposal type also includes proposals prohibiting any current chief executive officers of other companies from serving on the board's compensation committee.

- **Require two director candidates for each board seat** Requesting the company nominate two candidates for each directorship to be filled by voting of shareholders at annual meetings allowing shareholders to choose between the candidates
- **Restrict "overboarding"** To discourage overextended directors by requiring board service to be limited to a specified number of directorships
- **Separate CEO/chairman positions** For the adoption of a policy separating the roles of chairman and CEO and/or requiring that the chairmanship be assumed by an independent director with no management duties, titles, or responsibilities
- **Other board committee related** Any other shareholder-sponsored proposals related to board committees

  This proposal type includes proposals to form a new committee and other requirements on who may serve on a committee, including prohibiting directors who receive a specified percentage of votes *against* their re-election from serving on a committee.
- **Other board structure related** Any other shareholder-sponsored proposals related to board size and structure

  This proposal type includes proposals to change from a fixed to a variable board size, provisions regarding the ability of the board to determine the board size, placing and eliminating other director qualification requirements, and eliminating term and age limits.
- **Other takeover defense related (strengthen defense)** Any other shareholder-sponsored proposals requiring a charter and/or bylaw amendment to increase the company's takeover defenses

  This proposal type could include proposals to decrease a charter ownership limit or extend its expiration date, adopt an expanded constituency provision, or adopt an anti-greenmail provision.
- **Other takeover defense related (reduce defense)** Any other shareholder-sponsored proposals requiring a charter and/or bylaw amendment to reduce the company's takeover defenses or limit its ability to adopt defenses (e.g., to allow shareholders to amend the bylaws at a company where only the board can amend the bylaws)
- **Other corporate governance issues** Any other shareholder-sponsored proposals related to corporate governance practices not otherwise categorized (e.g., compensation consultant issues; stockholder communication; location of shareholder meetings; proxy issues; and increased disclosure of financial risk, credit risk, derivatives, or collateral and structured investment vehicles)

For the formulation of proposals submitted under this subject category, see Appendix on p. 258.

## By topic

The historical analysis by topic of filed shareholder proposals on corporate governance (Table 9) shows that issues on which shareholders had frequently been putting pressure on companies for over a decade barely made the list of submissions for 2018. For example, only five proposals on the adoption of majority voting in director elections went to a vote in the first six months of 2018, down from 14 in the same period of 2017; according to an earlier edition of this study, there were 27 in 2014. Similarly, there were only five voted proposals on board declassification, down from the nine of 2015, 29 of 2013 and 44 of 2010.

Instead, it was the request to allow shareholders to call special meetings that topped the 2018 list of governance-related proposals by volume. Investors voted on 58 of these resolutions at Russell 3000 companies in the first six months of the year, a number that doubled the one The Conference Board recorded in the same time period of 2017 (23 resolutions) and was more than three times as big as the one seen in 2015 (17 resolutions) and 2013 (10 resolutions).

Proxy access reform proposals ranked third on the 2018 list by volume, but their number continued a decline that had been observed even last year (shareholders of Russell 3000 companies voted on 38 of these proposals in 2018, down from the 49 and 76 instances of 2017 and 2015, respectively). More consistent over the years has been the volume of resolutions meant to strengthen board leadership, given that many companies continue to argue in favor of a dual leadership model that combines the CEO and board chairman positions. In 2018, investors voted on 46 of these resolutions, up from the 40 that were recorded last year.

Table 9

## Voted Shareholder Proposals on Corporate Governance—by Topic (2015, 2017, and 2018)

Number of voted shareholder proposals (percentage of total)

| | Number of proposals | Percentage of total |
|---|---|---|
| **2018** | | |
| Adopt director nominee qualifications | 3 | 1.3% |
| Adopt term limits for directors | 1 | 0.4 |
| Allow cumulative voting | 3 | 1.3 |
| Allow for (or ease requirement to) act by written consent | 37 | 16.1 |
| Allow for (or ease requirement to) call special meetings | 58 | 25.2 |
| Change from plurality to majority voting | 5 | 2.2 |
| Declassify board | 5 | 2.2 |
| Eliminate dual class structure (unequal voting) | 8 | 3.5 |
| Eliminate supermajority vote requirements | 13 | 5.7 |
| Fill board vacancies (reduce defense) | 1 | 0.4 |
| Include shareholder nominee in company proxy (proxy access) | 38 | 16.5 |
| Increase board size | 1 | 0.4 |
| Other board committee-related | 3 | 1.3 |
| Other corporate governance issues | 7 | 3.0 |
| Other nontakeover defense-related charter/bylaw amendment | 1 | 0.4 |
| Separate CEO/chairman positions | 46 | 20.0 |
| | *n=230* | |
| **2017** | | |
| Adopt director nominee qualifications | 4 | 2.1% |
| Allow cumulative voting | 2 | 1.1 |
| Allow for (or ease requirement to) act by written consent | 14 | 7.4 |
| Allow for (or ease requirement to) call special meetings | 23 | 12.2 |
| Change from plurality to majority voting | 14 | 7.4 |
| Declassify board | 5 | 2.6 |
| Decrease board ability to amend bylaws (reduce defense) | 2 | 1.1 |
| Eliminate dual class structure (unequal voting) | 9 | 4.8 |
| Eliminate supermajority vote requirements | 21 | 11.1 |
| Include shareholder nominee in company proxy (proxy access) | 49 | 25.9 |
| Opt out of state takeover statute | 1 | 0.5 |
| Other board committee-related | 1 | 0.5 |
| Other corporate governance issues | 4 | 2.1 |
| Separate CEO/chairman positions | 40 | 21.2 |
| | *n=189* | |
| **2015** | | |
| Adopt director nominee qualifications | 2 | 0.8% |
| Adopt term limits for directors | 1 | 0.4 |
| Allow cumulative voting | 2 | 0.8 |
| Allow for (or ease requirement to) act by written consent | 31 | 12.1 |
| Allow for (or ease requirement to) call special meetings | 17 | 6.6 |
| Change from plurality to majority voting | 9 | 3.5 |
| Declassify board | 9 | 3.5 |
| Decrease board ability to amend bylaws (reduce defense) | 4 | 1.6 |
| Eliminate dual class structure (unequal voting) | 10 | 3.9 |
| Eliminate supermajority vote requirements | 16 | 6.3 |
| Expand compensation-related disclosure | 1 | 0.4 |
| Include shareholder nominee in company proxy (proxy access) | 76 | 29.7 |
| Opt out of state takeover statute | 3 | 1.2 |
| Other board committee-related | 5 | 2.0 |
| Other board structure-related | 1 | 0.4 |
| Other corporate governance issues | 2 | 0.8 |
| Other takeover defense-related (reduce defense) | 2 | 0.8 |
| Redeem or require shareholder vote on poison pill | 3 | 1.2 |
| Reduce difficulty to remove directors (with/without cause) | 1 | 0.4 |
| Reincorporate in another state | 1 | 0.4 |
| Restrict "overboarding" | 2 | 0.8 |
| Separate CEO/chairman positions | 58 | 22.7 |
| | *n=257* | |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent sponsors—by topic

Table 10 ranks by topic the most frequent sponsors of shareholder proposals on corporate governance. Gadfly investor John Chevedden continued to pursue the issues that had taken center stage in his shareholder proposals of previous years, including the independence of the board chairmanship and the ability of shareholders to call special meetings and act by written consent. CalPERS sponsored three proposals on the change from plurality to majority voting. The only proposal on the adoption of terms limits for directors was introduced by gadfly investor William Steiner.

All voted resolutions regarding voting by written consent and the ability of shareholders to call special meetings were sponsored by individual investors. In addition to those coming from Mr. Chevedden (20 and 40, respectively), their other sponsors were Kenneth Steiner, William Steiner, James McRitchie, Emily K. Johnson, and Myra K. Young.

Table 10

**Shareholder Proposals on Corporate Governance—Most Frequent Sponsors, by Topic (2018)**

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | **Adopt director nominee qualifications** | | |
| 1 | Domestic and Foreign Missionary Society of Protestant Episcopal Church in United States of America | Religious groups | 1 |
| | Episcopal Church | Religious groups | 1 |
| | Ronald M. Friedman | Individuals | 1 |
| | **Adopt term limits for directors** | | |
| 1 | William Steiner | Individuals | 2 |
| | **Allow cumulative voting** | | |
| 1 | James McRitchie | Individuals | 1 |
| | John Chevedden | Individuals | 1 |
| | Martin Harangozo | Individuals | 1 |
| | **Allow for (or ease requirement to) act by written consent** | | |
| 1 | John Chevedden | Individuals | 20 |
| 2 | Kenneth Steiner | Individuals | 8 |
| 3 | James McRitchie | Individuals | 3 |
| 4 | Myra K. Young | Individuals | 1 |
| | William Steiner | Individuals | 1 |
| | **Allow for (or ease requirement to) call special meetings** | | |
| 1 | John Chevedden | Individuals | 40 |
| 2 | Kenneth Steiner | Individuals | 10 |
| 3 | Myra K. Young | Individuals | 7 |
| 4 | James McRitchie | Individuals | 2 |
| 5 | Emily K. Johnson | Individuals | 1 |
| | William Steiner | Individuals | 1 |
| | **Change from plurality to majority voting** | | |
| 1 | California Public Employees' Retirement System | Public pension funds | 3 |
| 2 | James McRitchie | Individuals | 1 |
| | Myra K. Young | Individuals | 1 |
| | Services Employees International Union | Labor unions | 1 |
| | Southwest Regional Council of Carpenters Pension Fund | Labor unions | 1 |
| | UNITE HERE | Labor unions | 1 |
| | **Declassify board** | | |
| 1 | James McRitchie | Individuals | 3 |
| 2 | John Chevedden | Individuals | 2 |
| 3 | Edith D. Neimark | Individuals | 1 |
| | KBS Strategic Opportunity REIT | Investment advisers | 1 |
| | Lisa Sala | Individuals | 1 |
| | UNITE HERE | Labor unions | 1 |
| | **Eliminate dual class structure (unequal voting)** | | |
| 1 | John Chevedden | Individuals | 4 |
| 2 | James McRitchie | Individuals | 1 |
| | Kenneth Steiner | Individuals | 1 |
| | Land & Buildings Investment Management LLC | Hedge funds | 1 |

*(continued on next page)*

Table 10

## Shareholder Proposals on Corporate Governance—Most Frequent Sponsors, by Topic (2018) (continued)

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | **Eliminate supermajority vote requirements** | | |
| 1 | John Chevedden | Individuals | 9 |
| 2 | James McRitchie | Individuals | 5 |
| 3 | Kenneth Steiner | Individuals | 2 |
| | Myra K. Young | Individuals | 2 |
| 4 | AFL-CIO | Labor unions | 1 |
| | California State Teachers' Retirement System | Public pension funds | 1 |
| | William Steiner | Individuals | 1 |
| | **Fill board vacancies (reduce defense)** | | |
| 1 | Voce Capital Management LLC | Hedge funds | 1 |
| | **Include shareholder nominee in company proxy (proxy access)** | | |
| 1 | John Chevedden | Individuals | 19 |
| 2 | James McRitchie | Individuals | 13 |
| 3 | New York City Employees' Retirement System | Public pension funds | 6 |
| 4 | Kenneth Steiner | Individuals | 2 |
| 5 | Alex Friedmann | Individuals | 1 |
| | Marco Consulting Group Trust | Other stakeholders | 1 |
| | Myra K. Young | Individuals | 1 |
| | California Public Employees' Retirement System | Public pension funds | 1 |
| | **Other board committee-related** | | |
| 1 | Jing Zhao | Individuals | 2 |
| | **Other corporate governance issues** | | |
| 1 | New York State Common Retirement Fund | Public pension funds | 2 |
| 2 | AFL-CIO | Labor unions | 1 |
| | Andrew Dale | Individuals | 1 |
| | Anthony Slomkoski | Individuals | 1 |
| | David A. Ridenour | Other stakeholders | 1 |
| | GLADSTEIN NEIL | Individuals | 1 |
| | Kenneth Steiner | Individuals | 1 |
| | Sarah Elizabeth Moore | Individuals | 1 |
| | Sisters of St. Francis of Philadelphia | Religious groups | 1 |
| | Thomas P. Swiler | Individuals | 1 |
| | UNITE HERE | Labor unions | 1 |
| | William Steiner | Individuals | 1 |
| | **Other nontakeover defense-related charter/bylaw amendment** | | |
| 1 | GAMCO Asset Management Inc. | Investment advisers | 1 |
| | **Repeal Bylaw Amendments Adopted by Company During Proxy Fight** | | |
| 1 | Sarissa Capital Domestic Fund LP | Hedge funds | 1 |
| | **Separate CEO/chairman positions** | | |
| 1 | John Chevedden | Individuals | 11 |
| 2 | Kenneth Steiner | Individuals | 8 |
| 3 | Humane Society of United States | Other stakeholders | 4 |
| 4 | Sisters of St. Francis of Philadelphia | Religious groups | 2 |
| | Teamsters General Fund | Labor unions | 2 |
| 5 | AFL-CIO | Labor unions | 1 |
| | Boston Trust & Investment Management Company | Investment advisers | 1 |
| | City of Philadelphia Public Employees Retirement System | Public pension funds | 1 |
| | Graphic Communications Conference IBT Benevolent Trust Fund U.S. | Other stakeholders | 1 |
| | International Brotherhood of Teamsters | Labor unions | 1 |
| | Jing Zhao | Individuals | 1 |
| | Kestrel Foundation | Other stakeholders | 1 |
| | Myra K. Young | Individuals | 1 |
| | Robert Andrew Davis | Individuals | 1 |
| | Timothy Robert | Individuals | 1 |
| | William Steiner | Individuals | 1 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Voting results—by topic

As shown in Table 11, the average support level for all corporate governance proposals in 2018 was 37.5 percent. Only three proposal types received average support of greater than 50 percent of votes cast: Proposals on board declassification (82 percent support level, on average), those on the adoption of majority voting in director elections (73.9 percent), and those requesting the elimination of supermajority requirements (60.7 percent). In fact, the average percentage of for votes recorded in 2018 in each of these categories was significantly higher than those reported for 2017 and 2015.

Even though their average support level was below the majority threshold, resolutions on the shareholders' ability to act by written consent and to call special meetings received 41.9 percent and 40.9 percent of for votes, respectively, in 2018. Among others that passed, a proposal submitted by William Steiner at Nuance Communications received the support of 92.37 percent of votes cast.

The lowest level of support was recorded for proposals to introduce terms limits for directors, to allow cumulative voting (9.3 percent, on average), and to increase the size of the board of directors (7.7 percent). The only voted proposal to adopt term limits for board members, which William Steiner filed at real estate construction firm Lennar Corporation, received only 1.1 percent of votes cast.

Table 11 **Shareholder Proposals on Corporate Governance—Average Voting Results, by Topic (2018)**

| Topic | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Adopt director nominee qualifications | 3 | 13.7 | 84.6 | 1.7 | 9.6 | 60.6 | 1.3 | 16.0 |
| Adopt term limits for directors | 1 | 1.1 | 98.8 | 0.2 | 0.8 | 75.1 | 0.1 | 3.9 |
| Allow cumulative voting | 3 | 9.3 | 90.0 | 0.7 | 6.2 | 62.2 | 0.5 | 13.8 |
| Allow for (or ease requirement to) act by written consent | 37 | 41.9 | 57.4 | 0.7 | 31.4 | 42.8 | 0.5 | 11.7 |
| Allow for (or ease requirement to) call special meetings | 58 | 40.9 | 58.3 | 0.8 | 34.9 | 48.4 | 0.6 | 12.5 |
| Change from plurality to majority voting | 5 | 73.9 | 24.6 | 1.5 | 56.5 | 20.1 | 1.0 | 15.2 |
| Declassify board | 5 | 82.0 | 15.4 | 2.6 | 59.6 | 11.3 | 1.7 | 12.0 |
| Eliminate dual class structure (unequal voting) | 8 | 29.1 | 70.4 | 0.5 | 24.0 | 58.5 | 0.4 | 5.4 |
| Eliminate supermajority vote requirements | 13 | 60.7 | 38.3 | 1.0 | 82.5 | 49.4 | 1.1 | 18.3 |
| Fill board vacancies (reduce defense) | 1 | 33.0 | 65.5 | 1.5 | 20.7 | 41.1 | 0.9 | 2.4 |
| Include shareholder nominee in company proxy (proxy access) | 38 | 31.3 | 67.8 | 0.9 | 23.7 | 52.2 | 0.7 | 11.5 |
| Increase board size | 1 | 7.7 | 91.4 | 1.0 | 5.3 | 63.6 | 0.7 | 19.0 |
| Other board committee-related | 3 | 6.6 | 92.3 | 1.1 | 4.8 | 61.8 | 0.7 | 18.6 |
| Other corporate governance issues | 7 | 22.3 | 77.0 | 0.7 | 16.7 | 60.9 | 0.6 | 11.3 |
| Other nontakeover defense-related charter/bylaw amendment | 1 | 14.3 | 85.6 | 0.1 | 10.9 | 65.1 | 0.1 | 3.9 |
| Separate CEO/chairman positions | 46 | 30.7 | 67.9 | 1.4 | 22.4 | 50.7 | 1.1 | 11.1 |
| | *n=230* | 37.5 | 61.5 | 1.0 | 31.2 | 48.7 | 0.8 | 12.1 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

As mentioned above, Table 12 highlights a year-over-year increase in the average support levels for proposals seeking to declassify boards (82 percent in 2018, compared to 60.4 percent in 2017), to adopt majority voting (73.9 percent in 2018, compared to 62.8 percent in 2017) and to eliminate supermajority requirements (60.7 percent, up from the 44.5 percent reported in the prior year). The finding confirms that the decline in volume observed over the years for these types of proposals is due to the saturation of investor demand, not their waning support in the investment community.

Table 12

**Shareholder Proposals on Corporate Governance—Average Support Level, by Topic (2015, 2017, and 2018)**

*For* votes as percentage of votes cast

| | 2018 | 2017 | 2015 |
|---|---|---|---|
| Adopt director nominee qualifications | 13.7 | 11.1 | 18.8 |
| Adopt term limits for directors | 1.1 | n/a | 7.1 |
| Allow cumulative voting | 9.3 | 9.6 | 23.7 |
| Allow for (or ease requirement to) act by written consent | 41.9 | 44.9 | 38.9 |
| Allow for (or ease requirement to) call special meetings | 40.9 | 41.6 | 45.2 |
| Change from plurality to majority voting | 73.9 | 62.8 | 69.6 |
| Declassify board | 82.0 | 60.4 | 76.1 |
| Decrease board ability to amend bylaws (reduce defense) | n/a | 78.0 | 68.7 |
| Eliminate dual class structure (unequal voting) | 29.1 | 29.1 | 34.4 |
| Eliminate supermajority vote requirements | 60.7 | 44.5 | 42.8 |
| Expand compensation-related disclosure | n/a | n/a | 8.8 |
| Fill board vacancies (reduce defense) | 33.0 | n/a | n/a |
| Include shareholder nominee in company proxy (proxy access) | 31.3 | 44.6 | 55.0 |
| Increase board size | 7.7 | n/a | n/a |
| Opt out of state takeover statute | n/a | 88.2 | 60.2 |
| Other board committee-related | 6.6 | 2.6 | 4.1 |
| Other board structure-related | n/a | n/a | 3.2 |
| Other corporate governance issues | 22.3 | 4.4 | 21.5 |
| Other nontakeover defense-related charter/bylaw amendment | 14.3 | n/a | n/a |
| Other takeover defense-related (reduce defense) | n/a | n/a | 6.6 |
| Redeem or require shareholder vote on poison pill | n/a | n/a | 69.1 |
| Reduce difficulty to remove directors (with/without cause) | n/a | n/a | 23.4 |
| Reincorporate in another state | n/a | n/a | 13.8 |
| Restrict "overboarding" | n/a | n/a | 3.7 |
| Separate CEO/chairman positions | 30.7 | 29.4 | 28.7 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Shareholder Proposals on Social and Environmental Policy

Since the 2013 proxy season, shareholders of U.S. public companies have increasingly turned to proposals pertaining to social and environmental policies of corporations. Promoting better social and environmental policies at business corporations had traditionally been the purview of a fringe group of specialized, socially responsible investors (SRIs). It was the 2010 decision by the Supreme Court on the Citizens United case that first galvanized mainstream institutional shareholders around an issue of corporate sustainability—the importance for business organizations of ensuring full transparency on the extent and destination of their political donations.

In a matter of a few voting seasons, political contributions disclosure has become the subject of the most frequently filed type of precatory requests by shareholders at Russell 3000 companies, followed by a whole new swath of corporate practices that, until then, had received only marginal or no attention by the wider investment community. They include the adoption of climate change policies, the compliance of procurement practices with human rights standards, and the publication of a periodic sustainability reports. For each of these topics, however, despite the growth in volume of filings, overall average support levels remained low.

For the purpose of this report, shareholder proposals on social and environmental policy are categorized based on the following topics:

- **Animal rights** To encourage the company to consider animal interests throughout its production and business processes, or to request that the board adopt an animal welfare policy

  People for the Ethical Treatment of Animals (PETA) tends to submit the majority of these proposals.

- **Board diversity** To request that the board take steps to ensure that women and minority candidates are in the pool from which board nominees are chosen

- **Environmental issues** To request that the board issue a report detailing the company's impact on the environment or that the board adopt policies to minimize the company's negative impact on the environment

  If a proposal combines health and environmental issues, it is generally classified in the "health issues" category. If a proposal focuses on preparing a sustainability report regarding environmental practices, it is generally classified in the "sustainability reporting" category.

- **Health issues** To request that the board institute policies to protect human health or issue a report regarding the company's stance on certain health-related issues

- **Human rights** To request that the board institute policies to protect or promote human rights

  Such actions could include respecting human rights throughout the company's production process or refusing to do business with countries or businesses that contribute to human rights abuses.

- **Labor issues** To request that the board institute certain labor-related policies

  Such labor policies may include prohibiting discrimination based on sexual orientation and gender identity or abiding by certain fairness principles.

- **Political issues** To request that the board provide a report detailing the company's policies and procedures governing political contributions or lobbying, including the officers in charge of those decisions and the amount of corporate allocations of this type

  Other variations may call for a complete ban on political spending or the adoption of a strict ratio between corporate assets and political contributions.

- **Sustainability reporting** To request that the board issue a report describing the company's strategies to ensure sustainability, usually focusing on actions to address greenhouse gas emissions and other environmental and social considerations

- **Other social issues** To request that the board provide a report regarding certain other social issues

  Common topics may include the examination of the company's effect on national security, the safety of the company's operations from terrorist attacks, and the company's lending practices.

For the formulation of proposals submitted under this subject category, see Appendix on p. 258.

## By topic

The historical analysis by topic of voted shareholder proposals on social and environmental policy (Chart 24) highlights a surge in investor requests related to this subject and, in particular, to corporate political spending and lobbying and to environmental issues. Combined, resolutions on these three topics composed more than half of all social and environmental policy issues proposals that went to a vote at the 2018 examined period. However, according to an earlier edition of this study, this percentage was much higher in 2014 (84 percent)—another sign of the expanding array of topics that today belong to this category of filings.

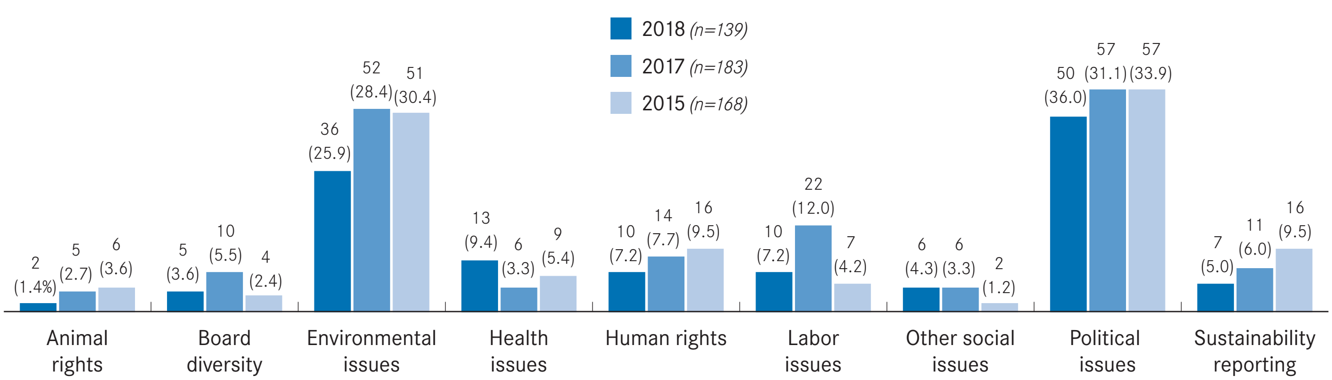
A hot topic since the controversial Supreme Court decision in 2010 on *Citizens United v. Federal Election Commission*, disclosure related to corporate political spending and lobbying reflects shareholder concerns about the lack of transparency in this area of corporate activities. Interest in the issue is not expected to subside, especially after the SEC dropped the introduction of disclosure rules on political contributions from its list of regulatory priorities. In 2018, there were 21 voted shareholder resolutions on political contributions disclosure, 26 on political lobbying disclosure, and three requesting the publication of a report on both political contributions and lobbying activities, for a total of 50 voted resolutions on political issues (a number that is in line with the 57 voted resolutions reported for each of the 2017 and 2015 periods).

As for the requests for corporate reporting on environmental impact, 36 of them went to a vote in the first six months of the year. The third and fourth most popular types, by number of voted proposals, were the requests for the publication of a report detailing the company's stance on certain health-related issues (10 voted resolutions in 2018) and those for corporate policy promoting the adoption of human rights, at the company and across its supply chain (also 10 voted resolutions).

Chart 24

**Shareholder Proposals on Social and Environmental Policy–by Topic (2015, 2017, and 2018)**

Number of voted shareholder proposals (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent sponsors—by topic

Table 13 ranks by topic the most frequent sponsors of shareholder proposals on social and environmental policy. Investment adviser Trillium Asset Management and environmental advocacy group As You Sow lead the list of proponents of resolutions on environmental impact reporting (respectively, they filed five and four such proposals in the first semester of 2018). The National Center for Public Policy Research had the highest number (six) of proposals seeking the adoption of a human rights corporate policy. As for the disclosure on political contributions and lobbying, it was sought by a diversified group of investors, including the New York State Common Retirement Fund (seven proposals), the fund affiliated with the labor union International Brotherhood of Teamsters (five proposals) and religious group Unitarian Universalist Association (also five proposals).

Table 13

**Shareholder Proposals on Social and Environmental Policy—Most Frequent Sponsors, by Topic (2018)**

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | **Animal rights** | | |
| 1 | People for Ethical Treatment of Animals ("PETA") | Other stakeholders | 3 |
| 2 | Benedictine Sisters of Mount St. Scholastica | Religious groups | 1 |
| | New York State Common Retirement Fund | Public pension funds | 1 |
| | **Board diversity** | | |
| 1 | Trillium Asset Management, LLC | Investment advisers | 5 |
| 2 | Antonio Avian Maldonado, II | Individuals | 1 |
| | City of Philadelphia Public Employees Retirement System | Public pension funds | 1 |
| | David A. Ridenour | Other stakeholders | 1 |
| | National Center for Public Policy Research | Other stakeholders | 1 |
| | New York City Employees' Retirement System | Public pension funds | 1 |
| | Oxfam America, Inc. | Other stakeholders | 1 |
| | **Environmental issues** | | |
| 1 | Trillium Asset Management, LLC | Investment advisers | 5 |
| 2 | As You Sow | Other stakeholders | 4 |
| 3 | Amalgamated Bank of New York | Labor unions | 3 |
| | Christine Jantz | Individuals | 3 |
| | New York City Employees' Retirement System | Public pension funds | 3 |
| | New York State Common Retirement Fund | Public pension funds | 3 |
| 4 | Boston Trust & Investment Management Company | Investment advisers | 2 |
| | Green Century Equity Fund | Investment advisers | 2 |
| | Mercy Investment Services, Inc. | Religious groups | 2 |
| 5 | Andrew Behar | Individuals | 1 |
| | Baldwin Brothers, Inc. | Other institutions | 1 |
| | Calvert Investment Management, Inc. | Investment advisers | 1 |
| | Dale Wannen | Individuals | 1 |
| | Edith P Homans Family Trust | Other stakeholders | 1 |
| | Elizabeth S. Bowles | Individuals | 1 |
| | Francis Don Schreiber | Individuals | 1 |
| | GAMCO Asset Management Inc. | Investment advisers | 1 |
| | Hammerman | Other stakeholders | 1 |
| | James McRitchie | Individuals | 1 |
| | John B. Mason | Individuals | 1 |
| | Jonathan M. Beall | Individuals | 1 |
| | Lowell Miller | Individuals | 1 |
| | Max and Anna Levinson Foundation | Other stakeholders | 1 |
| | Missouri Coalition For The Environment | Other stakeholders | 1 |
| | Park Foundation Inc. | Other stakeholders | 1 |

*(continued on next page)*

Table 13

## Shareholder Proposals on Social and Environmental Policy—Most Frequent Sponsors, by Topic (2018) (continued)

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | Pax World Mutual Funds | Investment advisers | 1 |
| | Robeco Institutional Asset Management BV | Investment advisers | 1 |
| | Sam and Wendy Hitt Family Trust | Other stakeholders | 1 |
| | Sierra Club | Other stakeholders | 1 |
| | Sisters of Presentation of Blessed Virgin Mary | Religious groups | 1 |
| | Stephen Sacks | Individuals | 1 |
| | Steven J. Milloy | Individuals | 1 |
| | SustainVest Asset Management LLC | Investment advisers | 1 |
| | Trust R UA | Other stakeholders | 1 |
| | Unitarian Universalist Association | Religious groups | 1 |
| | Walden Asset Management | Investment advisers | 1 |
| | **Health issues** | | |
| 1 | Mercy Investment Services, Inc. | Religious groups | 4 |
| 2 | Jeanne Miller | Individuals | 2 |
| | Sisters of St. Francis of Philadelphia | Religious groups | 2 |
| | Trinity Health | Religious groups | 2 |
| 3 | Azzad Asset Management, Inc. | Investment advisers | 1 |
| | Gun Denhart Living Trust | Other stakeholders | 1 |
| | Gwendolen Noyes | Individuals | 1 |
| | John Harrington | Investment advisers | 1 |
| | John P. Fishwick | Individuals | 1 |
| | Keith Schnip | Individuals | 1 |
| | Martin Harangozo | Individuals | 1 |
| | Norman Dudley Fulton | Individuals | 1 |
| | People for Ethical Treatment of Animals ("PETA") | Other stakeholders | 1 |
| | Singing Field Foundation | Other stakeholders | 1 |
| | Stewart W. Taggart | Individuals | 1 |

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | UAW Retiree Medical Benefits Trust | Labor unions | 1 |
| | **Human rights** | | |
| 1 | National Center for Public Policy Research | Other stakeholders | 6 |
| 2 | John Harrington | Investment advisers | 2 |
| 3 | As You Sow | Other stakeholders | 1 |
| | David A. Ridenour | Other stakeholders | 1 |
| | Domini Social Investments LLC | Investment advisers | 1 |
| | Heartland Initiative, Inc. | Other stakeholders | 1 |
| | Jesus and Mary | Religious groups | 1 |
| | Mercy Investment Services, Inc. | Religious groups | 1 |
| | New York State Common Retirement Fund | Public pension funds | 1 |
| | NorthStar Asset Management, Inc. | Investment advisers | 1 |
| | Sisters of St Francis Charitable Trust | Religious groups | 1 |
| | Ute Holdings LLC | Other stakeholders | 1 |
| | Wallace Global Fund | Other stakeholders | 1 |
| | William L. Rosenfeld | Other stakeholders | 1 |
| | **Labor issues** | | |
| 1 | Trillium Asset Management, LLC | Investment advisers | 8 |
| 2 | AFL-CIO | Labor unions | 2 |
| | Claire L. Bateman 1991 Trust | Hedge funds | 2 |
| | New York City Employees' Retirement System | Public pension funds | 2 |
| 3 | Benedictine Sisters of Baltimore | Religious groups | 1 |
| | Congregation of Benedictine Sisters | Religious groups | 1 |
| | Dominican Sisters of Grand Rapids | Religious groups | 1 |
| | Eve S. Sprunt | Individuals | 1 |

*(continued on next page)*

Table 13

## Shareholder Proposals on Social and Environmental Policy—Most Frequent Sponsors, by Topic (2018) (continued)

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | Holy Land Principles, Inc. | Religious groups | 1 |
| | Jennifer McDowell | Individuals | 1 |
| | Jessica Creighton | Individuals | 1 |
| | Kathleen Dennis | Individuals | 1 |
| | New York City Board of Education Retirement System | Public pension funds | 1 |
| | NorthStar Asset Management, Inc. | Investment advisers | 1 |
| | Portfolio 21 Global Equity Fund | Hedge funds | 1 |
| | Sisters of St. Francis of Philadelphia | Religious groups | 1 |
| | Walden Asset Management | Investment advisers | 1 |
| | **Other social issues** | | |
| 1 | AFL-CIO | Labor unions | 2 |
| | Thomas Strobhar | Individuals | 2 |
| 2 | Amnesty International | Other stakeholders | 1 |
| | Emma Creighton Irrevocable Trust | Other stakeholders | 1 |
| | John Harrington | Investment advisers | 1 |
| | National Center for Public Policy Research | Other stakeholders | 1 |
| | Park Foundation Inc. | Other stakeholders | 1 |
| | **Political issues** | | |
| 1 | New York State Common Retirement Fund | Public pension funds | 7 |
| 2 | International Brotherhood of Teamsters | Labor unions | 5 |
| | Unitarian Universalist Association | Religious groups | 5 |
| 3 | National Center for Public Policy Research | Other stakeholders | 3 |
| | Walden Asset Management | Investment advisers | 3 |
| 4 | Boston Trust & Investment Management Company | Investment advisers | 2 |
| | Mercy Investment Services, Inc. | Religious groups | 2 |
| | Myra K. Young | Individuals | 2 |
| | Nathan Cummings Foundation | Other stakeholders | 2 |
| | NorthStar Asset Management, Inc. | Investment advisers | 2 |
| 5 | AFL-CIO | Labor unions | 1 |
| | Alex Friedmann | Individuals | 1 |
| | Ann Testa | Individuals | 1 |
| | Azzad Asset Management, Inc. | Investment advisers | 1 |
| | Congregation of Sisters of St. Agnes | Religious groups | 1 |
| | CtW Investment Group | Labor unions | 1 |
| | Daughters of Charity, Inc. | Religious groups | 1 |
| | Friends Fiduciary Corporation | Other institutions | 1 |
| | James McRitchie | Individuals | 1 |
| | Jeannie Scheinin | Individuals | 1 |
| | John Chevedden | Individuals | 1 |
| | Marcella C. Calabi | Individuals | 1 |
| | New York City Board of Education Retirement System | Public pension funds | 1 |
| | New York City Teachers' Retirement System | Public pension funds | 1 |
| | People for Ethical Treatment of Animals ("PETA") | Other stakeholders | 1 |
| | Trillium Asset Management, LLC | Investment advisers | 1 |
| | United Steelworkers | Labor unions | 1 |
| | Zevin Asset Management, LLC | Investment advisers | 1 |
| | **Sustainability reporting** | | |
| 1 | Trillium Asset Management, LLC | Investment advisers | 4 |
| 2 | New York State Common Retirement Fund | Public pension funds | 2 |
| 3 | Carol A. Reisen | Individuals | 1 |
| | Dale Wannen | Individuals | 1 |
| | Heartland Initiative, Inc. | Other stakeholders | 1 |
| | UNITE HERE | Labor unions | 1 |
| | Walden Asset Management | Investment advisers | 1 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Voting results—by topic

As shown in Table 14, the average support level for all proposals on social and environmental policy submitted in 2018 was low at 25.7 percent of votes cast, but higher than the average of 19.5 percent recorded, according to an earlier edition of this study, in 2014. The social and environmental policy proposal topics that obtained the highest levels of *for* votes as a percentage of votes cast were those on political lobbying disclosure (28 percent on average, across the 50 voted proposals on the topic) and those seeking an environmental report (29.4 percent).

Table 14

**Shareholder Proposals on Social and Environmental Policy—Average Voting Results, by Topic (2018)**

| Topic | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Animal rights | 2 | 9.1 | 88.7 | 2.2 | 7.7 | 71.0 | 1.8 | 9.1 |
| Board diversity | 5 | 18.1 | 80.6 | 1.3 | 15.8 | 69.3 | 1.1 | 7.5 |
| Environmental issues | 36 | 29.4 | 68.1 | 2.5 | 23.0 | 53.2 | 1.9 | 10.7 |
| Health issues | 13 | 21.4 | 76.4 | 2.2 | 16.7 | 58.0 | 1.7 | 11.6 |
| Human rights | 10 | 17.5 | 79.6 | 2.9 | 12.6 | 61.0 | 2.2 | 12.6 |
| Labor issues | 10 | 26.4 | 70.5 | 3.1 | 20.3 | 54.5 | 2.3 | 11.4 |
| Other social issues | 6 | 15.0 | 82.7 | 2.3 | 10.9 | 52.3 | 1.6 | 9.2 |
| Political issues | 50 | 28.0 | 69.2 | 2.8 | 20.7 | 51.7 | 2.0 | 11.1 |
| Sustainability reporting | 7 | 27.9 | 71.3 | 0.8 | 22.8 | 60.4 | 0.6 | 5.1 |
| | *n=139* | **25.7** | **71.8** | **2.5** | **19.6** | **54.9** | **1.9** | **10.6** |

Note: Percentages may not add to 100 due to rounding.

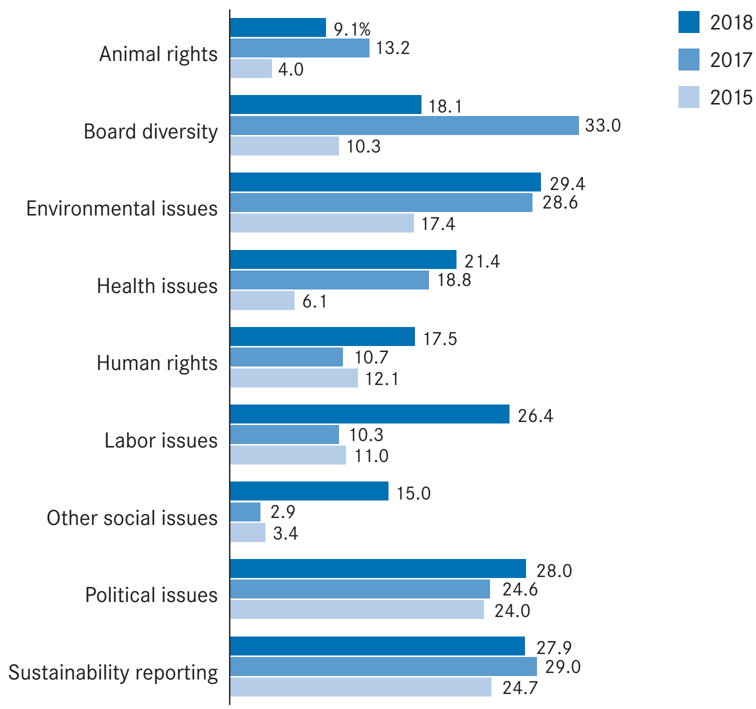
*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

Chart 25 highlights the overall upward trend regarding the average support received by proposals on political contribution disclosure and lobbying (the 28 percent of 2018 represented an uptick from the 24.6 percent of 2017 and the 24 percent of 2015), human rights (17.5 percent in 2018, up from 10.7 percent in 2017), and health issues (21.4 percent in 2018, up from 18.8 percent in 2017 and only 6.1 percent in 2015).

Chart 25

**Shareholder Proposals on Social and Environmental Policy, Average Support Level—by Topic (2015, 2017, and 2018)**

*For* votes as percentage of votes cast




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Other Shareholder Proposals

Shareholder proposals analyzed in this all-inclusive section of the report include requests for management to effect strategic and financial changes in the organization. Most of the proposals filed in this category pertained to the election of director nominees not supported by management and were included on the activist's proxy card in a proxy fight mounted to gain board representation or control. For this reason, data on other shareholder proposals segmented and analyzed in this section of the report should be read in connection with the information discussed in "Part IV: Proxy Contests and Other Shareholder Activism Campaigns," on p. 141.

For the purpose of this report, other shareholder proposals are categorized based on the following topics. If, for any of these categories, a shareholder submitted no resolution during the examined period, the category is omitted in the figures included in this section of the report:

- **Approve control share acquisition** To restore the voting rights to the common shares that are subject to the control-share restrictions of a state control-share acquisition statute

  A typical control-share acquisition statute provides that voting rights of shares acquired by a stockholder at ownership levels of 20 percent, 33 1/3 percent, and 50 percent of the outstanding voting stock be denied unless disinterested shareholders approve the restoration of the voting power. A control-share acquisition provision protects a company against the accumulation of a controlling block of voting shares by allowing shareholders to decide collectively whether a proposed acquisition of voting control of the company should be permitted.

- **Approve stock split** To approve a stock split transaction, in which a company divides its existing shares into multiple shares, usually to address situations where share price has become either too high or has exceeded the share price of similar companies in the same sector. Although the price of each outstanding share decreases as a result of the split, the total dollar value of the shares held by a certain shareholder remains the same as the pre-split value

- **Divest asset (division)** Requesting the company sell/spin off assets, divisions, or subsidiaries

- **Elect dissident's director nominee** To elect a dissident's director nominee

  These proposals appear on the dissident's proxy card in a proxy fight.

- **Fill board vacancy (reduce defense)** To limit the board of directors' ability to fill vacancies on the board or to allow or require vacancies be filled by shareholders

- **Hire adviser to evaluate strategy alternatives/Seek company sale or liquidation** Requesting that an investment banking firm be engaged to maximize shareholder value and/or seek the sale or liquidation of the company

- **Other capital stock-related** Includes any other shareholder-sponsored proposals related to the capital stock of the company

- **Other maximize shareholder value-related** Other shareholder-sponsored proposals requesting specific action be taken to enhance shareholder value not otherwise categorized
- **Remove director(s)** To remove one or more directors from the board

  This proposal usually appears at a special meeting or through a written consent solicitation, and it is often used in conjunction with proposals to elect one or more dissident directors.
- **Repeal bylaw amendments adopted during proxy fight** To repeal any bylaw amendments adopted by the company during a proxy fight

  This proposal type is usually a precautionary measure to preempt any potential defenses that the board might adopt during a proxy fight.
- **Return capital to shareholders (dividends/buyback)** Requesting the company return cash via dividends and share repurchases/self-tender offers
- **Terminate investment advisory agreement** To terminate a closed-end fund's investment advisory agreement

  The proposal may or may not be binding. Such a proposal type is often made in order to pressure the board to reduce the fund's discount to net asset value (NAV).
- **Miscellaneous** Any shareholder-sponsored proposals not otherwise categorized in this report

For the formulation of proposals submitted under this subject category, see Appendix on p. 258.

## By topic

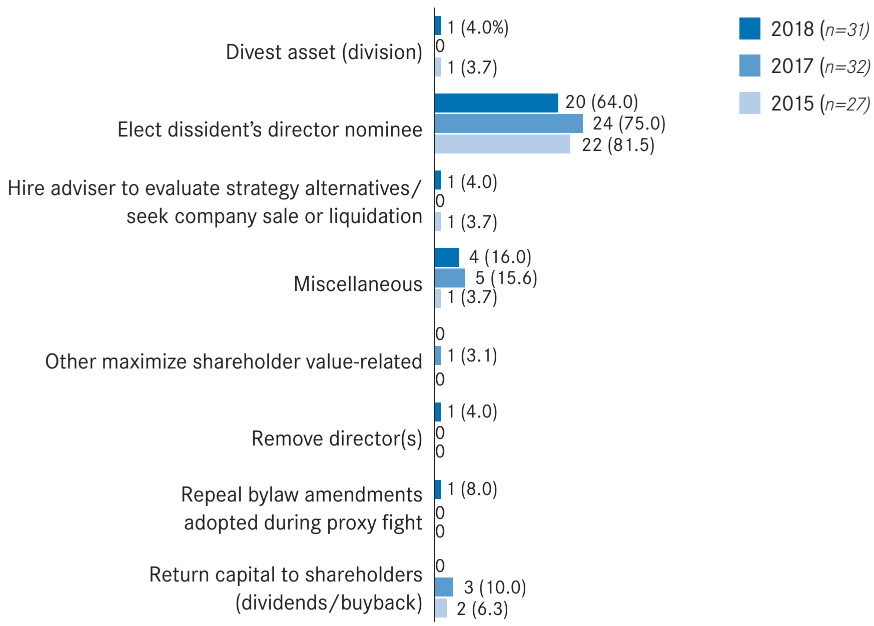
In the Russell 3000, during the examined period of 2018, shareholders voted only on 31 proposals in the all-inclusive "other shareholder proposals" category. Of those, 20 (or 64 percent) pertained to the election of a dissident's director nominee (Chart 26). These are shareholder-sponsored proposals included on the dissident's proxy card in a proxy fight mounted for the purpose of gaining board representation or control. For this reason, data on other shareholder proposals segmented and analyzed in this section of the report should be read in connection with the information discussed in "Part IV: Proxy Contests and Other Shareholder Activism Campaigns," on p. 141.

Among the "other shareholder proposals" that went to a vote during the 2018 period, one sought the engagement of an adviser to evaluate strategy alternatives, one demanded the sale of a division, and three requested the return of capital to shareholders through dividends or buybacks.

Chart 26

**Other Shareholder Proposals—by Topic (2015, 2017, and 2018)**

Number of voted shareholder proposals (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent sponsors—by topic

Table 15 ranks by topic the most frequent sponsors of other shareholder proposals. The proposals for the election of a dissident's nominee were primarily sponsored by investment advisers and hedge funds such as Carl C. Icahn and Mario Gabelli's GAMCO Asset Management. GAMCO was also the proponent of two resolutions seeking asset (division) sales, only one of which went to a vote. Individual investor Michael Salzhauer initiated a vote seeking the evaluation of strategic alternatives.

Table 15

### Other Shareholder Proposals—Most Frequent Sponsors, by Topic (2018)

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | **Elect dissident's director nominee** | | |
| 1 | Carl C. Icahn | Hedge funds | 7 |
| 2 | GAMCO Asset Management Inc. | Investment advisers | 6 |
| 3 | Wintergreen Advisers, LLC | Investment advisers | 3 |
| 4 | KBS Strategic Opportunity REIT | Investment advisers | 2 |
| | Sidus Investment Partners LP | Other stakeholders | 2 |
| | Voce Capital Management LLC | Hedge funds | 2 |
| 5 | Broadcom Limited | Corporations | 1 |
| | Land & Buildings Investment Management LLC | Hedge funds | 1 |
| | Starboard Value LP | Hedge funds | 1 |
| | **Return capital to shareholders (dividends/buyback)** | | |
| 1 | Dennis Rocheleau | Individuals | 1 |
| | James McRitchie | Individuals | 1 |
| | Myra K. Young | Individuals | 1 |

| Rank | Sponsor name | Sponsor type | Number of proposals |
|---|---|---|---|
| | **Divest Assets (division)** | | |
| 1 | GAMCO Asset Management, Inc. | Investment advisers | 2 |
| | **Hire adviser to evaluate strategy alternatives/Seek company sale or liquidation** | | |
| 1 | Michael C. Salzhauer | Individuals | 1 |
| | **Miscellaneous** | | |
| 1 | Flyers Rights Education Fund | Other stakeholders | 3 |
| 2 | GAMCO Asset Management Inc. | Investment advisers | 2 |
| 3 | Inge Vecht Prenzlau | Individuals | 1 |
| | Jeffrey L. Doppelt | Individuals | 1 |
| | Jing Zhao | Individuals | 1 |
| | Kelly Dean Warfield | Individuals | 1 |
| | Kenneth Steiner | Individuals | 1 |
| | Martin Harangozo | Individuals | 1 |
| | Richard M. Brown | Individuals | 1 |
| | Wayne E. Lipski | Individuals | 1 |
| | Voce Capital Management LLC | Hedge funds | 1 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Voting results—by topic

As shown in Table 16, shareholder proposals on the election of a dissident's director nominee received, on average, the support of 43.2 percent of shares outstanding. Neither the proposal seeking the engagement of an adviser to sell the company or the proposal to distribute cash or buy back the company's own stock received majority support. A proposal to repeal a bylaw amendment that had been passed during a previous proxy fight was approved with 84.5 percent of for-votes cast.

In Chart 27 and Table 16, voting results related to "Elect dissident's director nominee" are shown as a percentage of shares outstanding because the votes cast are divided between the dissident and management nominees. Shareholders generally only cast a vote for the nominee they support. Average voting support level for these types of proposals was 43.2 percent in 2018, up considerably from the 30.6 percent recorded in 2015.

Table 16

**Other Shareholder Proposals—Average Voting Results, by Topic (2018)**

| Topic | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Divest asset (division) | 1 | 21.5 | 77.5 | 1.0 | 18.8 | 67.6 | 0.9 | 5.7 |
| Elect dissident's director nominee | 20 | - | - | - | 43.2 | 1.3 | n/a | 2.3 |
| Hire adviser to evaluate strategy alternatives/seek company sale or liquidation | 1 | 41.8 | 49.2 | 9.0 | 35.5 | 41.8 | 7.7 | 2.7 |
| Miscellaneous | 4 | 16.0 | 74.1 | 9.9 | 12.6 | 56.3 | 7.4 | 12.4 |
| Remove director(s) | 1 | 33.8 | 64.6 | 1.5 | 21.2 | 40.6 | 1.0 | 2.4 |
| Repeal bylaw amendments adopted during proxy fight | 1 | 84.5 | 14.0 | 1.5 | 75.8 | 12.6 | 1.3 | 2.4 |
| Return capital to shareholders (dividends/buyback) | 3 | 4.0 | 95.4 | 0.6 | 2.2 | 62.9 | 0.3 | 15.3 |
| | *n=31* | 23.4 | 71.6 | 5.0 | 34.6 | 19.4 | 1.3 | 5.0 |

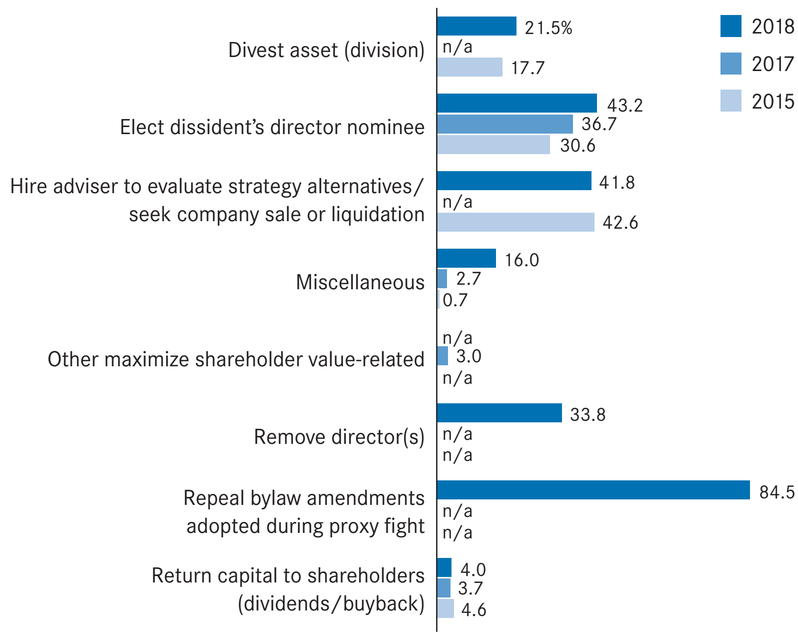
Note: Results for shareholder proposals to elect a dissident's director nominee are shown as a percentage of shares outstanding because the votes cast are divided between the dissident and management nominees. Shareholders generally only cast one vote for the nominee they support. Percentages may not add up to 100 due to rounding.

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

Chart 27

## Other Shareholder Proposals, Average Support Level, by Topic (2015, 2017, and 2018)

*For* votes as percentage of votes cast*




* Results reported for elect dissident's director nominee proposals are *for* votes as a percentage of shares outstanding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## PART III

# Management Proposals

Management proposals are company-formulated resolutions submitted to the vote of shareholders at the AGM, when applicable state corporate laws or the company's articles of incorporation or bylaws require shareholder approval on a certain business action. Companies routinely file management proposals on a variety of resolutions for which they solicit shareholder votes, including the ratification of auditors, the election of members of the board of directors, and the advisory vote on executive compensation.

This section reviews the volume, subjects, and voting results of management proposals filed at SEC-registered companies. The major highlight of this analysis is the increase in the volume of management proposals seeking governance-related changes (from board declassification to majority voting, and from the right to call special meetings to the elimination of supermajority requirements) that would normally occur in response to the adoption of a shareholder proposal. These proposals were often prompted by ISS voting guidelines on board responsiveness, following the majority support received in the previous proxy season by a precatory shareholder proposal on the same topic (see "Board Responsiveness," on p. 61).

In the eight year of management-proposed say-on-pay votes at most US companies, say on pay continues to function as a catalyst to greater company awareness of current compensation issues and more engagement and transparent communication with investors. Only one company in the Russell 3000 failed to win shareholder support for their say-on-pay proposals for any of the eight years.

## Volume

### Per company

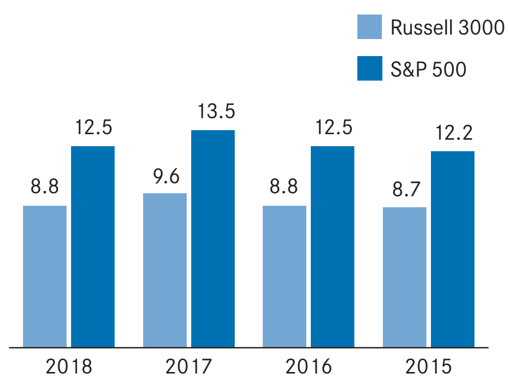
As shown in Chart 28, in the Russell 3000 sample examined for the purpose of this report, management filed on average 8.8 proposals per company, down slightly from the average of 9.6 proposals per company submitted in the same period in 2017 but in line with the numbers for 2016 and 2015. The average was calculated by dividing the total number of management proposals submitted in the sample period (Chart 29) by the total number of shareholder meetings held by index companies during the same period (Chart 1, p. 24).

The decline was greater among the large-cap sample of S&P 500 companies, where the average number of management proposals per company grew from 13.5 in 2017 to 12.5 in 2018. The finding denotes that management proposal volume per company is independent of market capitalization.

Chart 28

**Average Management Proposal Volume per Company—by Index (2015-2018)**

Average number of management proposals per company




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By index

In both indexes, management filed fewer proposals in 2018 than in 2017, but more than in 2016 and 2015 (Chart 29). Many shareholder advisory votes on the frequency of say-on-pay vote were not held in 2012 and 2013, and then in 2015 and 2016 since the law required them for most companies in 2011 and then at least once every six years. Moreover, while the vast majority of companies adopted an annual frequency for their say-on-pay votes, some companies opted to hold those votes every two or every three years. Therefore, the 2017 season marked the second since 2011 where companies adopting a triennial frequency for their say-on-pay proposals put them to a shareholder vote.

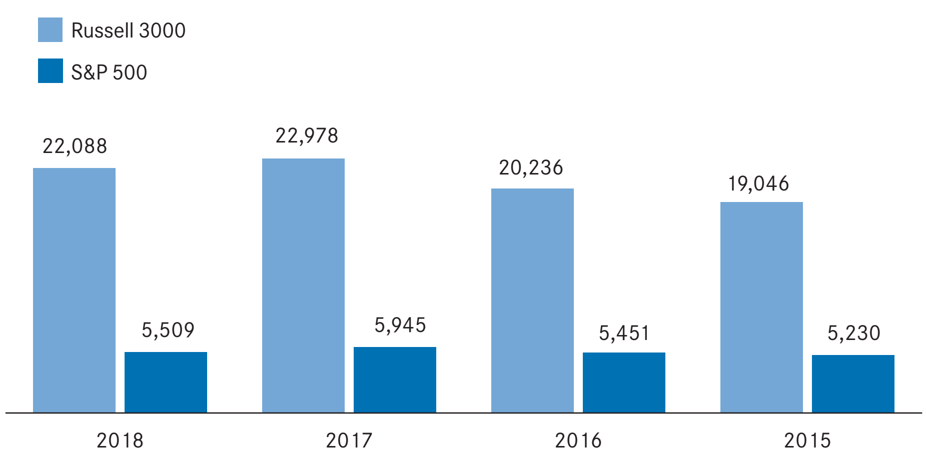
Proposal volume among the Russell 3000 sample decreased 3.8 percent in 2018 (890 proposals). Most of that is attributable to the much lower number of say-on-frequency proposals introduced by management for the reasons described above (Chart 31, p. 102). On the other hand, the volume of management proposals on corporate governance and in the other, catch-all category grew from 2017. In particular, Table 21 shows an uptick in management proposals related to the election of management's director nominees (4.1 percent higher volume, for a total of 627 proposals), which may reflect the movement by some companies in the Russell 3000 toward a declassified board model where all directors stand for election annually (see "Issues in Focus," p. 197). For an analysis of management proposals by subject, see Chart 31.

Among the S&P 500 sample, proposal declined 7.3 percent to 5,509. Again, the decline was largely due to the year-over-year drop in the number of proposals related to the frequency of the say on pay vote, which for most companies was held for the second time in 2017.

Chart 29

**Management Proposal Volume—by Index (2015-2018)**

Number of management proposals




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By industry

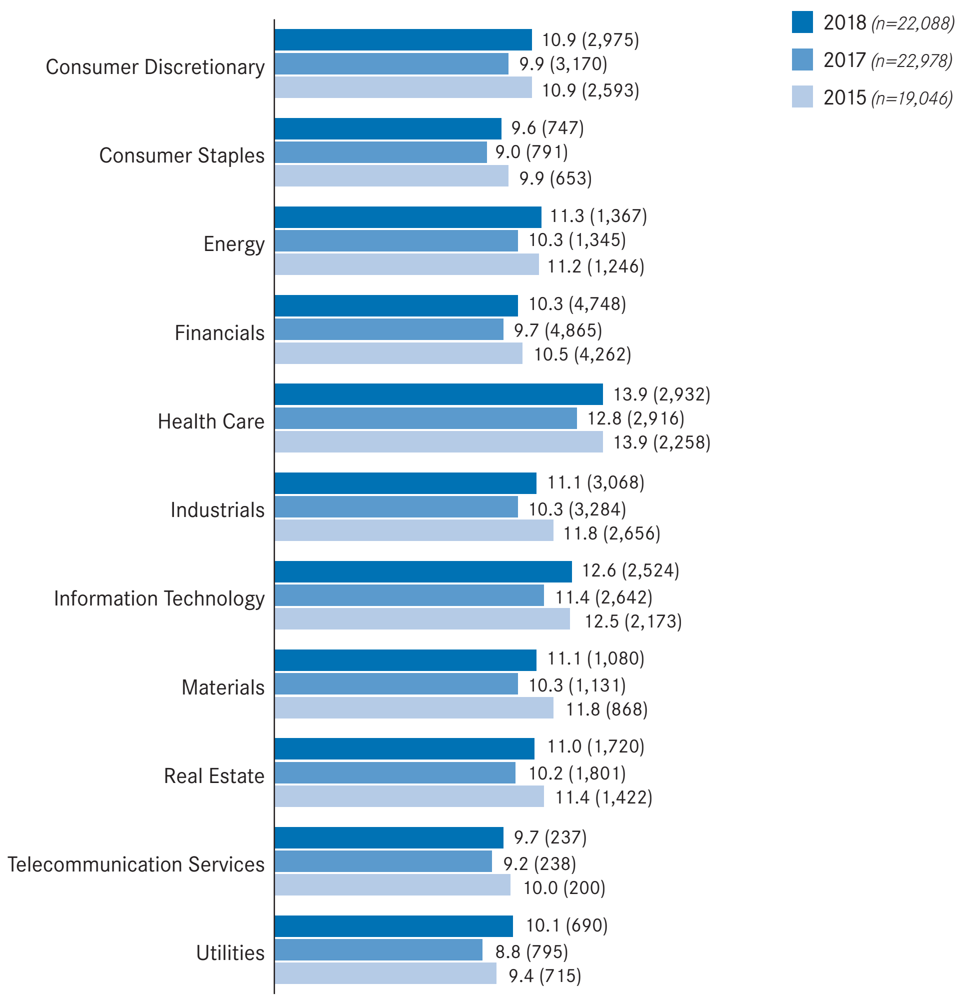
As shown in Chart 30, the highest concentration of management proposals was in the health care industry (13.9 proposals per company, on average) and the lowest among companies in the consumer staples industry category (9.6 proposals per company). Most other industries do not depart significantly from the index average of 11.1 proposals per company. The average by industry was calculated by dividing the number of management proposals submitted in each industry category in the sample period by the number of AGMs held by companies in each industry during the same period (Chart 2, p. 24).

Companies in the utilities industry reported the largest increase in the average number of management proposals since 2017 (from 8.8 proposals per company in 2017 to 10.1 proposals per company in 2018). None of the business sectors showed a decrease from the prior year.

Chart 30

**Management Proposal Volume—by Industry (2015, 2017, and 2018)**

Average number of management proposals per company (number of proposals)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By subject

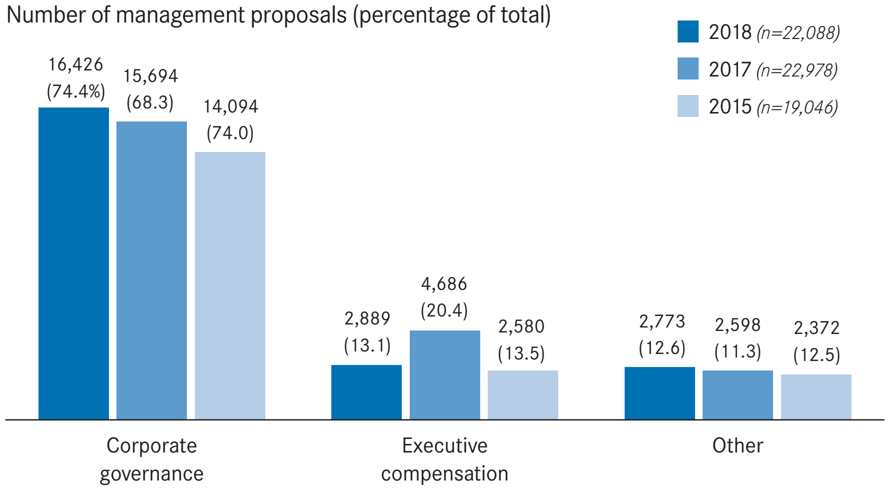
Chart 31 documents the historic variation in the volume of management proposals by subject. The overall volume of proposals declined by nearly 4 percent from the levels documented in 2017, driven by the 2018 drop in (say-on-frequency) executive compensation proposals. Overall, management proposals related to executive compensation dropped 38.3 percent from 2017 to 2018, which was due to the three-year periodicity of the say-on-frequency vote (last held by most companies in 2017); in fact, it is not a coincidence that the number of such proposals in 2018 was consistent with the one registered in 2015.

The volume of governance proposals has grown by nearly 13 percent since 2010, as the comparison with data included in an earlier edition of this report illustrates. As mentioned, this number was driven by the gradual increase in the number of proposals related to the election of management's director nominees—up almost 12 percent from the level recorded in 2010 (or by 1,681 voted proposals) as well as by the pressure that the board responsiveness guidelines from ISS is exercising on companies to preempt with management proposals a negative voting recommendation on director elections.

Chart 31

**Management Proposal Volume–by Subject (2015, 2017, and 2018)**

Number of management proposals (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Subjects

For the purpose of this report, management proposals are categorized based on the four subjects already described in Part II: corporate governance, executive compensation, social and environmental policy, and other proposals.

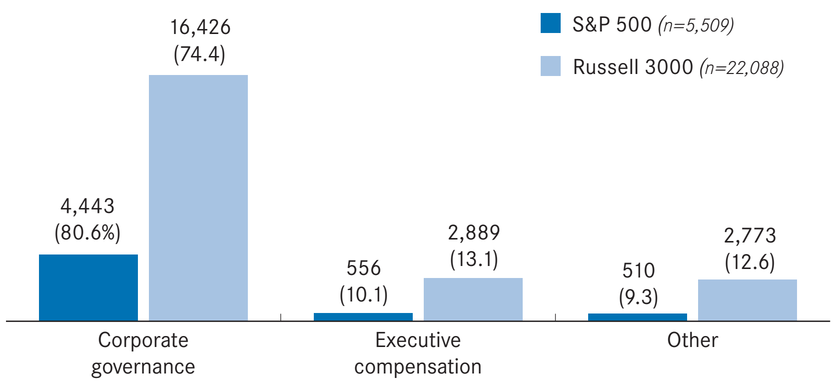
### By index

The subject analysis by index shows the distribution of management proposal subjects in the Russell 3000 and S&P 500 sample (Chart 32). During the examined 2018 period, management of S&P 500 companies submitted a somewhat higher proportion of corporate governance proposals and a slightly lower proportion of executive compensation proposals. No management proposals were filed on social and environmental policy in either index.

Chart 32

**Management Proposal Subject–by Index (2018)**

Number of management proposals (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By industry

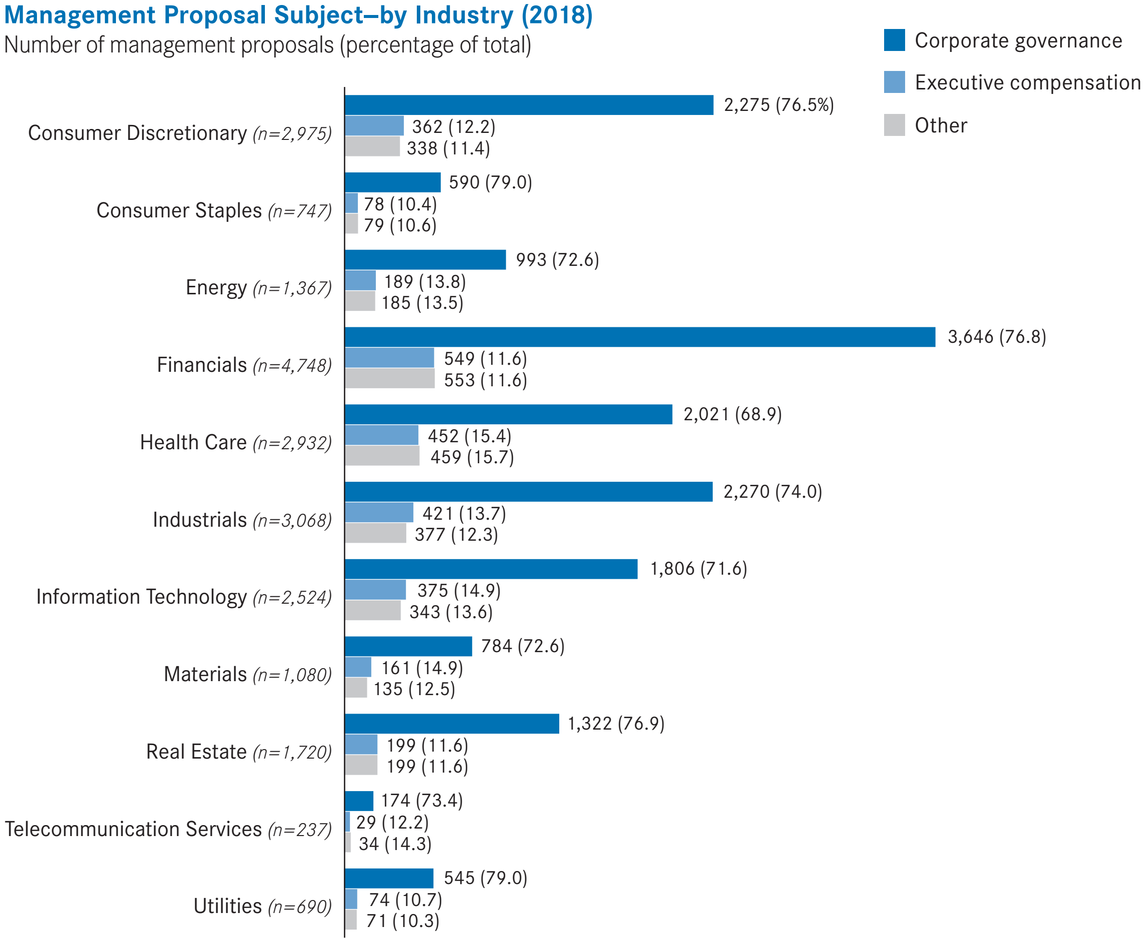
Chart 33 illustrates the distribution of management proposal subjects within each industry. For example, industries with the highest proportion of corporate governance proposals were utilities and consumer staples (79 percent each), followed by real estate (76.9 percent).

Health care companies had the highest proportion of executive compensation proposals (15.4 percent) as well as of proposals in the all-inclusive other category (15.7 percent) and the lowest percentage of governance-related proposals (68.9 percent).

Chart 33

**Management Proposal Subject–by Industry (2018)**

Number of management proposals (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Voting Results

This section extends the management proposal analysis to average voting results, including the percentage of management proposals reported by the company as passed. In the tables in this section, data on average votes *for* and *against* a proposal as a percentage of votes cast (including abstentions and excluding broker nonvotes) is supplemented with data on results as a percentage of shares outstanding. This additional information highlights the extent of broker nonvotes and offers a more comprehensive assessment of the level of support obtained by these proposals.

The total number of voted management proposals discussed in this section may differ slightly from the total management proposal volume figures discussed earlier (and illustrated in Charts 29 to 31, on pp. 100–102). The discrepancy is due to proposals that did not ultimately go to a vote or proposals for which voting results were not disclosed or were reported as pending as of July 8, 2018. In addition, where noted, for management proposals at companies that have a multishare system where certain classes of stock only vote on certain proposal types, results as a percentage of shares outstanding are not included because they would skew support level statistics.

### By index

Table 17 displays the average voting results by index. *For* and *against* votes as well as abstention levels are calculated both as a percentage of votes cast and as a percentage of shares outstanding. The analysis shows a similar distribution of levels of support, objection, and abstention across both indexes. Nonvotes constitute more than 8.5 percent of shares outstanding in both indexes and reached 9.3 percent in the Russell 3000.

Table 17

**Management Proposal Average Voting Results—by Index (2018)**

| Index | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Russell 3000 | 21,837 | 96.9 | 2.8 | 0.4 | 76.4 | 2.1 | 0.3 | 9.3 |
| S&P 500 | 5,493 | 96.6 | 2.9 | 0.5 | 78.6 | 2.4 | 0.2 | 8.7 |

Note: Total voted proposals includes "say-on-pay frequency" proposals, but results for those proposals are not included in averages because they are not for/against/abstain votes. For management proposals at companies that have a multishare system where certain classes of stock only vote on certain proposal types, results as a percentage of shares outstanding are not included because they would skew support level statistics. Percentages may not add to 100 due to rounding.

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By industry

The voting analysis by industry (Table 18) shows that, despite an average support level across industries of 94.7 to 97.7 percent of votes cast, the average level of nonvotes was highest among companies in the telecommunications services sector (12.4 percent) and was more than 10 percent in three other industries.

Table 18

**Management Proposal Average Voting Results—by Industry (2018)**

| Industry | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Consumer discretionary | 2,943 | 97.1 | 2.7 | 0.2 | 81.4 | 2.2 | 0.2 | 8.0 |
| Consumer staples | 744 | 97.7 | 2.1 | 0.2 | 73.6 | 1.6 | 0.1 | 9.1 |
| Energy | 1,335 | 95.7 | 3.7 | 0.5 | 74.3 | 2.8 | 0.4 | 8.8 |
| Financials | 4,711 | 97.4 | 2.2 | 0.3 | 75.2 | 1.7 | 0.2 | 10.3 |
| Health Care | 2,908 | 96.1 | 3.5 | 0.4 | 72.2 | 2.5 | 0.2 | 11.5 |
| Industrials | 3,020 | 97.1 | 2.6 | 0.3 | 79.5 | 2.1 | 0.3 | 7.8 |
| Information Technology | 2,508 | 96.7 | 2.7 | 0.6 | 76.3 | 2.1 | 0.2 | 8.4 |
| Materials | 1,046 | 96.7 | 2.8 | 0.5 | 77.6 | 2.3 | 0.3 | 7.8 |
| Real Estate | 1,712 | 96.4 | 3.0 | 0.5 | 78.0 | 2.4 | 0.4 | 8.5 |
| Telecommunication services | 226 | 94.7 | 4.8 | 0.6 | 63.4 | 2.9 | 0.3 | 12.4 |
| Utilities | 684 | 97.7 | 1.9 | 0.3 | 74.2 | 1.5 | 0.3 | 11.3 |

Note: Total voted proposals includes "say-on-pay frequency" proposals, but results for those proposals are not included in averages because they are not for/against/abstain votes. For management proposals at companies that have a multishare system where certain classes of stock only vote on certain proposal types, results as a percentage of shares outstanding are not included because they would skew support level statistics. Percentages may not add to 100 due to rounding.

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By subject

The voting result analysis by subject (Table 19) shows that management proposals on executive compensation had the lowest average support levels: on average, 90.3 percent of votes cast, compared to 97.8 percent for corporate governance proposals, and 97.8 percent for proposals in the all-inclusive other category. Although support levels remain high even in this category, the finding confirms that issues related executive compensation remain among the most contentious, with some shareholders using those votes to express dissatisfaction with management performance.

To be sure, this vote of nonconfidence may be the only way for many retail shareholders to voice their concerns. Executive compensation and corporate governance proposals registered disproportionately higher average levels of nonvotes than those in the all-inclusive "other" category: almost 11 percent of outstanding shares, compared to 0.4 percent.

Table 19

### Management Proposal Average Voting Results—by Subject (2018)

| Subject | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Corporate governance | 16,282 | 97.8 | 1.9 | 0.3 | 75.4 | 1.5 | 0.2 | 10.5 |
| Executive compensation | 2,857 | 90.3 | 9.0 | 0.8 | 71.5 | 6.9 | 0.6 | 10.8 |
| Social and environmental policy | 0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Other | 2698 | 97.8 | 1.7 | 0.4 | 87.2 | 1.5 | 0.4 | 0.4 |

Note: Total voted proposals includes "say-on-pay frequency" proposals, but results for those proposals are not included in averages because they are not for/against/abstain votes. For management proposals at companies that have a multishare system where certain classes of stock only vote on certain proposal types, results as a percentage of shares outstanding are not included because they would skew support level statistics. Percentages may not add to 100 due to rounding.

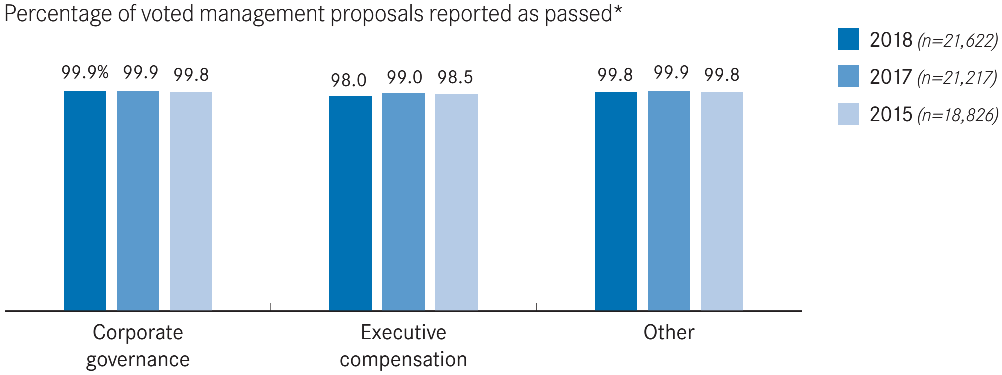
*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

For each subject examined for the purpose of this report, Chart 34 illustrates the historical trend in the number and percentage of management proposals reported as passed by Russell 3000 companies. The average is lowest in the executive compensation category, which include the periodic say-on-pay proposals (98 percent).

Chart 34

**Management Proposals Reported as Passed—by Subject (2015, 2017, and 2018)**

Percentage of voted management proposals reported as passed*




* Based on total management proposals for which voting results were disclosed, not those reported only as pass/fail, not voted on, or pending/never disclosed.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Management Proposals on Executive Compensation

In the eighth year of say on pay, average support was high and consistent with the one recorded during prior proxy seasons: on average, 90.3 among 1,976 companies in the Russell 3000, a percentage that has been fairly consistent over the years (by way of comparison, it was 90.4 percent during the same period in 2014). During the examined period in 2018, 53 companies reported failed say-on-pay votes (2.7 percent), compared with 28 out of 2,020 (1.4 percent) during the same period in 2017. The results of eight years of say on pay demonstrate that companies with high votes cannot assume that they will receive overwhelming support the next year, especially if they had poor stock performance or made changes to their pay plans that could be viewed as problematic by investors or proxy advisors. Only one Russell 3000 companies has failed all eight years of say on pay: Tutor Perini Corporation (NYSE: TPC), where 62 percent of votes cast were *against* the executive compensation proposal in 2018, following dismal voting performance even in prior seasons.

For the purpose of this report, management-sponsored proposals on executive compensation are categorized based on the following topics:

- **Advisory vote on compensation ("say on pay")** Filed in accordance with Section 951 of the Dodd-Frank Act (and implemented under Rule 14a-21(a) of Securities Exchange Act of 1934), which requires public companies with meetings on or after January 21, 2011, to provide shareholders, at least once every three years, a nonbinding vote on the compensation of executive officers as disclosed in the company's proxy statement.

- **Advisory vote on the frequency of compensation vote ("say-on-pay frequency")** Filed in accordance with Section 951 of the Dodd-Frank Act (and implemented under Rule 14a-21(b) of Securities Exchange Act of 1934), which requires public companies holding shareholder meetings on or after January 21, 2011, to provide a nonbinding shareholder vote on the frequency of their say-on-pay vote on executive compensation (i.e., whether on an annual, biennial, or triennial basis). Under the law, this frequency vote (also referred to as "say when on pay") must be held at least once every six years.
- **Advisory vote on golden parachute compensation ("say on parachutes")** Filed in accordance with Section 951 of the Dodd-Frank Act (and implemented under Rule 14a-21(c) of Securities Exchange Act of 1934), which requires that—at meetings where shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all corporate assets—management obtain a separate nonbinding shareholder vote on the "golden parachute" compensation arrangements related to the transaction being approved. The term "golden parachute" refers to any agreement or understanding under which, upon the completion of a business combination transaction, executive officers are being granted severance payments, accelerated vesting of stock awards and options, perquisites, and tax reimbursements. Subject to limited exceptions, companies are required to introduce proposals on golden parachute compensation in proxy statements and other schedules and forms filed on or after April 25, 2011.
- **Other executive compensation** Any other management proposal regarding executive compensation. Typically, this category includes proposals to approve the adoption or amendment of equity incentive plans, employee stock purchase plans, and stock option plans.

For the formulation of proposals submitted under this subject category, see Appendix on p. 258.

## By topic

Data in Chart 35 include proposals for which detailed voting results were reported as of July 8, 2018; proposals reported only as "pass/fail," "not voted on," or "pending/never disclosed" are excluded from this calculation.

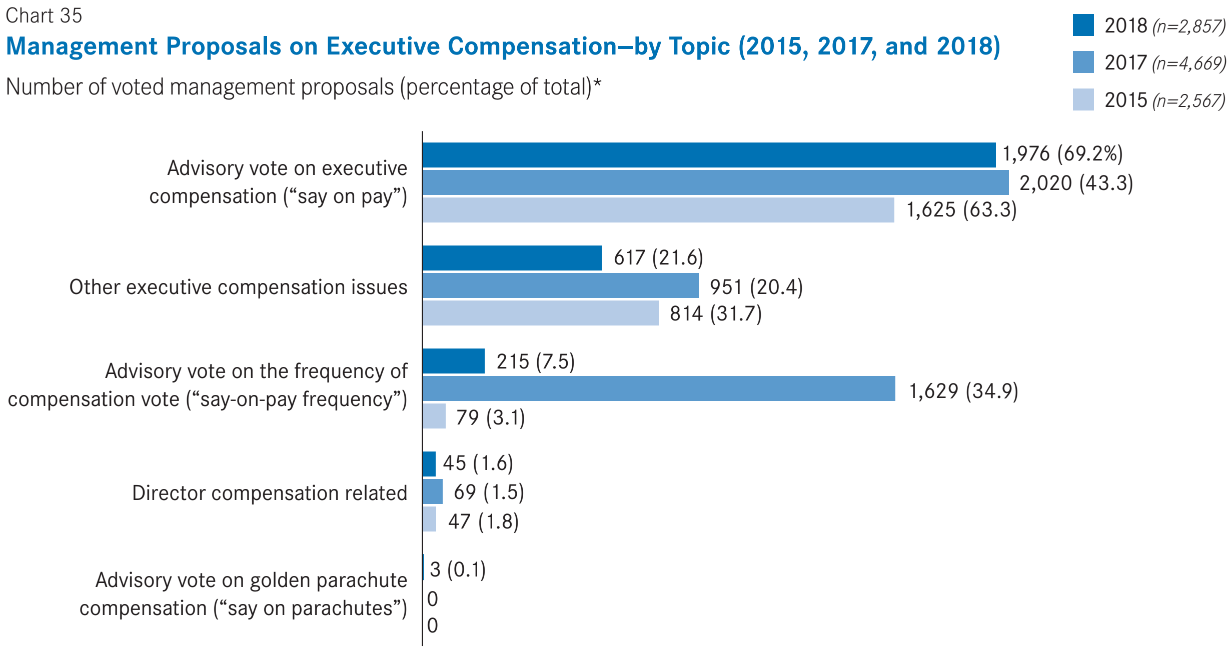
With say on pay dominating the executive compensation proposals sponsored by management, the volume of board-backed compensation proposals unrelated to the advisory vote mandated by the Dodd-Frank Act has declined to 881 in 2018, down nearly 18 percent from the level recorded in 2010 (1,076 proposals).

The number of say-on-pay proposals at Russell 3000 companies varies marginally from year to year due to the decision by a minority of companies to hold their advisory vote less frequently than annually. For example, management filed 2,020 say-on-pay proposals in the January 1–June 30, 2017, period, which constituted the end of the second triennial period since the introduction of say on pay in 2011; and the number declined to 1,976 this year. It is therefore not a coincidence that The Conference Board had already reported the exact same number of say-on-pay resolutions (2,020) in an earlier edition of this study, for the 2014 proxy season, or when the first triennial period had ended. In addition, in the 2014 proxy season, the say-on-pay mandate has become fully effective to all companies, including those with a capitalization of less than $75 million.

Chart 35

**Management Proposals on Executive Compensation—by Topic (2015, 2017, and 2018)**

Number of voted management proposals (percentage of total)*




* Totals only include proposals for which detailed voting results were reported, not those reported only as pass/fail, not voted on, or pending/never disclosed.

Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Voting results—by topic

Table 20 contains average voting results regarding management proposals on executive compensation voted at Russell 3000 companies in the sample period. In 2018, the eighth year of widespread implementation of say on pay, companies continued to register high levels of support for their executive compensation plans, averaging 90.3 percent of votes cast. However, when broker nonvotes are factored in, average support declines to 71.8 percent of the shares entitled to vote.

Management proposals related to other executive compensation issues (including advisory votes on golden parachutes) were also widely supported.

The table does not display results for say-on-pay frequency proposals, which allow shareholders to vote in favor of holding a say-on-pay consultation every one, two, or three years and are not for/against/abstain votes. According to data on governance practices jointly released by The Conference Board, NASDAQ OMX, and NYSE following the introduction of the new regulation, more than 75 percent of companies across industries currently hold annual say-on-pay voting. Approximately 54 percent of companies with annual revenue of $100 million or less have opted for a policy where executive compensation is submitted to a say-on-pay vote every three years, while none of the largest financial services companies with assets valued at $100 billion or higher adopts this practice.[1]

On voted say-on-pay proposals, also see "The Say-on-Pay Vote at Russell 3000 Companies" on p. 112, where the findings in Table 20 are supplemented with information on the companies that failed to obtain majority shareholder support for their advisory votes, as well as those that received the support of less than 70 percent of votes cast.

Table 20

**Management Proposals on Executive Compensation—Average Voting Results, by Topic (2018)**

| Topic | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Advisory vote on executive compensation ("say on pay") | 1,976 | 90.3 | 8.9 | 0.8 | 71.8 | 6.9 | 0.6 | 10.5 |
| Advisory vote on the frequency of compensation vote ("say-on-pay frequency") | 215 | – | – | – | – | – | – | – |
| Advisory vote on golden parachute compensation ("say on parachutes") | 3 | 91.0 | 8.2 | 0.8 | 74.5 | 6.5 | 0.6 | 7.5 |
| Other executive compensation issues | 617 | 90.3 | 9.1 | 0.7 | 70.3 | 6.7 | 0.5 | 11.9 |
| Director compensation related | 45 | 89.9 | 9.4 | 0.7 | 72.7 | 8.2 | 0.5 | 10.2 |
| Other executive compensation | 1 | 99.4 | 0.4 | 0.2 | 82.9 | 0.3 | 0.1 | 6.7 |

Note: Total voted proposals includes "say-on-pay frequency" proposals, but results for those proposals are not included in averages because they are not for/against/abstain votes. For management proposals at companies that have a multishare system where certain classes of stock only vote on certain proposal types, results as a percentage of shares outstanding are not included because they would skew support level statistics. Percentages may not add to 100 due to rounding.

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

1 Matteo Tonello, *Director Compensation and Board Practices: 2013 Edition*, The Conference Board, February 2013. The study is based on a survey of 359 SEC-registered corporations conducted by The Conference Board in collaboration with NASDAQ OMX and NYSE.

## The Say-on-Pay Vote at Russell 3000 Companies

Exhibits 3 (pp. 114–116) and 4 (pp. 117–124) supplement the average voting results included in Table 18 (p. 106) with, respectively, information on the companies that failed their say-on-pay vote and those that received the support of less than 70 percent of votes cast. In the exhibit, findings from the 2018 proxy season are compared with the corresponding sample period in 2017.

### Failed say on pay

Of companies in the Russell 3000 that held meetings between January 1 and June 30, 2018, and that reported detailed say-on-pay vote results as of July 8, 2018 (a total of 1,976 companies), 53 executive compensation plans (or 2.7 percent) failed to receive the majority support of shareholders. This compares with 28 companies that failed those votes during the same period in 2017 and, according to an earlier edition of this study, 51, 47 and 51 companies that failed those votes during the same period in 2014, 2013 and 2012, respectively. Twelve companies that reported failed votes in 2018 also had failed votes in 2017. Their names are highlighted in blue in Exhibit 3. They include: IMAX Corp. (NYSE: IMAX); Universal Insurance Holdings, Inc. (NYSE: UVE); Medifast, Inc. (NYSE: MED); Nabors Industries Ltd. (NYSE: NBR); Hospitality Properties Trust (NASDAQ: HPT); Whitestone REIT (NYSE: WSR); New York Community Bank (NYSE: NYCB); and Tutor Perini Corporation (NYSE: TPC). Tutor Perini Corporation is the only company in the Russell 3000 that has failed all eight years of say-on-pay advisory votes. Nabors Industries Ltd. had four consecutive failed votes as of 2014, received 65.3 percent of for votes at its 2015 annual general meeting (AGM), then failed the advisory vote again in 2016 (with a mere 36 percent of votes cast in favor of the compensation plan proposed by management), in 2017 (where the percentage of favorable votes cast increased only slightly, to 42.3), and in 2018 (with 62 percent of votes cast against the say-on-pay proposal).

There is a significant year-over-year turnover in failed votes and, aside from the cases indicated above, all companies that failed their say-on-pay votes in 2018 had successful votes in 2017, in most cases by wide margins. This is an indication that companies cannot lower their guard when it comes to compensation oversight and need to ensure ongoing transparency, not only by communicating any new compensation decision made by the board but also by providing reassurance that the compensation policy continues to be aligned with the long-term business strategy of the organization.

The average support level among the companies that did not obtain majority support on their advisory vote on executive compensation was 36.9 percent of votes cast. Among companies that failed the 2018 say-on-pay vote, Nuance Communications, Inc. (NASDAQ: NUAN) reported the lowest support level (a mere 9.5 percent of votes cast). The incidence of nonvotes also varied sharply within the group, from a high of 38.7 percent of shares outstanding at Chesapeake Energy Corporation (NYSE: CHK) to a low of 0 percent at Waterstone Financial, Inc. (NASDASQ: WSBF).

*(continued on next page)*

## The 70 percent threshold

Another 113 companies in the Russell 3000 (5.7 percent) reported passing say-on-pay proposals with support of less than 70 percent of votes cast, the level at which proxy advisory firms may scrutinize more closely their compensation plans and evaluate issuing a future negative recommendation. This finding is in line with the 5.6 percent of companies with votes under 70 percent seen during the same period in 2017.

The list includes Motorola Solutions, Inc. (NYSE: MSI); Humana, Inc. (NYSE: HUM); Mylan N.V. (NASDAQ: MYL); Weight Watchers International, Inc. (NYSE: WTW); Etsy, Inc. (NASDAQ: ETSY); Harley-Davidson, Inc. (NYSE: HOG); Unisys Corporation (NYSE: UIS); Netflix, Inc. (NASDAQ: NFLX); and Six Flags Entertainment Corporation (NYSE: SIX). Moreover, 19 of the companies below the 70 percent support threshold in 2018 were below that level in 2017; their names are highlighted in blue in Exhibit 4. Their boards will inevitably need to reopen the discussion on pay for performance and either persuade investors that their compensation policies are sound and fit the company's strategic needs or revisit those policies. In fact, many of the companies on this gray list have already made additional filings to integrate information on their approach to executive pay or to dispute ISS's characterization of their compensation choices.

**A catalyst to improved communication** In the eighth yearly iteration of say on pay, the advisory vote continued to function as a catalyst to greater awareness of current compensation issues and more engagement and transparent communication with shareholders. Efforts by companies that received less than 70 percent of votes cast in 2017 to engage with shareholders and improve transparency and communication around say on pay paid off in 2018. In particular:

- For the Russell 3000 companies that received less than 70 percent support levels in 2017 (Exhibit 4) and that reported 2018 AGM voting results as of July 8, 2018, the overall average level of support showed an improvement of more than 9 percentage points.
- Only one Russell 3000 company in the sample failed its say-on-pay votes eight years in a row and only another company failed it in seven out of eight years, whereas the others made the improvements to their executive compensation plans required for a majority of investors to revisit their position and cast a favorable advisory votes.

Exhibit 3

## Say-on-Pay Management Proposals—Failed Proposals (2017-2018)

| Company | Ticker | Industry | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **2018** | | | | | | | | | | |
| Cogent Communications Holdings Inc | CCOI | Telecommunication Services | Fail | 49.6 | 50.2 | 0.1 | 43.8 | 44.4 | 0.1 | 5.4 |
| Jefferies Financial Group Inc. | JEF | Financials | Fail | 49.5 | 47.2 | 3.3 | 40.4 | 38.5 | 2.7 | 9.3 |
| Customers Bancorp, Inc. | CUBI | Financials | Fail | 49.5 | 45.8 | 4.7 | 40.7 | 37.7 | 3.9 | 9.0 |
| Waterstone Financial, Inc. | WSBF | Financials | Fail | 49.2 | 49.9 | 0.9 | 36.6 | 37.0 | 0.7 | 0.0 |
| Fluidigm Corporation | FLDM | Health Care | Fail | 49.1 | 50.8 | 0.1 | 39.5 | 40.8 | 0.1 | 11.3 |
| AECOM | ACM | Industrials | Fail | 48.1 | 51.4 | 0.5 | 40.4 | 43.1 | 0.4 | 6.6 |
| Palatin Technologies, Inc. | PTN | Health Care | Fail | 48.0 | 51.2 | 0.8 | 10.1 | 10.8 | 0.2 | 38.6 |
| Rambus Inc. | RMBS | Information Technology | Fail | 46.0 | 50.7 | 3.3 | 34.9 | 38.5 | 2.5 | 14.8 |
| USG Corporation | USG | Industrials | Fail | 45.9 | 52.6 | 1.4 | 39.0 | 44.7 | 1.2 | 2.8 |
| Virtus Investment Partners, Inc. | VRTS | Financials | Fail | 45.8 | 53.3 | 0.8 | 38.0 | 44.2 | 0.7 | 5.5 |
| Mattel, Inc. | MAT | Consumer Discretionary | Fail | 45.7 | 54.2 | 0.1 | 38.4 | 45.5 | 0.1 | 9.1 |
| Boingo Wireless, Inc. | WIFI | Telecommunication Services | Fail | 45.3 | 54.5 | 0.2 | 36.8 | 44.2 | 0.1 | 9.5 |
| Trinseo SA | TSE | Materials | Fail | 44.5 | 55.2 | 0.3 | 38.0 | 47.2 | 0.2 | 8.8 |
| Mondelez International, Inc. | MDLZ | Consumer Staples | Fail | 44.4 | 55.0 | 0.6 | 31.2 | 38.7 | 0.4 | 12.1 |
| Commercial Metals Company | CMC | Materials | Fail | 43.8 | 54.5 | 1.7 | 37.5 | 46.7 | 1.4 | 7.8 |
| Walt Disney Company | DIS | Consumer Discretionary | Fail | 43.6 | 52.2 | 4.2 | 29.9 | 35.9 | 2.9 | 17.0 |
| IMAX Corp. | IMAX | Consumer Discretionary | Fail | 43.2 | 56.8 | 0.0 | 34.3 | 45.1 | 0.0 | 7.1 |
| LivePerson, Inc. | LPSN | Information Technology | Fail | 42.5 | 56.8 | 0.7 | 25.3 | 33.8 | 0.4 | 11.7 |
| Chesapeake Energy Corporation | CHK | Energy | Fail | 42.3 | 51.4 | 6.3 | 18.2 | 22.2 | 2.7 | 38.7 |
| Halliburton Company | HAL | Energy | Fail | 42.0 | 56.6 | 1.3 | 30.8 | 41.6 | 1.0 | 10.6 |
| Universal Insurance Holdings, Inc. | UVE | Financials | Fail | 41.8 | 57.4 | 0.8 | 32.9 | 45.1 | 0.6 | 14.9 |
| Tanger Factory Outlet Centers, Inc. | SKT | Real Estate | Fail | 41.8 | 57.8 | 0.5 | 31.3 | 43.4 | 0.3 | 17.3 |
| Preferred Bank | PFBC | Financials | Fail | 41.7 | 58.3 | 0.0 | 32.6 | 45.6 | 0.0 | 12.0 |
| Digimarc Corporation | DMRC | Information Technology | Fail | 41.5 | 57.3 | 1.2 | 20.5 | 28.3 | 0.6 | 35.2 |
| Medifast, Inc. | MED | Consumer Staples | Fail | 41.0 | 58.6 | 0.4 | 31.9 | 45.7 | 0.3 | 13.7 |
| Nabors Industries Ltd. | NBR | Energy | Fail | 40.7 | 59.2 | 0.2 | 31.0 | 45.1 | 0.1 | 12.5 |
| Huron Consulting Group Inc. | HURN | Industrials | Fail | 39.8 | 60.1 | 0.1 | 35.0 | 52.8 | 0.1 | 5.8 |
| Nexstar Media Group, Inc. | NXST | Consumer Discretionary | Fail | 39.5 | 58.3 | 2.3 | 33.3 | 49.2 | 1.9 | 8.9 |

Companies that are highlighted in blue also failed their Say on Pay votes in 2017.

*continued on next page*

Exhibit 3

## Say-on-Pay Management Proposals—Failed Proposals (2017-2018) (continued)

| Company | Ticker | Industry | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **2018** | | | | | | | | | | |
| Hospitality Properties Trust | HPT | Real Estate | Fail | 39.1 | 54.9 | 6.0 | 30.6 | 42.9 | 4.7 | 15.9 |
| Qualys, Inc. | QLYS | Information Technology | Fail | 38.8 | 61.1 | 0.1 | 32.7 | 51.5 | 0.0 | 7.9 |
| Tutor Perini Corporation | TPC | Industrials | Fail | 37.9 | 62.0 | 0.1 | 33.1 | 54.0 | 0.1 | 7.0 |
| G-III Apparel Group, Ltd. | GIII | Consumer Discretionary | Fail | 37.0 | 62.8 | 0.2 | 33.3 | 56.6 | 0.1 | 3.5 |
| Gentherm Incorporated | THRM | Consumer Discretionary | Fail | 36.6 | 63.3 | 0.1 | 33.5 | 57.9 | 0.1 | 4.2 |
| Whitestone REIT | WSR | Real Estate | Fail | 36.2 | 61.0 | 2.8 | 25.4 | 42.8 | 2.0 | 0.0 |
| Zoe's Kitchen, Inc. | ZOES | Consumer Discretionary | Fail | 35.3 | 43.5 | 21.2 | 28.1 | 34.6 | 16.9 | 15.5 |
| iStar Inc. | STAR | Real Estate | Fail | 35.1 | 53.3 | 11.6 | 26.1 | 39.6 | 8.6 | 18.3 |
| FCB Financial Holdings, Inc. | FCB | Financials | Fail | 33.1 | 66.6 | 0.3 | 29.0 | 58.3 | 0.2 | 3.8 |
| Goodrich Petroleum Corporation | GDP | Energy | Fail | 33.0 | 41.1 | 25.9 | 25.7 | 32.1 | 20.2 | 6.7 |
| New York Community Bancorp, Inc. | NYCB | Financials | Fail | 32.9 | 66.2 | 0.8 | 22.1 | 44.4 | 0.6 | 23.5 |
| Cleveland Cliffs Inc. | CLF | Materials | Fail | 31.8 | 66.6 | 1.6 | 14.8 | 31.0 | 0.7 | 34.3 |
| Sanmina-SCI Corporation | SANM | Information Technology | Fail | 30.7 | 69.2 | 0.1 | 26.0 | 58.6 | 0.1 | 6.4 |
| First Horizon National Corporation | FHN | Financials | Fail | 29.8 | 63.8 | 6.4 | 24.8 | 53.0 | 5.3 | 9.6 |
| Synergy Pharmaceuticals, Inc. | SGYP | Health Care | Fail | 29.2 | 70.2 | 0.7 | 12.9 | 31.0 | 0.3 | 37.0 |
| GenMark Diagnostics, Inc. | GNMK | Health Care | Fail | 28.5 | 71.2 | 0.3 | 22.7 | 56.6 | 0.3 | 13.6 |
| Ameriprise Financial, Inc. | AMP | Financials | Fail | 24.3 | 71.8 | 3.8 | 19.9 | 58.9 | 3.1 | 7.9 |
| Patterson-UTI Energy, Inc. | PTEN | Energy | Fail | 24.3 | 75.0 | 0.8 | 21.0 | 64.9 | 0.7 | 3.5 |
| Bed Bath & Beyond Inc. | BBBY | Consumer Discretionary | Fail | 21.3 | 78.3 | 0.3 | 16.6 | 60.8 | 0.2 | 10.5 |
| Nevro Corp. | NVRO | Health Care | Fail | 20.3 | 79.3 | 0.4 | 17.7 | 69.2 | 0.3 | 7.1 |
| Wynn Resorts, Limited | WYNN | Consumer Discretionary | Fail | 19.9 | 79.8 | 0.3 | 13.5 | 54.2 | 0.2 | 0.8 |
| Acacia Research Corporation | ACTG | Industrials | Fail | 19.4 | 75.6 | 5.0 | 15.3 | 59.5 | 3.9 | 2.9 |
| FleetCor Technologies, Inc. | FLT | Information Technology | Fail | 14.3 | 85.6 | 0.0 | 11.9 | 71.4 | 0.0 | 4.5 |
| SandRidge Energy, Inc. | SD | Energy | Fail | 12.3 | 83.2 | 4.5 | 10.8 | 73.2 | 4.0 | 5.5 |
| Nuance Communications, Inc. | NUAN | Information Technology | Fail | 9.5 | 88.8 | 1.6 | 7.1 | 66.3 | 1.2 | 11.8 |
| **AVERAGE** | | | | **36.9** | **60.6** | **2.5** | **28.0** | **46.4** | **1.9** | **11.7** |

Companies that are highlighted in blue also failed their Say on Pay votes in 2017.

*continued on next page*

Exhibit 3

## Say-on-Pay Management Proposals—Failed Proposals (2017-2018) (continued)

| Company | Ticker | Industry | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **2017** | | | | | | | | | | |
| New York Community Bancorp, Inc. | NYCB | Financials | Fail | 48.5 | 49.1 | 2.4 | 32.3 | 32.7 | 1.6 | 24.1 |
| Hospitality Properties Trust | HPT | Real Estate | Fail | 47.7 | 51.8 | 0.5 | 36.8 | 39.9 | 0.4 | 16.0 |
| Sanchez Energy Corporation | SN | Energy | Fail | 47.3 | 51.7 | 1.0 | 30.8 | 33.7 | 0.6 | 17.8 |
| Universal Insurance Holdings, Inc. | UVE | Financials | Fail | 46.6 | 52.5 | 1.0 | 35.1 | 39.5 | 0.7 | 17.6 |
| Senior Housing Properties Trust | SNH | Real Estate | Fail | 45.6 | 53.5 | 1.0 | 34.9 | 40.9 | 0.8 | 17.0 |
| Argan, Inc. | AGX | Industrials | Fail | 45.3 | 54.5 | 0.2 | 36.6 | 44.0 | 0.1 | 10.3 |
| FMC Corporation | FMC | Materials | Fail | 45.1 | 27.4 | 27.4 | 48.7 | 29.6 | 29.6 | 29.6 |
| Bed Bath & Beyond Inc. | BBBY | Consumer Discretionary | Fail | 43.8 | 56.0 | 0.2 | 35.0 | 44.8 | 0.1 | 6.4 |
| Nabors Industries Ltd. | NBR | Energy | Fail | 43.7 | 55.7 | 0.5 | 37.0 | 47.2 | 0.5 | 5.4 |
| Spectrum Pharmaceuticals, Inc. | SPPI | Health Care | Fail | 43.7 | 55.8 | 0.5 | 29.5 | 37.7 | 0.3 | 20.7 |
| Sprouts Farmers Markets, Inc. | SFM | Consumer Staples | Fail | 43.1 | 56.4 | 0.5 | 35.1 | 45.9 | 0.4 | 12.9 |
| SandRidge Energy, Inc. | SD | Energy | Fail | 42.8 | 39.3 | 18.0 | 33.5 | 30.8 | 14.1 | 7.1 |
| SL Green Realty Corp. | SLG | Real Estate | Fail | 42.7 | 57.1 | 0.3 | 38.6 | 51.6 | 0.2 | 1.4 |
| SeaWorld Entertainment, Inc. | SEAS | Consumer Discretionary | Fail | 42.5 | 57.3 | 0.2 | 36.0 | 48.6 | 0.2 | 4.5 |
| Whitestone REIT | WSR | Real Estate | Fail | 42.4 | 55.9 | 1.7 | 24.7 | 32.5 | 1.0 | 26.8 |
| Tutor Perini Corporation | TPC | Industrials | Fail | 42.3 | 57.6 | 0.1 | 37.8 | 51.5 | 0.0 | 6.2 |
| Medifast, Inc. | MED | Consumer Staples | Fail | 41.7 | 57.2 | 1.2 | 34.1 | 46.7 | 1.0 | 11.3 |
| Endologix, Inc. | ELGX | Health Care | Fail | 40.4 | 59.4 | 0.2 | 32.1 | 47.2 | 0.1 | 11.2 |
| American Axle & Manufacturing Holdings, Inc. | AXL | Consumer Discretionary | Fail | 38.7 | 61.0 | 0.4 | 31.8 | 50.1 | 0.3 | 7.4 |
| FleetCor Technologies, Inc. | FLT | Information Technology | Fail | 37.3 | 62.5 | 0.2 | 30.0 | 50.2 | 0.1 | 5.1 |
| PHH Corporation | PHH | Financials | Fail | 35.8 | 63.0 | 1.1 | 30.3 | 53.4 | 0.9 | 10.2 |
| Hallmark Financial Services, Inc. | HALL | Financials | Fail | 34.4 | 1.3 | 64.3 | 29.2 | 1.1 | 54.4 | 0.0 |
| Nuance Communications, Inc. | NUAN | Information Technology | Fail | 33.2 | 66.0 | 0.9 | 24.0 | 47.8 | 0.6 | 12.9 |
| Atlas Air Worldwide Holdings, Inc. | AAWW | Industrials | Fail | 32.4 | 66.1 | 1.5 | 29.1 | 59.4 | 1.3 | 5.1 |
| ConocoPhillips | COP | Energy | Fail | 31.9 | 67.4 | 0.7 | 22.3 | 47.1 | 0.5 | 18.4 |
| IMAX Corp. | IMAX | Consumer Discretionary | Fail | 30.0 | 70.0 | 0.0 | 24.1 | 56.3 | 0.0 | 8.6 |
| Rockwell Medical, Inc. | RMTI | Health Care | Fail | 25.3 | 72.6 | 2.1 | 19.5 | 55.8 | 1.6 | 0.0 |
| NII Holdings, Inc. | NIHD | Telecommunication Services | Fail | 23.3 | 76.7 | 0.0 | 19.1 | 62.6 | 0.0 | 12.5 |
| Mylan N.V. | MYL | Health Care | Fail | 16.4 | 82.9 | 0.6 | 12.0 | 60.4 | 0.5 | 6.7 |
| **AVERAGE** | | | | **39.1** | **56.5** | **4.4** | **31.0** | **44.4** | **3.9** | **11.5** |

Companies that are highlighted in blue also failed their Say on Pay votes in 2017.

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

Exhibit 4 **Say-on-Pay Management Proposals—Proposals Receiving Less Than 70 Percent Support (2017-2018)**

| Company | Ticker | Industry | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **2018** | | | | | | | | | | |
| Anworth Mortgage Asset Corporation | ANH | Financials | Pass | 69.9 | 28.2 | 1.9 | 37.9 | 15.3 | 1.0 | 0.0 |
| TETRA Technologies, Inc. | TTI | Energy | Pass | 69.9 | 27.1 | 3.0 | 54.0 | 21.0 | 2.3 | 8.6 |
| Wyndham Destinations, Inc | WYND | Consumer Discretionary | Pass | 69.8 | 30.0 | 0.2 | 55.6 | 23.9 | 0.2 | 8.1 |
| Glaukos Corp | GKOS | Health Care | Pass | 69.8 | 30.1 | 0.1 | 54.2 | 23.4 | 0.1 | 12.1 |
| American Express Company | AXP | Financials | Pass | 69.7 | 30.1 | 0.2 | 56.3 | 24.3 | 0.2 | 8.8 |
| Chegg, Inc. | CHGG | Consumer Discretionary | Pass | 69.7 | 28.8 | 1.5 | 53.3 | 22.0 | 1.2 | 12.9 |
| Heritage-Crystal Clean, Inc. | HCCI | Industrials | Pass | 69.4 | 29.3 | 1.3 | 43.0 | 18.2 | 0.8 | 26.1 |
| TerraForm Power, Inc. Class A | TERP | Utilities | Pass | 69.2 | 16.7 | 14.1 | 59.2 | 14.3 | 12.0 | 0.0 |
| Southwestern Energy Company | SWN | Energy | Pass | 69.2 | 30.5 | 0.3 | 48.9 | 21.5 | 0.2 | 17.5 |
| Motorola Solutions, Inc. | MSI | Information Technology | Pass | 69.1 | 30.6 | 0.3 | 54.1 | 23.9 | 0.2 | 11.7 |
| Immersion Corporation | IMMR | Information Technology | Pass | 68.6 | 29.1 | 2.3 | 42.7 | 18.1 | 1.4 | 24.3 |
| RTI Surgical, Inc. | RTIX | Health Care | Pass | 68.6 | 28.4 | 3.1 | 68.1 | 28.2 | 3.0 | 0.0 |
| Matthews International Corporation Class A | MATW | Industrials | Pass | 68.6 | 31.3 | 0.2 | 58.2 | 26.5 | 0.2 | 5.4 |
| NII Holdings, Inc. | NIHD | Telecommunication Services | Pass | 68.5 | 17.6 | 13.9 | 44.1 | 11.4 | 9.0 | 27.8 |
| Spectrum Pharmaceuticals, Inc. | SPPI | Health Care | Pass | 68.3 | 31.4 | 0.2 | 49.6 | 22.8 | 0.2 | 16.8 |
| General Dynamics Corporation | GD | Industrials | Pass | 68.3 | 31.5 | 0.2 | 57.4 | 26.5 | 0.2 | 8.7 |
| Investors Bancorp Inc | ISBC | Financials | Pass | 68.2 | 31.1 | 0.7 | 53.4 | 24.4 | 0.6 | 11.2 |
| Ball Corporation | BLL | Materials | Pass | 68.2 | 31.3 | 0.6 | 59.8 | 27.4 | 0.5 | 5.1 |
| Las Vegas Sands Corp. | LVS | Consumer Discretionary | Pass | 67.9 | 32.1 | 0.0 | 60.9 | 28.8 | 0.0 | 5.7 |
| Hecla Mining Company | HL | Materials | Pass | 67.8 | 31.7 | 0.5 | 39.0 | 18.2 | 0.3 | 27.5 |
| Clean Energy Fuels Corp. | CLNE | Energy | Pass | 67.8 | 30.7 | 1.5 | 32.5 | 14.7 | 0.7 | 40.8 |
| Civista Bancshares, Inc. | CIVB | Financials | Pass | 67.7 | 30.5 | 1.7 | 42.2 | 19.0 | 1.1 | 20.3 |
| Horizon Bancorp | HBNC | Financials | Pass | 67.6 | 30.7 | 1.7 | 44.8 | 20.3 | 1.1 | 18.7 |
| Bank of Marin Bancorp | BMRC | Financials | Pass | 66.4 | 29.2 | 4.4 | 41.1 | 18.1 | 2.7 | 26.0 |
| Universal Health Realty Income Trust | UHT | Real Estate | Pass | 66.4 | 27.8 | 5.8 | 44.2 | 18.5 | 3.9 | 23.1 |
| SS&C Technologies Holdings, Inc. | SSNC | Information Technology | Pass | 66.3 | 33.6 | 0.1 | 60.6 | 30.7 | 0.1 | 3.7 |
| Columbia Property Trust, Inc. | CXP | Real Estate | Pass | 66.2 | 33.2 | 0.6 | 47.0 | 23.6 | 0.4 | 13.1 |
| Synchrony Financial | SYF | Financials | Pass | 66.2 | 33.5 | 0.3 | 55.4 | 28.0 | 0.2 | 5.0 |
| Humana Inc. | HUM | Health Care | Pass | 66.2 | 33.5 | 0.3 | 55.9 | 28.3 | 0.3 | 3.9 |

Companies that are highlighted in blue also received less than 70 percent affirmative votes for Say on Pay in 2017.

*continued on next page*

Exhibit 4 **Say-on-Pay Management Proposals—Proposals Receiving Less Than 70 Percent Support (2017-2018)** (continued)

| Company | Ticker | Industry | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **2018** | | | | | | | | | | |
| Immunomedics, Inc. | IMMU | Health Care | Pass | 66.0 | 33.5 | 0.5 | 32.9 | 16.7 | 0.2 | 20.9 |
| Tempur Sealy International Inc | TPX | Consumer Discretionary | Pass | 66.0 | 34.0 | 0.0 | 58.3 | 30.0 | 0.0 | 4.7 |
| Norwegian Cruise Line Holdings Ltd. | NCLH | Consumer Discretionary | Pass | 65.9 | 30.4 | 3.7 | 57.5 | 26.5 | 3.3 | 3.3 |
| LSB Industries, Inc. | LXU | Materials | Pass | 65.7 | 29.3 | 5.0 | 46.0 | 20.5 | 3.5 | 20.9 |
| PennyMac Mortgage Investment Trust | PMT | Financials | Pass | 65.7 | 30.7 | 3.6 | 43.0 | 20.1 | 2.4 | 25.9 |
| Mobile Mini, Inc. | MINI | Industrials | Pass | 65.6 | 33.9 | 0.5 | 59.2 | 30.5 | 0.5 | 5.1 |
| Endo International Plc | ENDP | Health Care | Pass | 65.6 | 34.2 | 0.2 | 46.0 | 24.0 | 0.1 | 16.5 |
| Signature Bank | SBNY | Financials | Pass | 65.0 | 34.7 | 0.2 | 56.0 | 29.9 | 0.2 | 3.0 |
| Liberty TripAdvisor Holdings, Inc. | LTRP A | Consumer Discretionary | Pass | 65.0 | 35.0 | 0.0 | 55.8 | 30.0 | 0.0 | 6.6 |
| Schnitzer Steel Industries, Inc. Class A | SCHN | Materials | Pass | 65.0 | 34.7 | 0.3 | 50.2 | 26.8 | 0.2 | 10.7 |
| Weight Watchers International, Inc. | WTW | Consumer Discretionary | Pass | 64.9 | 35.0 | 0.1 | 55.2 | 29.8 | 0.1 | 9.5 |
| Mylan N.V. | MYL | Health Care | Pass | 64.8 | 33.5 | 1.7 | 48.7 | 25.2 | 1.3 | 5.6 |
| TransDigm Group Incorporated | TDG | Industrials | Pass | 64.4 | 35.5 | 0.1 | 58.9 | 32.5 | 0.1 | 2.6 |
| Ormat Technologies, Inc. | ORA | Telecommunication Services | Pass | 64.1 | 35.8 | 0.1 | 52.2 | 29.1 | 0.1 | 2.6 |
| NxStage Medical, Inc. | NXTM | Health Care | Pass | 63.9 | 35.1 | 1.0 | 38.6 | 21.2 | 0.6 | 9.7 |
| U.S. Physical Therapy, Inc. | USPH | Health Care | Pass | 63.7 | 33.7 | 2.5 | 57.7 | 30.5 | 2.3 | 6.1 |
| White Mountains Insurance Group Ltd | WTM | Financials | Pass | 63.7 | 36.1 | 0.1 | 52.3 | 29.7 | 0.1 | 11.9 |
| FuelCell Energy, Inc. | FCEL | Industrials | Pass | 63.5 | 33.3 | 3.1 | 13.3 | 7.0 | 0.7 | 47.4 |
| Overseas Shipholding Group Inc Class A | OSG | Energy | Pass | 63.5 | 35.3 | 1.2 | 43.9 | 24.4 | 0.8 | 0.0 |
| Realogy Holdings Corp. | RLGY | Real Estate | Pass | 63.4 | 36.1 | 0.5 | 56.3 | 32.1 | 0.5 | 4.1 |
| Walker & Dunlop, Inc. | WD | Financials | Pass | 63.0 | 36.8 | 0.1 | 52.3 | 30.6 | 0.1 | 8.1 |
| SeaWorld Entertainment, Inc. | SEAS | Consumer Discretionary | Pass | 63.0 | 35.2 | 1.8 | 49.9 | 27.9 | 1.4 | 10.0 |
| Harley-Davidson, Inc. | HOG | Consumer Discretionary | Pass | 63.0 | 36.6 | 0.4 | 49.2 | 28.6 | 0.3 | 12.4 |
| Orrstown Financial Services, Inc. | ORRF | Financials | Pass | 62.9 | 33.1 | 4.0 | 39.2 | 20.6 | 2.5 | 12.3 |
| Tejon Ranch Co. | TRC | Real Estate | Pass | 62.6 | 37.2 | 0.2 | 50.7 | 30.1 | 0.1 | 10.2 |
| Schlumberger NV | SLB | Energy | Pass | 62.6 | 32.0 | 5.5 | 48.3 | 24.7 | 4.2 | 7.3 |
| Senior Housing Properties Trust | SNH | Real Estate | Pass | 62.4 | 37.0 | 0.6 | 47.3 | 28.0 | 0.5 | 17.3 |
| Scotts Miracle-Gro Company | SMG | Materials | Pass | 62.3 | 37.5 | 0.1 | 53.5 | 32.2 | 0.1 | 7.7 |

Companies that are highlighted in blue also received less than 70 percent affirmative votes for Say on Pay in 2017.

continued on next page

Exhibit 4 **Say-on-Pay Management Proposals—Proposals Receiving Less Than 70 Percent Support (2017-2018)** (continued)

| Company | Ticker | Industry | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **2018** | | | | | | | | | | |
| Broadcom Limited | AVGO | Information Technology | Pass | 62.3 | 37.6 | 0.1 | 51.9 | 31.4 | 0.1 | 5.7 |
| Invesco Ltd. | IVZ | Financials | Pass | 62.1 | 37.8 | 0.1 | 46.5 | 28.3 | 0.1 | 10.1 |
| Noble Corporation | NE | Energy | Pass | 61.9 | 37.7 | 0.4 | 38.7 | 23.6 | 0.3 | 23.6 |
| Vanda Pharmaceuticals Inc. | VNDA | Health Care | Pass | 61.6 | 38.3 | 0.0 | 46.6 | 29.0 | 0.0 | 8.7 |
| Macquarie Infrastructure Corporation | MIC | Industrials | Pass | 61.6 | 37.2 | 1.2 | 43.8 | 26.5 | 0.9 | 17.8 |
| Unisys Corporation | UIS | Information Technology | Pass | 61.3 | 38.4 | 0.3 | 48.4 | 30.3 | 0.3 | 9.6 |
| Netflix, Inc. | NFLX | Consumer Discretionary | Pass | 61.1 | 38.7 | 0.2 | 43.1 | 27.3 | 0.1 | 17.9 |
| American International Group, Inc. | AIG | Financials | Pass | 60.9 | 36.8 | 2.3 | 48.9 | 29.6 | 1.9 | 6.0 |
| Meta Financial Group, Inc. | CASH | Financials | Pass | 60.7 | 38.3 | 1.0 | 51.1 | 32.3 | 0.8 | 10.7 |
| Hersha Hospitality Trust | HT | Real Estate | Pass | 60.5 | 39.3 | 0.2 | 46.3 | 30.1 | 0.2 | 18.2 |
| Ultimate Software Group, Inc. | ULTI | Information Technology | Pass | 60.3 | 39.0 | 0.7 | 53.8 | 34.8 | 0.6 | 6.0 |
| Assured Guaranty Ltd. | AGO | Financials | Pass | 60.1 | 39.7 | 0.2 | 51.6 | 34.1 | 0.2 | 5.2 |
| Denbury Resources Inc. | DNR | Energy | Pass | 60.0 | 34.6 | 5.3 | 40.6 | 23.4 | 3.6 | 22.7 |
| FireEye, Inc. | FEYE | Information Technology | Pass | 60.0 | 37.5 | 2.4 | 32.1 | 20.1 | 1.3 | 34.0 |
| FMC Corporation | FMC | Materials | Pass | 59.9 | 36.2 | 3.9 | 47.2 | 28.5 | 3.1 | 5.8 |
| QTS Realty Trust, Inc. | QTS | Real Estate | Pass | 59.9 | 39.9 | 0.3 | 53.3 | 35.5 | 0.2 | 3.8 |
| ACADIA Pharmaceuticals Inc. | ACAD | Health Care | Pass | 59.5 | 40.3 | 0.2 | 43.0 | 29.1 | 0.2 | 16.6 |
| CARBO Ceramics Inc. | CRR | Energy | Pass | 59.4 | 38.9 | 1.7 | 37.7 | 24.7 | 1.1 | 22.2 |
| ServiceNow, Inc. | NOW | Information Technology | Pass | 59.4 | 39.4 | 1.2 | 51.7 | 34.4 | 1.0 | 6.5 |
| SL Green Realty Corp. | SLG | Real Estate | Pass | 59.2 | 38.4 | 2.4 | 54.7 | 35.5 | 2.2 | 1.4 |
| Ventas, Inc. | VTR | Real Estate | Pass | 59.2 | 40.5 | 0.3 | 47.0 | 32.2 | 0.2 | 11.5 |
| H.B. Fuller Company | FUL | Materials | Pass | 59.0 | 40.3 | 0.6 | 52.5 | 35.9 | 0.5 | 6.6 |
| Kilroy Realty Corporation | KRC | Real Estate | Pass | 59.0 | 40.9 | 0.1 | 56.0 | 38.9 | 0.1 | 1.0 |
| Etsy, Inc. | ETSY | Information Technology | Pass | 58.9 | 40.8 | 0.3 | 38.9 | 26.9 | 0.2 | 19.2 |
| Unitil Corporation | UTL | Utilities | Pass | 58.9 | 40.0 | 1.1 | 39.0 | 26.5 | 0.7 | 21.0 |
| NOW, Inc. | DNOW | Industrials | Pass | 58.9 | 40.3 | 0.8 | 49.2 | 33.7 | 0.7 | 7.5 |
| FLIR Systems, Inc. | FLIR | Information Technology | Pass | 58.8 | 40.0 | 1.2 | 48.2 | 32.8 | 1.0 | 7.5 |
| Great Lakes Dredge & Dock Corporation | GLDD | Industrials | Pass | 58.7 | 41.2 | 0.1 | 44.2 | 30.9 | 0.1 | 15.1 |
| Mallinckrodt plc | MNK | Health Care | Pass | 58.6 | 40.9 | 0.5 | 42.3 | 29.5 | 0.3 | 17.2 |

Companies that are highlighted in blue also received less than 70 percent affirmative votes for Say on Pay in 2017.

continued on next page

Exhibit 4 **Say-on-Pay Management Proposals—Proposals Receiving Less Than 70 Percent Support (2017-2018)** (continued)

| Company | Ticker | Industry | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **2018** | | | | | | | | | | |
| National Instruments Corporation | NATI | Information Technology | Pass | 58.5 | 41.2 | 0.3 | 52.5 | 36.9 | 0.3 | 6.9 |
| C&J Energy Services, Inc. | CJ | Energy | Pass | 58.5 | 41.0 | 0.5 | 48.8 | 34.2 | 0.4 | 6.6 |
| Peabody Energy Corporation | BTU | Energy | Pass | 57.9 | 30.7 | 11.4 | 45.5 | 24.2 | 8.9 | 2.7 |
| Sarepta Therapeutics, Inc. | SRPT | Health Care | Pass | 57.7 | 42.0 | 0.3 | 40.0 | 29.2 | 0.2 | 21.8 |
| WEX Inc. | WEX | Information Technology | Pass | 57.1 | 42.8 | 0.1 | 53.0 | 39.8 | 0.1 | 2.3 |
| Government Properties Income Trust | GOV | Real Estate | Pass | 56.3 | 38.6 | 5.1 | 33.6 | 23.0 | 3.1 | 31.4 |
| Ambarella, Inc. | AMBA | Information Technology | Pass | 56.2 | 43.4 | 0.4 | 27.8 | 21.5 | 0.2 | 32.6 |
| Kopin Corporation | KOPN | Information Technology | Pass | 55.8 | 37.8 | 6.4 | 27.6 | 18.7 | 3.2 | 31.6 |
| Six Flags Entertainment Corporation | SIX | Consumer Discretionary | Pass | 55.7 | 42.2 | 2.2 | 49.2 | 37.2 | 1.9 | 6.5 |
| Fidelity National Information Services, Inc. | FIS | Information Technology | Pass | 55.6 | 44.2 | 0.2 | 46.0 | 36.5 | 0.1 | 6.0 |
| BioMarin Pharmaceutical Inc. | BMRN | Health Care | Pass | 55.4 | 44.3 | 0.3 | 40.5 | 32.3 | 0.2 | 4.3 |
| Echo Global Logistics, Inc | ECHO | Industrials | Pass | 54.5 | 45.4 | 0.0 | 45.7 | 38.0 | 0.0 | 7.3 |
| Flushing Financial Corporation | FFIC | Financials | Pass | 54.5 | 44.6 | 0.9 | 45.7 | 37.4 | 0.8 | 8.1 |
| CNO Financial Group, Inc. | CNO | Financials | Pass | 53.9 | 45.7 | 0.4 | 48.7 | 41.3 | 0.4 | 4.3 |
| The Bancorp, Inc. | TBBK | Financials | Pass | 52.6 | 47.3 | 0.0 | 45.9 | 41.3 | 0.0 | 4.7 |
| Clearwater Paper Corporation | CLW | Materials | Pass | 52.4 | 46.7 | 0.9 | 46.4 | 41.3 | 0.8 | 6.5 |
| ServiceSource International, Inc. | SREV | Information Technology | Pass | 52.0 | 47.3 | 0.7 | 41.2 | 37.5 | 0.6 | 14.2 |
| TrueCar, Inc. | TRUE | Information Technology | Pass | 52.0 | 48.0 | 0.0 | 31.1 | 28.7 | 0.0 | 10.3 |
| New Media Investment Group, Inc. | NEWM | Consumer Discretionary | Pass | 52.0 | 44.9 | 3.1 | 42.4 | 36.6 | 2.5 | 11.8 |
| Johnson Controls International plc | JCI | Industrials | Pass | 51.8 | 42.9 | 5.3 | 43.7 | 36.2 | 4.5 | 5.8 |
| Consolidated-Tomoka Land Co. | CTO | Real Estate | Pass | 51.7 | 47.1 | 1.2 | 43.9 | 40.0 | 1.0 | 2.7 |
| Vector Group Ltd. | VGR | Consumer Staples | Pass | 51.5 | 47.8 | 0.8 | 36.1 | 33.5 | 0.5 | 21.9 |
| STAG Industrial, Inc. | STAG | Real Estate | Pass | 51.4 | 48.0 | 0.6 | 39.2 | 36.6 | 0.4 | 16.8 |
| Shore Bancshares, Inc. | SHBI | Financials | Pass | 51.2 | 48.6 | 0.2 | 35.7 | 33.8 | 0.1 | 14.6 |
| Aramark | ARMK | Consumer Discretionary | Pass | 50.7 | 49.2 | 0.1 | 46.6 | 45.2 | 0.1 | 1.1 |
| VeriFone Systems, Inc. | PAY | Information Technology | Pass | 50.4 | 48.3 | 1.3 | 41.7 | 40.0 | 1.1 | 7.5 |
| AGNC Investment Corp. | AGNC | Real Estate | Pass | 50.0 | 49.2 | 0.8 | 31.4 | 30.9 | 0.5 | 22.5 |
| **AVERAGE** | | | | **61.7** | **36.8** | **1.5** | **47.1** | **28.2** | **1.1** | **12.1** |

Companies that are highlighted in blue also received less than 70 percent affirmative votes for Say on Pay in 2017.

continued on next page

Exhibit 4 **Say-on-Pay Management Proposals—Proposals Receiving Less Than 70 Percent Support (2017-2018)** (continued)

| Company | Ticker | Industry | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **2017** | | | | | | | | | | |
| AtriCure, Inc. | ATRC | Health Care | Pass | 69.9 | 27.0 | 3.2 | 50.6 | 19.5 | 2.3 | 11.1 |
| Charter Communications, Inc | CHTR | Consumer Discretionary | Pass | 69.7 | 30.2 | 0.0 | 63.5 | 27.5 | 0.0 | 2.6 |
| Anworth Mortgage Asset Corporation | ANH | Financials | Pass | 69.6 | 26.7 | 3.7 | 39.4 | 15.1 | 2.1 | 0.0 |
| Fidelity National Financial, Inc. | FNF | Financials | Pass | 69.6 | 29.7 | 0.8 | 58.5 | 24.9 | 0.6 | 9.5 |
| Verisk Analytics Inc | VRSK | Industrials | Pass | 69.4 | 30.5 | 0.1 | 61.4 | 27.1 | 0.1 | 3.2 |
| Discovery, Inc. | DISCA | Consumer Discretionary | Pass | 69.3 | 30.6 | 0.1 | 62.4 | 27.6 | 0.1 | 4.1 |
| Pacific Premier Bancorp, Inc. | PPBI | Financials | Pass | 69.2 | 30.6 | 0.2 | 56.1 | 24.8 | 0.2 | 9.1 |
| Tower International, Inc. | TOWR | Consumer Discretionary | Pass | 68.9 | 25.9 | 5.2 | 57.0 | 21.5 | 4.3 | 7.1 |
| Range Resources Corporation | RRC | Energy | Pass | 68.8 | 31.2 | 0.1 | 55.0 | 24.9 | 0.1 | 8.4 |
| Cerus Corporation | CERS | Health Care | Pass | 68.7 | 7.8 | 23.6 | 38.6 | 4.4 | 13.2 | 31.4 |
| 22nd Century Group, Inc. | XXII | Consumer Staples | Pass | 68.3 | 14.7 | 17.0 | 16.3 | 3.5 | 4.0 | 43.5 |
| XL Group Ltd | XL | Financials | Pass | 68.2 | 31.6 | 0.1 | 60.4 | 28.0 | 0.1 | 2.7 |
| Noble Corporation | NE | Energy | Pass | 68.1 | 31.6 | 0.3 | 44.5 | 20.7 | 0.2 | 18.7 |
| Ryder System, Inc. | R | Industrials | Pass | 68.0 | 31.1 | 0.8 | 59.0 | 27.0 | 0.7 | 6.1 |
| Central European Media Enterprise Ltd. | CETV | Consumer Discretionary | Pass | 68.0 | 32.0 | 0.0 | 50.0 | 23.5 | 0.0 | 3.4 |
| VirnetX Holding Corporation | VHC | Information Technology | Pass | 68.0 | 31.1 | 0.9 | 21.2 | 9.7 | 0.3 | 46.4 |
| Annaly Capital Management, Inc. | NLY | Financials | Pass | 67.9 | 31.1 | 1.0 | 38.4 | 17.6 | 0.6 | 30.5 |
| Immersion Corporation | IMMR | Information Technology | Pass | 67.8 | 30.8 | 1.4 | 46.5 | 21.2 | 0.9 | 16.2 |
| Exxon Mobil Corporation | XOM | Energy | Pass | 67.7 | 31.1 | 1.2 | 44.1 | 20.3 | 0.8 | 20.6 |
| Unisys Corporation | UIS | Information Technology | Pass | 67.6 | 32.0 | 0.3 | 54.4 | 25.8 | 0.3 | 12.9 |
| Antero Resources Corporation | AR | Energy | Pass | 67.4 | 32.6 | 0.0 | 55.7 | 26.9 | 0.0 | 5.1 |
| Union Pacific Corporation | UNP | Industrials | Pass | 67.3 | 32.1 | 0.5 | 52.0 | 24.8 | 0.4 | 10.8 |
| G-III Apparel Group, Ltd. | GIII | Consumer Discretionary | Pass | 67.3 | 32.7 | 0.0 | 56.4 | 27.4 | 0.0 | 7.3 |
| Natural Gas Services Group, Inc. | NGS | Energy | Pass | 67.2 | 32.1 | 0.8 | 56.5 | 26.9 | 0.6 | 11.6 |
| Lennar Corporation | LEN | Consumer Discretionary | Pass | 67.2 | 32.6 | 0.2 | 60.1 | 29.2 | 0.2 | 4.1 |
| Regeneron Pharmaceuticals, Inc. | REGN | Health Care | Pass | 67.1 | 32.8 | 0.1 | 60.6 | 29.7 | 0.1 | 4.8 |
| Newmont Mining Corporation | NEM | Materials | Pass | 67.1 | 32.7 | 0.2 | 48.7 | 23.8 | 0.2 | 7.4 |
| Knowles Corp. | KN | Information Technology | Pass | 66.5 | 33.0 | 0.5 | 59.0 | 29.3 | 0.4 | 5.5 |
| Echo Global Logistics, Inc | ECHO | Industrials | Pass | 66.4 | 32.9 | 0.7 | 57.2 | 28.3 | 0.6 | 7.7 |

Companies that are highlighted in blue also received less than 70 percent affirmative votes for Say on Pay in 2017.

continued on next page

Exhibit 4 **Say-on-Pay Management Proposals—Proposals Receiving Less Than 70 Percent Support (2017-2018)** (continued)

| Company | Ticker | Industry | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **2017** | | | | | | | | | | |
| Children's Place, Inc. | PLCE | Consumer Discretionary | Pass | 66.4 | 33.4 | 0.1 | 57.4 | 28.9 | 0.1 | 4.9 |
| Post Holdings, Inc. | POST | Consumer Staples | Pass | 66.4 | 33.5 | 0.0 | 58.7 | 29.6 | 0.0 | 3.5 |
| Virtus Investment Partners, Inc. | VRTS | Financials | Pass | 66.3 | 33.5 | 0.2 | 55.6 | 28.1 | 0.1 | 6.7 |
| Halliburton Company | HAL | Energy | Pass | 66.2 | 33.5 | 0.3 | 49.6 | 25.1 | 0.2 | 10.8 |
| Cogent Communications Holdings Inc | CCOI | Telecommunication Services | Pass | 66.2 | 33.6 | 0.2 | 57.9 | 29.4 | 0.2 | 5.0 |
| Radian Group Inc. | RDN | Financials | Pass | 66.2 | 33.6 | 0.2 | 49.8 | 25.3 | 0.1 | 7.6 |
| Enzo Biochem, Inc. | ENZ | Health Care | Pass | 65.9 | 33.7 | 0.4 | 43.9 | 22.4 | 0.3 | 21.0 |
| Schweitzer-Mauduit International, Inc. | SWM | Materials | Pass | 65.8 | 33.2 | 0.9 | 57.4 | 29.0 | 0.8 | 4.5 |
| Citizens, Inc. | CIA | Financials | Pass | 65.6 | 0.4 | 34.0 | 15.4 | 0.1 | 8.0 | 5.1 |
| LSC Communications, Inc. | LKSD | Industrials | Pass | 65.6 | 33.2 | 1.2 | 52.7 | 26.7 | 0.9 | 11.6 |
| Boston Beer Company, Inc. Class A | SAM | Consumer Staples | Pass | 65.6 | 34.1 | 0.3 | 36.2 | 18.8 | 0.2 | 0.0 |
| Verint Systems Inc. | VRNT | Information Technology | Pass | 65.5 | 34.1 | 0.3 | 55.8 | 29.1 | 0.3 | 4.0 |
| Meet Group Inc | MEET | Information Technology | Pass | 65.4 | 31.9 | 2.7 | 31.8 | 15.5 | 1.3 | 31.3 |
| Willis Lease Finance Corporation | WLFC | Industrials | Pass | 65.4 | 34.4 | 0.2 | 54.1 | 28.4 | 0.2 | 11.4 |
| GenMark Diagnostics, Inc. | GNMK | Health Care | Pass | 65.2 | 34.8 | 0.0 | 53.5 | 28.5 | 0.0 | 12.8 |
| White Mountains Insurance Group Ltd | WTM | Financials | Pass | 65.1 | 34.8 | 0.1 | 48.2 | 25.8 | 0.1 | 10.7 |
| DMC Global Inc. | BOOM | Industrials | Pass | 64.2 | 26.8 | 9.0 | 50.7 | 21.2 | 7.1 | 14.0 |
| Extended Stay America Inc | STAY | Consumer Discretionary | Pass | 64.0 | 36.0 | 0.0 | 55.3 | 31.1 | 0.0 | 2.7 |
| Ionis Pharmaceuticals, Inc. | IONS | Health Care | Pass | 64.0 | 35.7 | 0.3 | 48.2 | 26.9 | 0.2 | 17.0 |
| P. H. Glatfelter Company | GLT | Materials | Pass | 63.5 | 36.2 | 0.3 | 55.6 | 31.8 | 0.2 | 0.0 |
| Johnson Controls International plc | JCI | Industrials | Pass | 63.3 | 35.7 | 0.9 | 51.4 | 29.0 | 0.8 | 6.8 |
| Plexus Corp. | PLXS | Information Technology | Pass | 63.1 | 35.5 | 1.4 | 55.8 | 31.3 | 1.2 | 5.6 |
| Shore Bancshares, Inc. | SHBI | Financials | Pass | 63.1 | 36.6 | 0.3 | 42.8 | 24.9 | 0.2 | 14.0 |
| Mueller Industries, Inc. | MLI | Industrials | Pass | 63.0 | 36.9 | 0.1 | 56.5 | 33.1 | 0.1 | 5.8 |
| Government Properties Income Trust | GOV | Real Estate | Pass | 62.9 | 35.4 | 1.7 | 37.6 | 21.2 | 1.0 | 31.9 |
| Eagle Pharmaceuticals, Inc. | EGRX | Health Care | Pass | 62.9 | 36.8 | 0.3 | 54.6 | 31.9 | 0.3 | 6.2 |
| Ambac Financial Group, Inc. | AMBC | Financials | Pass | 62.8 | 35.8 | 1.4 | 45.4 | 25.9 | 1.0 | 12.9 |
| Plug Power Inc. | PLUG | Industrials | Pass | 62.4 | 34.2 | 3.4 | 14.8 | 8.1 | 0.8 | 48.6 |
| ACI Worldwide, Inc. | ACIW | Information Technology | Pass | 62.0 | 37.2 | 0.8 | 57.4 | 34.4 | 0.7 | 2.9 |

Companies that are highlighted in blue also received less than 70 percent affirmative votes for Say on Pay in 2017.

continued on next page

Exhibit 4 **Say-on-Pay Management Proposals—Proposals Receiving Less Than 70 Percent Support (2017-2018)** (continued)

| Company | Ticker | Industry | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **2017** | | | | | | | | | | |
| Kansas City Southern | KSU | Industrials | Pass | 62.0 | 37.7 | 0.3 | 50.0 | 30.4 | 0.3 | 8.3 |
| Merit Medical Systems, Inc. | MMSI | Health Care | Pass | 62.0 | 37.6 | 0.4 | 50.3 | 30.5 | 0.3 | 8.6 |
| Newlink Genetics Corporation | NLNK | Health Care | Pass | 61.5 | 38.3 | 0.2 | 43.8 | 27.3 | 0.1 | 19.5 |
| Preformed Line Products Company | PLPC | Industrials | Pass | 61.4 | 20.9 | 17.8 | 42.5 | 14.4 | 12.3 | 5.9 |
| NCR Corporation | NCR | Information Technology | Pass | 61.3 | 38.4 | 0.3 | 49.3 | 30.9 | 0.2 | 7.7 |
| CVS Health Corporation | CVS | Consumer Staples | Pass | 61.1 | 38.6 | 0.3 | 47.4 | 30.0 | 0.2 | 9.8 |
| Affiliated Managers Group, Inc. | AMG | Financials | Pass | 60.9 | 37.7 | 1.4 | 53.0 | 32.8 | 1.2 | 3.6 |
| PennyMac Mortgage Investment Trust | PMT | Financials | Pass | 60.7 | 38.1 | 1.2 | 36.0 | 22.6 | 0.7 | 26.3 |
| PROS Holdings, Inc. | PRO | Information Technology | Pass | 60.5 | 37.8 | 1.7 | 51.5 | 32.1 | 1.4 | 10.6 |
| Tejon Ranch Co. | TRC | Real Estate | Pass | 60.5 | 38.8 | 0.6 | 49.2 | 31.6 | 0.5 | 12.3 |
| AGCO Corporation | AGCO | Industrials | Pass | 60.5 | 39.4 | 0.1 | 53.4 | 34.8 | 0.1 | 3.4 |
| Southern Company | SO | Utilities | Pass | 60.4 | 38.4 | 1.2 | 38.6 | 24.5 | 0.8 | 23.0 |
| FireEye, Inc. | FEYE | Information Technology | Pass | 60.3 | 39.1 | 0.6 | 25.8 | 16.7 | 0.3 | 39.7 |
| Gray Television, Inc. | GTN | Consumer Discretionary | Pass | 60.0 | 39.3 | 0.7 | 44.3 | 29.1 | 0.5 | 17.7 |
| Vector Group Ltd. | VGR | Consumer Staples | Pass | 59.8 | 39.6 | 0.5 | 41.5 | 27.5 | 0.4 | 22.5 |
| Tribune Media Co. | TRCO | Consumer Discretionary | Pass | 59.8 | 40.1 | 0.2 | 53.1 | 35.6 | 0.2 | 5.6 |
| Innophos Holdings, Inc. | IPHS | Materials | Pass | 59.7 | 39.7 | 0.6 | 51.4 | 34.2 | 0.5 | 6.7 |
| Activision Blizzard, Inc. | ATVI | Information Technology | Pass | 59.4 | 40.1 | 0.5 | 49.0 | 33.1 | 0.4 | 6.2 |
| XPO Logistics, Inc. | XPO | Industrials | Pass | 59.4 | 36.2 | 4.4 | 50.0 | 30.4 | 3.7 | 7.3 |
| Ultimate Software Group, Inc. | ULTI | Information Technology | Pass | 58.9 | 34.5 | 6.6 | 53.5 | 31.3 | 6.0 | 5.9 |
| Interface, Inc. | TILE | Industrials | Pass | 58.8 | 40.6 | 0.5 | 50.6 | 34.9 | 0.5 | 5.4 |
| Wynn Resorts, Limited | WYNN | Consumer Discretionary | Pass | 58.6 | 41.3 | 0.1 | 47.1 | 33.1 | 0.1 | 9.6 |
| Vanda Pharmaceuticals Inc. | VNDA | Health Care | Pass | 58.5 | 41.4 | 0.1 | 41.2 | 29.1 | 0.1 | 20.9 |
| Consolidated-Tomoka Land Co. | CTO | Real Estate | Pass | 58.1 | 40.7 | 1.2 | 51.4 | 36.1 | 1.0 | 0.0 |
| Boingo Wireless, Inc. | WIFI | Telecommunication Services | Pass | 58.0 | 40.4 | 1.6 | 44.8 | 31.2 | 1.2 | 14.9 |
| Anika Therapeutics, Inc. | ANIK | Health Care | Pass | 57.9 | 41.8 | 0.3 | 43.9 | 31.7 | 0.2 | 14.1 |
| TJX Companies Inc | TJX | Consumer Discretionary | Pass | 57.9 | 41.8 | 0.4 | 46.8 | 33.8 | 0.3 | 5.9 |
| Signature Bank | SBNY | Financials | Pass | 57.7 | 42.0 | 0.2 | 50.5 | 36.7 | 0.2 | 3.5 |

Companies that are highlighted in blue also received less than 70 percent affirmative votes for Say on Pay in 2017.

continued on next page

Exhibit 4 **Say-on-Pay Management Proposals—Proposals Receiving Less Than 70 Percent Support (2017-2018)** (continued)

| Company | Ticker | Industry | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **2017** | | | | | | | | | | |
| Cleveland Cliffs Inc. | CLF | Materials | Pass | 57.4 | 41.3 | 1.3 | 26.8 | 19.3 | 0.6 | 27.4 |
| Primo Water Corporation | PRMW | Consumer Staples | Pass | 57.0 | 41.3 | 1.7 | 44.3 | 32.1 | 1.3 | 15.1 |
| Charter Financial Corporation | CHFN | Financials | Pass | 56.7 | 43.0 | 0.3 | 41.2 | 31.2 | 0.2 | 17.3 |
| Imperva, Inc. | IMPV | Information Technology | Pass | 56.7 | 42.5 | 0.9 | 44.5 | 33.4 | 0.7 | 9.4 |
| FTI Consulting, Inc. | FCN | Industrials | Pass | 56.5 | 43.3 | 0.3 | 49.7 | 38.1 | 0.2 | 3.6 |
| Chesapeake Energy Corporation | CHK | Energy | Pass | 56.2 | 42.7 | 1.1 | 27.2 | 20.6 | 0.5 | 29.1 |
| Kennedy-Wilson Holdings, Inc. | KW | Real Estate | Pass | 55.8 | 43.6 | 0.5 | 49.8 | 39.0 | 0.5 | 4.8 |
| Jones Lang LaSalle Incorporated | JLL | Real Estate | Pass | 55.7 | 44.0 | 0.3 | 46.5 | 36.7 | 0.2 | 6.8 |
| Six Flags Entertainment Corporation | SIX | Consumer Discretionary | Pass | 55.5 | 44.4 | 0.1 | 47.2 | 37.7 | 0.1 | 7.4 |
| Fidelity Southern Corporation | LION | Financials | Pass | 55.2 | 43.4 | 1.4 | 47.5 | 37.4 | 1.2 | 6.9 |
| FCB Financial Holdings, Inc. | FCB | Financials | Pass | 55.2 | 44.8 | 0.0 | 47.2 | 38.3 | 0.0 | 3.7 |
| Ebix, Inc. | EBIX | Information Technology | Pass | 55.0 | 44.1 | 0.9 | 42.0 | 33.7 | 0.7 | 13.9 |
| Hill International, Inc. | HIL | Industrials | Pass | 54.3 | 36.8 | 8.9 | 47.2 | 32.0 | 7.7 | 7.8 |
| Evercore Parterns Inc. | EVR | Financials | Pass | 53.8 | 46.1 | 0.1 | 47.2 | 40.4 | 0.1 | 5.9 |
| International Business Machines Corporation | IBM | Information Technology | Pass | 53.6 | 45.2 | 1.1 | 34.8 | 29.3 | 0.7 | 17.6 |
| Cloud Peak Energy Inc. | CLD | Energy | Pass | 53.6 | 44.5 | 1.9 | 30.7 | 25.5 | 1.1 | 22.8 |
| Ashford Hospitality Trust, Inc. | AHT | Real Estate | Pass | 53.3 | 40.5 | 6.2 | 39.9 | 30.3 | 4.7 | 18.0 |
| Shutterfly, Inc. | SFLY | Consumer Discretionary | Pass | 53.2 | 46.5 | 0.2 | 47.6 | 41.6 | 0.2 | 3.5 |
| Innoviva, Inc. | INVA | Health Care | Pass | 52.8 | 46.7 | 0.5 | 48.5 | 42.8 | 0.5 | 0.0 |
| Pacira Pharmaceuticals, Inc. | PCRX | Health Care | Pass | 52.7 | 46.7 | 0.6 | 40.6 | 35.9 | 0.5 | 15.5 |
| AECOM | ACM | Industrials | Pass | 52.5 | 47.1 | 0.5 | 42.5 | 38.2 | 0.4 | 6.8 |
| Freeport-McMoRan Inc. | FCX | Materials | Pass | 52.4 | 46.9 | 0.7 | 35.9 | 32.1 | 0.5 | 15.1 |
| Palatin Technologies, Inc. | PTN | Health Care | Pass | 52.3 | 40.3 | 7.4 | 10.1 | 7.8 | 1.4 | 48.8 |
| CyrusOne, Inc. | CONE | Real Estate | Pass | 52.3 | 47.5 | 0.2 | 45.9 | 41.7 | 0.2 | 6.1 |
| Envision Healthcare Corp. | EVHC | Health Care | Pass | 51.9 | 47.9 | 0.2 | 45.7 | 42.2 | 0.1 | 3.8 |
| Denbury Resources Inc. | DNR | Energy | Pass | 51.5 | 48.2 | 0.3 | 36.5 | 34.3 | 0.2 | 16.5 |
| Nu Skin Enterprises, Inc. | NUS | Consumer Staples | Pass | 50.9 | 49.0 | 0.1 | 39.2 | 37.7 | 0.0 | 8.8 |
| Arrowhead Pharmaceuticals, Inc. | ARWR | Health Care | Pass | 50.4 | 48.5 | 1.1 | 15.1 | 14.5 | 0.3 | 32.6 |
| **AVERAGE** | | | | **61.8** | **36.4** | **1.8** | **46.7** | **27.8** | **1.0** | **12.0** |

Companies that are highlighted in blue also received less than 70 percent affirmative votes for Say on Pay in 2017.

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Management Proposals on Corporate Governance

The analysis of management proposals on corporate governance highlights the degree to which Russell 3000 companies introduced resolutions to align their organizational practices to standards usually advocated by activist investors (from board declassification to majority voting and from the shareholder right to call special meetings to the elimination of supermajority requirements).

For the purpose of this report, management-sponsored proposals on corporate governance are categorized based on the following topics:

- **Add ownership limit to charter** To add an ownership limitation to the company's charter, most often to preserve the value of certain tax assets associated with net operating loss carryforwards ("NOLs") under Section 382 of the Internal Revenue Code

  This proposal type may also include ownership limits to preserve a company's qualifications to retain real estate investment trust (REIT) status or other qualifications set for regulated industries.

- **Adopt director nominee qualifications** Requesting the establishment of additional requirements to serve as a member of the board of directors

  These requirements may include stock ownership guidelines, industry experience, director independence standards, and limiting service in the event of significant change in personal circumstances or principal job responsibilities.

- **Advance-notice related (reduce defense)** Typically seeking a bylaw amendment to eliminate or ease the company's advance notice requirements

  Advance notice bylaw provisions require a shareholder who wants to nominate a candidate to the board or have other proposals considered at a shareholder meeting to submit information to the company about the nominations or the proposals by a specified date prior to the meeting.

- **Advance-notice related (strengthen defense)** Typically seeking a bylaw amendment to adopt or strengthen the company's advance notice requirements

  Companies may seek to strengthen advance notice provisions by moving the deadline further from the annual meeting date or requiring more disclosure to the proponent, such as data on derivative stakes or expanded background information.

- **Allow for (or ease requirement to) act by written consent** Seeking a charter or bylaw amendment to allow shareholders to act by written consent or to reduce the requirement to take action by written consent (e.g., a majority of the shares outstanding instead of a supermajority or unanimous requirement)

- **Allow for (or ease requirement to) call special meetings** Seeking a charter or bylaw amendment to grant shareholders the power to call special meetings or to reduce the ownership threshold required to do so (e.g., from 50 percent to 25 percent or, in some cases, as low as 10 percent of shares outstanding)

- **Authorize blank-check preferred stock** Seeking a charter amendment to authorize blank-check preferred stock

  The term "blank-check preferred stock" refers to stock in which the board of directors has broad discretion to establish the voting, dividend, conversion, and other rights at the time of issuance. The stock could be used to underlie a poison pill or issued to a friendly third party to thwart a takeover.

- **Change from plurality to majority voting** First filed in 2004 to change the voting standard for director elections from plurality to majority voting. On plurality and majority voting, also see "Shareholder Proposals on Corporate Governance," p. 74.

- **Classify board** To institute a classified board structure, where board members are divided into classes and directors in each class serve staggered terms (typically running three years, so only one class of directors stands for election each year). On board classification, also see "Shareholder Proposals on Corporate Governance," p. 74.

- **Create dual class structure (unequal voting)** Seeking a charter amendment to create a dual class/unequal voting share structure (e.g., approve a new class of common stock with 20 votes per share)

- **Declassify board** To eliminate classified board structures in favor of annually elected directors. On board classification, also see "Shareholder Proposals on Corporate Governance" p. 74.

- **Decrease board ability to amend bylaws (reduce defense**) Seeking a charter or bylaws amendment to decrease the board of directors' authority to amend the company's bylaws (e.g., by limiting the authority of the board to specific circumstances or by always granting shareholders the exclusive power to amend the bylaws)

- **Decrease board size** To reduce the current number or the minimum number (where a range is established) of members of the board of directors

- **Ease vote requirement for mergers (eliminate supermajority vote)** Seeking a charter or bylaws amendment to ease the voting requirement to approve business combinations (e.g., by eliminating a supermajority vote requirement)

  For the purpose of this report, management proposals seeking to eliminate all supermajority vote requirements contemplated by the company's charter or bylaws, including but not limited to those to approve mergers, are included in the "Eliminate supermajority vote requirements" proposal category.

- **Ease vote requirement to amend charter/bylaws (eliminate supermajority vote)** Seeking a charter or bylaws amendment to ease the voting requirement for shareholders to amend the company's charter or bylaws (e.g., by eliminating a supermajority vote requirement)

  For the purpose of this report, management proposals seeking to eliminate all supermajority vote requirements contemplated by the company's charter or bylaws, including but not limited to those to amend the company's charter or bylaws, are included in the "Eliminate supermajority vote requirements" proposal category.

- **Ease vote requirement to amend charter/bylaws (without eliminating supermajority vote)** Seeking a charter or bylaws amendment to reduce the voting requirement for shareholders to amend the charter or bylaws, without eliminating a supermajority vote requirement (e.g., vote requirement is reduced from 90 percent to 75 percent)
- **Elect management director's nominee** Any management-sponsored proposal to elect the company's director nominee
- **Eliminate blank-check preferred stock** Management sponsored proposals to eliminate blank-check preferred stock in the company's charter
- **Eliminate cumulative voting** To eliminate cumulative voting for the election of directors. On cumulative voting, also see "Shareholder Proposals on Corporate Governance," p. 74.
- **Eliminate dual class structure (unequal voting)** Seeking a charter amendment to eliminate dual class/unequal voting share structure

  This may be accomplished through a recapitalization designed so that all outstanding stock has one vote per share or by eliminating any time-phased voting (where shareholders who have held the stock for a given period of time are assigned more votes per share than recent purchases).
- **Eliminate expanded constituency provision** Seeking a charter or bylaws amendment to eliminate an "expanded constituency provision" (also known as "stakeholder provision")

  An expanded constituency provision allows directors evaluating a takeover offer to consider the interests of other corporate constituencies (including employees, suppliers, creditors, the local community in which the company operates, and, in some cases, even the economy of the nation as a whole) and conclude that they might be better served by the company remaining independent.
- **Eliminate fair price provision** Seeking a charter amendment to remove a fair price provision

  Fair price provisions require that any business combination with a holder of a specified percentage of its stock (most commonly 10 percent) not approved by the board of directors must either be approved by shareholders or satisfy certain fair price requirements. The vote requirement of shareholders to approve the business combination is almost always a supermajority. Companies seeking to eliminate supermajority vote requirements will typically also remove their fair price provision.
- **Eliminate (or increase requirement to) act by written consent** Seeking charter or bylaws amendment to remove the right of shareholders to act by written consent in lieu of a meeting or to increase the requirements to do so
- **Eliminate (or increase requirement to) call special meetings** Seeking a charter or bylaws amendment to eliminate the ability of shareholders to call special meetings or to increase the ownership threshold required to do so (e.g., from 10 percent to 33 percent)

- **Eliminate supermajority vote requirement** Requesting that the company eliminate all supermajority vote requirements and apply a simple majority standard in the voting of any matter by shareholders

  For the purpose of this report, a management proposal requesting the elimination only of a specific supermajority vote provision (e.g., for the approval of mergers or to pass a charter or bylaws amendment) is coded under such separate proposal category.

- **Fill board vacancies (reduce defense)** Seeking a charter or bylaws amendment to limit the board of directors' ability to fill vacancies on the board or to allow or require vacancies be filled by shareholders

- **Fill board vacancies (strengthen defense)** Seeking a charter or bylaws amendment to permit or increase the board of directors' authority to fill vacancies on the board or to limit or eliminate the ability of shareholders to fill any such vacancy

- **Include shareholder nominee in company proxy (proxy access)** Requesting the inclusion in proxy materials director candidate(s) nominated by shareholders

- **Increase board ability to amend bylaws (strengthen defense)** Seeking a charter or bylaws amendment to increase the board of directors' authority to amend the company's bylaws (i.e., by allowing the board to amend the bylaws without shareholder approval)

- **Increase board size** To increase the current number or the maximum number (where a range is established) of members of the board of directors

- **Increase difficulty to remove directors (strengthen supermajority vote)** Seeking a charter or bylaws amendment to increase the voting requirement for shareholders to remove directors (i.e., by adopting a supermajority vote requirement)

- **Increase vote requirement to amend charter/bylaws (adopt supermajority)** Management sponsored proposals to amend the charter and/or bylaws to increase the voting requirement for shareholders to amend the charter or bylaws (e.g. to adopt a supermajority requirement)

- **Increase vote requirement for mergers (adopt supermajority vote)** Seeking a charter or bylaws amendment to increase the voting requirement to approve business combinations (i.e., by adopting a supermajority vote requirement)

- **Mandatory director retirement age-related** To create a policy or bylaw establishing, amending, or eliminating an age limitation to serve on the board of directors

- **Opt into state takeover statute** Management sponsored proposals to amend the charter and/or bylaws to become subject to (i.e. opt in) a state takeover law of the company's state of incorporation for which the company may have previously elected to decline coverage. Most states allow a company to opt out of all or some of its anti-takeover laws by adopting an appropriate provision in its charter or bylaws.

- **Opt out of state takeover statute** Seeking a charter or bylaws amendment for the company to be exonerated from the application of a takeover law of the company's state of incorporation, where such opting out is permitted under the law
- **Quorum requirement-related** Seeking a charter or bylaw amendment related to quorum requirements (i.e., to reduce the quorum required for shareholder meetings from a majority to one-third of outstanding shares entitled to vote)

  A quorum represents the minimum number of shares voted (as a percentage of votes outstanding) necessary to take action at a meeting.
- **Redeem or require shareholder vote on poison pill** To maintain an existing shareholder rights plan ("poison pill") or to ratify a new poison pill through a shareholder vote. On poison pills, see "Shareholder Proposals on Corporate Governance," p. 74.
- **Reduce difficulty to remove directors (ease supermajority vote)** To reduce the voting requirement for shareholders to remove directors (i.e., by easing the supermajority requirement, without eliminating it altogether)

  Management proposals seeking to eliminate altogether the supermajority vote requirement to remove directors are categorized under the "Eliminate supermajority vote requirements" proposal category. Management proposals seeking to eliminate or ease the supermajority vote requirement to amend the company's charter or bylaws are categorized under "Ease vote requirement to amend charter/bylaws (eliminate supermajority vote)" or under "Ease vote requirement to amend charter/bylaws (without eliminating supermajority vote)."
- **Reduce difficulty to remove directors (with/without cause)** Seeking a charter or bylaws amendment to allow shareholders to remove a director either with or without cause (i.e., eliminate the requirement that directors may be removed only for cause)
- **Reincorporate in another state** Seeking approval to change the company's state of incorporation to another US state
- **Set the number of directors at specified number** To set the number of directors at a specified number
- **Separate CEO/chairman positions** For the adoption of a policy separating the roles of chairman and CEO and/or requiring that the chairmanship be assumed by an independent director with no management duties, titles, or responsibilities
- **Other board committee-related** Any other management-sponsored proposals related to board committees. This category includes proposals to form a new committee and other requirements on who may serve on a committee, including prohibiting directors who receive a specified percentage of votes against their re-election from serving on a committee

- **Other board structure-related** Any other management-sponsored proposals related to board size and structure

  This category includes proposals to change from a fixed to a variable board size, provisions regarding the ability of the board to determine the board size, placing and eliminating other director qualification requirements, and eliminating term and age limits.

- **Other nontakeover defense-related charter/bylaw amendment** Any other nontakeover defense-related management sponsored proposals seeking a charter or bylaws amendment (e.g., with respect to indemnification provisions)

- **Other takeover defense-related (strengthen defense)** Any other management-sponsored proposals requiring a charter or bylaw amendment to increase the company's takeover defenses

  This category could include proposals to decrease a charter ownership limit or extend its expiration date, adopt an expanded constituency provision, or adopt an anti-greenmail provision.

- **Other takeover defense-related (reduce defense)** Any other management-sponsored proposals requiring a charter or bylaw amendment to reduce the company's takeover defenses or limit its ability to adopt defenses (e.g., to allow shareholders to amend the bylaws at a company where only the board can amend the bylaws)

- **Other corporate governance issues** Any other management-sponsored proposals related to corporate governance practices not otherwise categorized (e.g., compensation consultant issues, stockholder communication, location of shareholder meetings, proxy issues, and increased disclosure of financial risk, credit risk, derivatives, or collateral and structured investment vehicles)

For the formulation of proposals submitted under this category, see Appendix on p. 258.

## By topic

The historical analysis by topic of filed management proposals on corporate governance (Table 21) highlights governance-related changes that typically occur in response to the adoption of a shareholder proposal but that were instead introduced by management. The most frequent management proposals in 2018 were board declassification (55 proposals, or 18.7 percent of the total after excluding proposals on the election of management's director nominee), those on the elimination of a supermajority vote requirement and the resolutions related to board committees (42 proposals or 14.3 percent each), those seeking nontakeover defense-related charter or bylaw amendments (34 proposals, or 11.6 percent), and those related to shareholders' ability to call special meetings (22 proposals, or 7.5 percent).

These instances are likely to reflect a response by management to some type of shareholder pressure. The circumstances may vary: A proposal on the same topic might have been filed by shareholders during previous proxy seasons, activists might have been particularly effective in mounting a public campaign against a certain corporate practice, or the management proposal might be the concession the company made to settle a threatened proxy contest. In some cases, management might agree to introduce a proposal to meet part of a shareholder request; for example, easing the requirements to call special meetings but not removing them. Voting guidance by ISS on board responsiveness has also been a major driver of management proposals on corporate governance—especially on topics such as board declassification and majority voting, which have been consistently supported for a few years by a majority of shareholders (see "Board Responsiveness," on p. 61).

The totals in Table 21 include proposals for which the company reported detailed voting results; proposals reported only as "pass/fail," "not voted on," or "pending/never disclosed" are excluded. Totals for proposals to elect management's director nominee are shown separately.

Table 21 **Management Proposals on Corporate Governance—by Topic (2015, 2017, and 2018)**

Number of voted management proposals (percentage of total)

| Topic | Number of voted management proposals | ercentage of total |
|---|---|---|
| **Elect management's director nominee** | | |
| 2018 | 15,988 | 98.2% |
| 2017 | 15,361 | 98.3 |
| 2015 | 13,784 | 98.4 |
| **2018** | **n=294** | |
| Add ownership limit to charter | 1 | 0.3% |
| Advance-notice related (reduce defense) | 1 | 0.3 |
| Advance-notice related (strengthen defense) | 1 | 0.3 |
| Allow for (or ease requirement to) act by written consent | 5 | 1.7 |
| Allow for (or ease requirement to) call special meetings | 22 | 7.5 |
| Change from plurality to majority voting | 12 | 4.1 |
| Declassify board | 55 | 18.7 |
| Decrease board ability to amend bylaws (reduce defense) | 10 | 3.4 |
| Decrease board size | 1 | 0.3 |
| Decrease vote requirement to amend charter/bylaws (eliminate supermajority vote) | 2 | 0.7 |
| Ease vote requirement for mergers (eliminate supermajority vote) | 5 | 1.7 |
| Ease vote requirement to amend charter/ bylaws (eliminate supermajority vote) | 42 | 14.3 |
| Eliminate (or increase requirement to) call special meetings | 2 | 0.7 |
| Eliminate blank-check preferred stock | 1 | 0.3 |
| Eliminate cumulative voting | 1 | 0.3 |
| Eliminate dual class structure (unequal voting) | 1 | 0.3 |
| Eliminate supermajority vote requirements | 2 | 0.7 |
| Include shareholder nominee in company proxy (proxy access) | 8 | 2.7 |
| Increase board ability to amend bylaws (strengthen defense) | 2 | 0.7 |
| Increase board size | 9 | 3.1 |
| Mandatory director retirement age-related | 1 | 0.3 |
| Opt out of state takeover statute | 2 | 0.7 |
| Other board committee-related | 10 | 3.4 |
| Other board structure-related | 5 | 1.7 |
| Other corporate governance issues | 6 | 2.0 |
| Other nontakeover defense-related charter/bylaw amendment | 34 | 11.6 |
| Other takeover defense-related (reduce defense) | 13 | 4.4 |
| Other takeover defense-related (strengthen defense) | 1 | 0.3 |
| Redeem or require shareholder vote on poison pill | 13 | 4.4 |
| Reduce difficulty to remove directors (ease supermajority vote) | 8 | 2.7 |
| Reduce difficulty to remove directors (with/ without cause) | 7 | 2.4% |
| Reincorporate in another state | 4 | 1.4 |
| Set the number of directors at specified number | 7 | 2.4 |
| **2017** | **n=260** | |
| Add ownership limit to charter | 1 | 0.4% |
| Advance-notice related (strengthen defense) | 3 | 1.2 |
| Allow for (or ease requirement to) call special meetings | 7 | 2.7 |
| Authorize blank-check preferred stock | 1 | 0.4 |
| Change from plurality to majority voting | 28 | 10.8 |
| Classify board | 3 | 1.2 |
| Declassify board | 32 | 12.3 |
| Decrease board ability to amend bylaws (reduce defense) | 12 | 4.6 |
| Decrease board size | 1 | 0.4 |
| Ease vote requirement for mergers (eliminate supermajority vote) | 2 | 0.8 |
| Ease vote requirement to amend charter/ bylaws (eliminate supermajority vote) | 29 | 11.2 |
| Eliminate (or increase requirement to) act by written consent | 1 | 0.4 |
| Eliminate (or increase requirement to) call special meetings | 2 | 0.8 |
| Eliminate blank-check preferred stock | 1 | 0.4 |
| Eliminate cumulative voting | 4 | 1.5 |
| Eliminate dual class structure (unequal voting) | 3 | 1.2 |
| Include shareholder nominee in company proxy (proxy access) | 10 | 3.8 |
| Increase board ability to amend bylaws (strengthen defense) | 1 | 0.4 |
| Increase board size | 5 | 1.9 |

continued on next page

Table 21 **Management Proposals on Corporate Governance—by Topic (2015, 2017, and 2018)** (continued)
Number of voted management proposals (percentage of total)

| Topic | Number of voted management proposals | ercentage of total |
|---|---|---|
| Increase vote requirement for mergers (adopt supermajority vote) | 1 | 0.4 |
| Other board committee-related | 18 | 6.9 |
| Other board structure-related | 5 | 1.9 |
| Other corporate governance issues | 9 | 3.5 |
| Other nontakeover defense-related charter/bylaw amendment | 41 | 15.8 |
| Other takeover defense-related (strengthen defense) | 2 | 0.8 |
| Redeem or require shareholder vote on poison pill | 12 | 4.6 |
| Reduce difficulty to remove directors (ease supermajority vote) | 5 | 1.9 |
| Reduce difficulty to remove directors (with/without cause) | 12 | 4.6 |
| Reincorporate in another state | 2 | 0.8 |
| Set the number of directors at specified number | 7 | 2.7 |
| **2015** | **n=228** | |
| Add ownership limit to charter | 5 | 2.2% |
| Adopt director nominee qualifications | 1 | 0.4 |
| Advance-notice related (strengthen defense) | 3 | 1.3 |
| Allow for (or ease requirement to) act by written consent | 2 | 0.9 |
| Allow for (or ease requirement to) call special meetings | 13 | 5.7 |
| Authorize blank-check preferred stock | 1 | 0.4 |
| Change from plurality to majority voting | 23 | 10.1 |
| Create dual class structure (unequal voting) | 1 | 0.4 |
| Declassify board | 32 | 14.0 |

| Topic | Number of voted management proposals | ercentage of total |
|---|---|---|
| Decrease board ability to amend bylaws (reduce defense) | 1 | 0.4 |
| Decrease board size | 2 | 0.9 |
| Ease vote requirement for mergers (eliminate supermajority vote) | 3 | 1.3 |
| Ease vote requirement to amend charter/bylaws (eliminate supermajority vote) | 26 | 11.4 |
| Eliminate cumulative voting | 4 | 1.8 |
| Eliminate dual class structure (unequal voting) | 1 | 0.4 |
| Eliminate fair price provision | 1 | 0.4 |
| Fill board vacancies (strengthen defense) | 2 | 0.9 |
| Include shareholder nominee in company proxy (proxy access) | 9 | 3.9 |
| Increase board ability to amend bylaws (strengthen defense) | 1 | 0.4 |
| Increase board size | 1 | 0.4 |
| Mandatory director retirement age-related | 1 | 0.4 |
| Opt out of state takeover statute | 2 | 0.9 |
| Other board committee-related | 8 | 3.5 |
| Other board structure-related | 2 | 0.9 |
| Other corporate governance issues | 7 | 3.1 |
| Other nontakeover defense-related charter/bylaw amendment | 48 | 21.1 |
| Redeem or require shareholder vote on poison pill | 5 | 2.2 |
| Reduce difficulty to remove directors (ease supermajority vote) | 5 | 2.2 |
| Reduce difficulty to remove directors (with/without cause) | 2 | 0.9 |
| Reincorporate in another state | 9 | 3.9 |
| Set the number of directors at specified number | 7 | 3.1 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Voting results—by topic

As shown in Table 22, the lowest levels of support were for proposals to eliminate supermajority requirements (only 48.7 percent of votes cast supported the only voted proposal on this topic, with 41.6 percent votes *against* and 9.7 percent of abstentions), those to reduce the defense provided by advance-notice bylaws (57.4 percent of *for* votes), and those to increase the board's ability to amend bylaws (67.6 percent of *for* votes).

Management proposals on corporate governance reported higher average levels of nonvotes than their counterparts in the other management proposals category. Broker nonvotes constituted an average of 10.3 percent of outstanding shares for proposals to elect a management candidate to the board; when computing such nonvotes, the average support for director nominee proposals filed by management decreased from 92.2 percent of votes cast to 73.1 percent of outstanding shares. A proposal to eliminate an advance notice requirement voted at Lululemon Athletica (NASDAQ: LULU) and a proposal to eliminate blank-check preferred stock voted at Fortress Biotech (NASDAQ: FBIO) passed even though they did not receive support of a majority of shares outstanding.

Table 22

**Management Proposals on Corporate Governance—Average Voting Results, by Topic (2018)**

| Topic | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Add ownership limit to charter | 1 | 71.9 | 27.9 | 0.1 | 51.7 | 20.1 | 0.1 | 15.5 |
| Advance-notice related (reduce defense) | 1 | 57.4 | 42.5 | 0.1 | 47.3 | 35.0 | 0.1 | 5.7 |
| Advance-notice related (strengthen defense) | 1 | 98.3 | 1.6 | 0.1 | 87.4 | 1.4 | 0.1 | 7.5 |
| Allow for (or ease requirement to) act by written consent | 5 | 95.7 | 4.2 | 0.1 | 80.7 | 3.5 | 0.1 | 7.4 |
| Allow for (or ease requirement to) call special meetings | 22 | 84.5 | 14.5 | 1.0 | 91.2 | 19.5 | 1.9 | 13.5 |
| Change from plurality to majority voting | 12 | 98.0 | 1.9 | 0.1 | 81.9 | 1.6 | 0.1 | 6.1 |
| Declassify board | 55 | 98.0 | 1.6 | 0.4 | 77.4 | 1.0 | 0.3 | 9.9 |
| Decrease board ability to amend bylaws (reduce defense) | 10 | 99.3 | 0.5 | 0.2 | 77.6 | 0.3 | 0.1 | 10.6 |
| Decrease board size | 1 | 99.2 | 0.6 | 0.2 | 80.1 | 0.5 | 0.2 | 7.4 |
| Decrease vote requirement to amend charter/bylaws (eliminate supermajority vote) | 2 | 99.9 | 0.1 | 0.0 | 86.0 | 0.1 | 0.0 | 4.6 |
| Ease vote requirement for mergers (eliminate supermajority vote) | 5 | 98.9 | 0.8 | 0.3 | 80.9 | 0.6 | 0.2 | 8.2 |
| Ease vote requirement to amend charter/bylaws (eliminate supermajority vote) | 42 | 97.9 | 1.6 | 0.5 | 75.8 | 1.2 | 0.4 | 10.4 |
| Elect management's director nominee | 15,988 | 97.8 | 1.9 | 0.3 | 75.4 | 1.4 | 0.2 | 10.5 |
| Eliminate (or increase requirement to) call special meetings | 2 | 99.6 | 0.2 | 0.2 | 74.5 | 0.1 | 0.1 | 12.3 |
| Eliminate blank-check preferred stock | 1 | 99.6 | 0.3 | 0.1 | 45.0 | 0.1 | 0.0 | 42.7 |
| Eliminate cumulative voting | 1 | 95.6 | 4.2 | 0.2 | 84.8 | 3.7 | 0.2 | 4.1 |

continued on next page

Table 22

## Management Proposals on Corporate Governance—Average Voting Results, by Topic (2018) (continued)

| Topic | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Eliminate dual class structure (unequal voting) | 1 | 99.6 | 0.3 | 0.1 | 89.5 | 0.3 | 0.1 | 3.8 |
| Eliminate supermajority vote requirements | 2 | 48.7 | 41.6 | 9.7 | 37.8 | 2.5 | 1.1 | 15.1 |
| Include shareholder nominee in company proxy (proxy access) | 8 | 96.2 | 3.0 | 0.8 | 81.6 | 2.6 | 0.6 | 7.0 |
| Increase board ability to amend bylaws (strengthen defense) | 2 | 67.6 | 31.1 | 1.2 | 56.2 | 24.3 | 0.9 | 2.9 |
| Increase board size | 9 | 98.7 | 1.1 | 0.2 | 80.0 | 0.8 | 0.2 | 5.3 |
| Mandatory director retirement age-related | 1 | 95.4 | 4.4 | 0.3 | 63.6 | 2.9 | 0.2 | 14.8 |
| Opt out of state takeover statute | 2 | 99.5 | 0.5 | 0.1 | 88.2 | 0.4 | 0.1 | 3.9 |
| Other board committee-related | 10 | 94.9 | 4.9 | 0.2 | 67.0 | 3.8 | 0.1 | 12.8 |
| Other board structure-related | 5 | 92.2 | 7.3 | 0.5 | 71.9 | 3.8 | 0.3 | 9.9 |
| Other corporate governance issues | 6 | 98.3 | 1.1 | 0.6 | 76.9 | 0.9 | 0.5 | 9.0 |
| Other nontakeover defense-related charter/bylaw amendment | 34 | 89.3 | 10.3 | 0.4 | 73.6 | 7.9 | 0.3 | 7.4 |
| Other takeover defense-related (reduce defense) | 13 | 94.7 | 5.1 | 0.1 | 78.7 | 4.6 | 0.1 | 7.0 |
| Other takeover defense-related (strengthen defense) | 1 | 99.8 | 0.1 | 0.1 | 83.9 | 0.1 | 0.1 | 3.7 |
| Redeem or require shareholder vote on poison pill | 13 | 79.1 | 19.8 | 1.1 | 57.3 | 15.9 | 0.7 | 15.2 |
| Reduce difficulty to remove directors (ease supermajority vote) | 8 | 99.2 | 0.6 | 0.2 | 76.3 | 0.4 | 0.1 | 10.9 |
| Reduce difficulty to remove directors (with/without cause) | 7 | 99.8 | 0.1 | 0.1 | 83.6 | 0.1 | 0.1 | 8.0 |
| Reincorporate in another state | 4 | 94.2 | 4.9 | 0.9 | 64.0 | 3.4 | 0.5 | 16.7 |
| Set the number of directors at specified number | 7 | 97.5 | 2.1 | 0.5 | 58.2 | 1.1 | 0.2 | 20.3 |

Note: For management proposals at companies that have a multishare system where certain classes of stock only vote on certain proposal types, results as a percentage of shares outstanding are not included because they would skew support level statistics. Percentages may not add to 100 due to rounding.

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Management Proposals on Social and Environmental Policy

There were no management proposals on social and environmental policy in the sample period examined for the purpose of this report.

## Other Management Proposals

The analysis of other management proposals filed in 2018 offers a snapshot of this residual, all-inclusive category of corporate actions brought to a shareholder vote by the company.

For the purpose of this report, other management-sponsored proposals are categorized based on the following topics:

- **Approve adjournment of meeting** Seeking shareholder approval to adjourn or postpone an annual or special meeting to solicit additional proxies

  The results of these proposals are often not disclosed.

- **Approve change to fundamental investment policies** To approve a change to a closed-end fund's investment strategy or policy, including the adoption of a new investment objective or the repealing of certain investment restrictions
- **Approve investment advisory agreement** To approve a closed-end fund's investment advisory agreement
- **Approve liquidation/dissolution** To approve the liquidation and/or dissolution of the company
- **Approve merger (acquirer)** Seeking the approval or adoption of the merger agreement by the shareholders of the acquiring company
- **Approve merger (target)** Seeking the approval or adoption of the merger agreement by the shareholders of the target company
- **Approve reorganization/restructuring plan** To approve restructuring or reorganization plans

  This category includes proposals on the creation of a holding company, on converting from a mutual to a public ownership structure, and on REIT conversions.

- **Approve sale/issuance of stock at price below NAV** To authorize the board of a closed-end fund to issue shares at a price below net asset value (NAV), as per the requirements of the Investment Company Act of 1940
- **Approve sale/spin-off of assets or subsidiary** To approve the sale or spin-off of assets, business units, or subsidiaries
- **Approve stock issuance for a private placement** To approve the issuance of securities in a private placement

  This category is used in those cases in which the text of the proposal as filed in the proxy statement specifically discloses that the issuance is a private placement. NYSE rules require shareholder approval prior to any issuance or sale of common stock or securities convertible into or exercisable for common stock if it exceeds 19.99 percent of the voting power. Similarly, NASDAQ rules require shareholder approval for certain transactions involving the issuance of 20 percent or more of the voting power.

- **Approve stock issuance for merger/acquisition** To approve the issuance of securities used as consideration in a merger or acquisition

  NYSE rules require shareholder approval prior to any issuance or sale of common stock or securities convertible into or exercisable for common stock if it exceeds 19.99 percent of the voting power. Similarly, NASDAQ rules require shareholder approval for certain transactions involving the issuance of 20 percent or more of the voting power.

- **Approve stock split** To approve stock splits

  These proposals usually contemplate a charter amendment.

- **Approve stock/warrant issuance** Seeking approval of the issuance of securities, including those issuable upon the conversion of convertible stock, notes, or warrants

  NYSE rules require shareholder approval prior to any issuance or sale of common stock or securities convertible into or exercisable for common stock if it exceeds 19.99 percent of the voting power. Similarly, NASDAQ rules require shareholder approval for certain transactions involving the issuance of 20 percent or more of the voting power. If the proxy discloses that the issuance is a private placement, then the proposal is categorized under "Approve stock issuance for a private placement." If the issuance constitutes the consideration in a merger or acquisition, then the proposal is categorized under "Approve stock issuance for merger/acquisition."

- **Authorize declawed blank-check preferred stock** Establishing a specified number of shares of preferred stock but limiting its use as a takeover defense

  On blank-check preferred stock, also see p. 127. If the blank-check preferred stock is "declawed," the board retains the flexibility in structuring capital-raising transactions but generally offers the representation that the company will not issue, without prior shareholder approval, any series of preferred stock for any defensive or anti-takeover purpose or with features specifically intended to make any attempted acquisition of the company more difficult or costly. In some cases, the company issues a separate press release (and files it as a Form 8-K or DEFA14A) disclosing that the proposed preferred stock will be declawed.

- **Decrease authorized number of shares of common stock** Seeking a charter amendment to decrease the number of authorized shares of common stock

- **Decrease authorized number of shares of preferred stock** Seeking a charter amendment to decrease the number of authorized shares of preferred stock

- **Increase authorized number of shares of common stock** Seeking a charter amendment to increase the number of authorized shares of common stock

- **Increase authorized number of shares of preferred stock** Seeking a charter amendment to increase the number of authorized shares of preferred stock

- **Name change** Seeking charter approval to change the name of the company

  These proposals typically request approval to amend the company's charter.

- **Par value-related** To change (typically, reduce) the par value of the common stock

  Par value represents the per-share value that is arbitrarily assigned to each class of common stock upon its issuance. Par value is used to designate the lowest value for which a company can sell its shares and to report the outstanding equity value on a company's balance sheet. Historically, the concept of par value served to protect creditors and senior security holders by ensuring that a company received at least the par value as consideration for issuance of stock; however, this concept has lost much of its significance over time. Companies seeking to reduce par value often do so to issue shares below the pre-existing par value or to claim certain fiscal benefits.

- **Ratify auditors** To ratify the appointment of the company's auditor for the ensuing year
- **Reincorporate outside of the United States** Seeking approval to reincorporate in a jurisdiction outside of the United States
- **Remove ownership limit from charter** To remove an ownership limitation from the company's charter

  These ownership limits are usually related to preserving net operating loss carryforwards ("NOLs"), qualification for REIT status, and regulated industries.

- **Other capital stock-related** Any other management-sponsored proposals related to the capital stock of the company
- **Other fund-specific issues** Other management-sponsored proposals relating to closed-end fund business
- **Miscellaneous** Any management-sponsored proposals not otherwise categorized in this report

For the formulation of proposals submitted under this category, see Appendix on p. 258.

## By topic

As shown in Table 23, the vast majority of the proposals in the "other" category that management brought to a vote at annual meetings in 2018 sought to ratify the appointment of the company's auditor for the ensuing year. While ratification votes are advisory and are not required by law, they are often held as a matter of good corporate practice. In addition, since they are considered routine matters for which brokers may vote uninstructed shares, such proposals may help establish a quorum for shareholder meeting purposes.

Other issues or planned actions management brought to a shareholder vote included proposals related to the capital stock of the company (74 proposals) and proposals seeking to increase of the authorized number of shares of common stock (71 proposals). The 61 proposals categorized as "miscellaneous" include the proposals to release members of the company's management or supervisory boards from liability in respect of the exercise of their duties or to approve the company's annual report and financial statements.

Totals include proposals for which the company reported detailed voting results; proposals reported only as "pass/fail," "not voted on," or "pending/never disclosed" are excluded from this calculation.

Table 23 **Other Management Proposals—by Topic (2015, 2017, and 2018)**

Number of voted management proposals (percentage of total)*

| Topic | Number of voted management proposals | Percentage of total |
|---|---|---|
| **2018** | **n=2,698** | |
| Approve adjournment of meeting | 12 | 0.4% |
| Approve merger (acquirer) | 2 | 0.1 |
| Approve merger (target) | 1 | 0.0 |
| Approve reorganization/restructuring plan | 2 | 0.1 |
| Approve sale/spin-off of assets or subsidiary | 1 | 0.0 |
| Approve stock issuance for a private placement | 3 | 0.1 |
| Approve stock issuance for merger/acquisition | 5 | 0.2 |
| Approve stock split | 8 | 0.3 |
| Approve stock/warrant issuance | 9 | 0.3 |
| Decrease authorized number of shares of common stock | 3 | 0.1 |
| Increase authorized number of shares of common stock | 71 | 2.6 |
| Increase authorized number of shares of preferred stock | 2 | 0.1 |
| Miscellaneous | 61 | 2.3 |
| Name change | 9 | 0.3 |
| Other capital stock-related | 74 | 2.7 |
| Other nontakeover defense-related charter/bylaw amendment | 1 | 0.0 |
| Ratify auditors | 2,434 | 90.2 |
| **2017** | **n=2,556** | |
| Approve adjournment of meeting | 8 | 0.3% |
| Approve investment advisory agreement | 1 | 0.0 |
| Approve merger (acquirer) | 2 | 0.1 |
| Approve sale/spin-off of assets or subsidiary | 2 | 0.1 |
| Approve stock issuance for a private placement | 2 | 0.1 |
| Approve stock issuance for merger/acquisition | 1 | 0.0 |
| Approve stock split | 7 | 0.3 |
| Approve stock/warrant issuance | 7 | 0.3 |
| Decrease authorized number of shares of common stock | 3 | 0.1 |
| Increase authorized number of shares of common stock | 58 | 2.3 |
| Miscellaneous | 71 | 2.8 |
| Name change | 3 | 0.1 |
| Other capital stock-related | 60 | 2.3 |
| Ratify auditors | 2,330 | 91.2 |
| Remove ownership limit from charter | 1 | 0.0 |
| **2015** | **n=2,326** | |
| Approve adjournment of meeting | 6 | 0.3% |
| Approve merger (acquirer) | 3 | 0.1 |
| Approve merger (target) | 1 | 0.0 |
| Approve reorganization/restructuring plan | 1 | 0.0 |
| Approve stock issuance for a private placement | 2 | 0.1 |
| Approve stock issuance for merger/acquisition | 1 | 0.0 |
| Approve stock split | 16 | 0.7 |
| Approve stock/warrant issuance | 10 | 0.4 |
| Decrease authorized number of shares of common stock | 1 | 0.0 |
| Increase authorized number of shares of common stock | 64 | 2.8 |
| Increase authorized number of shares of preferred stock | 2 | 0.1 |
| Miscellaneous | 47 | 2.0 |
| Name change | 6 | 0.3 |
| Other capital stock-related | 54 | 2.3 |
| Par value-related | 4 | 0.2 |
| Ratify auditors | 2,106 | 90.5 |
| Reincorporate in another state | 1 | 0.0 |
| Remove ownership limit from charter | 1 | 0.0 |

***Totals only include proposals for which detailed voting results were reported, not those reported only as pass/fail, not voted on, or pending/never disclosed.**

**Source: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.**

## Voting results—by topic

As shown in Table 24, the "other management proposals" that received the lowest average support level sought to increase the authorized number of shares of preferred stock (on average, 89.4 percent of votes cast were in favor of the 71 voted proposals on this topic, with 10 percent of votes *against*) and those seeking to approve a meeting adjournment (on average, 14.7 percent of votes cast were *against* the 12 voted proposals). Proposals to approve the issuance of new stock for a private placement received the highest level of nonvotes (19.4 percent of shares outstanding for three proposals).

Table 24

### Other Management Proposals—Average Voting Results, by Topic (2018)

| Topic | Voted proposals | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|
| | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Approve adjournment of meeting | 12 | 84.7 | 14.7 | 0.6 | 72.2 | 12.3 | 0.6 | 2.4 |
| Approve merger (acquirer) | 2 | 99.7 | 0.3 | 0.0 | 76.5 | 0.2 | 0.0 | 11.2 |
| Approve merger (target) | 1 | 97.6 | 2.4 | 0.0 | 62.0 | 1.5 | 0.0 | 0.0 |
| Approve reorganization/restructuring plan | 2 | 98.5 | 0.7 | 0.8 | 71.3 | 0.5 | 0.6 | 12.4 |
| Approve sale/spin-off of assets or subsidiary | 1 | 99.7 | 0.2 | 0.1 | 86.1 | 0.2 | 0.1 | 9.6 |
| Approve stock issuance for a private placement | 3 | 94.8 | 2.7 | 2.4 | 66.6 | 2.0 | 1.3 | 19.4 |
| Approve stock issuance for merger/ acquisition | 5 | 99.3 | 0.3 | 0.4 | 80.4 | 0.3 | 0.3 | 7.2 |
| Approve stock split | 8 | 94.6 | 4.9 | 0.4 | 80.7 | 3.9 | 0.4 | 4.9 |
| Approve stock/warrant issuance | 9 | 94.7 | 3.7 | 1.6 | 71.9 | 2.8 | 1.0 | 11.6 |
| Decrease authorized number of shares of common stock | 3 | 99.3 | 0.2 | 0.4 | 62.9 | 0.1 | 0.3 | 8.0 |
| Increase authorized number of shares of common stock | 71 | 89.4 | 10.0 | 0.6 | 78.4 | 8.7 | 0.5 | 0.9 |
| Increase authorized number of shares of preferred stock | 2 | 90.7 | 9.2 | 0.1 | 73.5 | 7.4 | 0.1 | 9.8 |
| Miscellaneous | 61 | 93.1 | 4.0 | 2.9 | 77.1 | 3.2 | 2.4 | 3.8 |
| Name change | 9 | 97.6 | 2.0 | 0.3 | 85.7 | 1.8 | 0.3 | 2.1 |
| Other capital stock-related | 74 | 96.7 | 2.3 | 1.0 | 81.5 | 1.9 | 0.9 | 1.8 |
| Other nontakeover defense-related charter/bylaw amendment | 1 | 95.2 | 0.0 | 4.8 | 60.7 | 0.0 | 3.0 | 10.4 |
| Ratify auditors | 2434 | 98.3 | 1.3 | 0.3 | 88.2 | 1.2 | 0.3 | 0.1 |

Note: For management proposals at companies that have a multishare system where certain classes of stock only vote on certain proposal types, results as a percentage of shares outstanding are not included because they would skew support level statistics. Percentages may not add to 100 due to rounding.

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

# PART IV

# Proxy Contests and Other Shareholder Activism Campaigns

Broadly speaking, shareholder activism is any attempt made by a public company investor to influence important business management decisions. As such, some forms of shareholder activism have existed for a long time, with large investment institutions urging additional corporate transparency or publicly voicing concerns about the long-term value creation strategy of their portfolio companies. However, in the last decade, the phenomenon has undergone a profound transformation that affected not only the type of shareholders involved but also their tactics and ultimate objectives. Today, activism has become a separate class of investing on its own, and corporations have taken notice.

This section of the report reviews data on publicly disclosed shareholder activism campaigns. The mere filing of a Rule 14a-8 resolution (reviewed in Part II) does not constitute a "publicly disclosed activism campaign" if it is not accompanied by one of the following forms of public agitation. For the purpose of this analysis, publicly disclosed shareholder activism campaigns are categorized as follows:

- **Proxy contest** A "proxy contest" (or "proxy fight" or "contested solicitation") is a proxy voting campaign under which an activist shareholder or group of shareholders (the "dissident") solicits the proxy of fellow shareholders in support of a resolution it is advancing. This type of initiative usually involves the election of the dissident's own slate of nominees to the company's board of directors in opposition to the company's director nominees. However, it may also pertain to the approval of a shareholder proposal or to the vote against a management proposal (including the proposal to approve a merger or another business combination).

  In a proxy contest, the dissident files a separate proxy statement and card from the company's proxy materials. Regulation 14a (Rules 14a-1 to 14b-2) under the Securities Exchange Act of 1934 requires that the dissident abide by several procedural and disclosure requirements to wage a proxy contest. For the purpose of this report, an initiative is classified as a proxy contest from the moment the dissident publicly discloses the delivery of formal notice to the company that it intends to solicit proxies from other shareholders.

- **Exempt solicitation** Made pursuant to Rule 14a-2(b)(1) under the Securities Exchange Act of 1934, an exempt solicitation is a campaign under which an activist dissenting from management can communicate its views to other shareholders without having to comply with SEC proxy filing and disclosure rules. Like proxy contests, exempt solicitations usually involve communications to other shareholders to persuade them to vote for or against a resolution. Unlike a proxy contest, the activist is not seeking the power to act as proxy for a fellow shareholder and does not provide its own proxy card in its materials.

Under Exchange Act Rule 16a-6(g), if the activist owns target company securities of the class subject to the solicitation with a market value of over USD5 million, it must file with the SEC a Notice of Exempt Solicitation (Form PX14A6G) not later than three days after the date the written solicitation is first sent or given to any other shareholder. Although there is no indication that the SEC intended these notices to be used on a voluntary basis by smaller shareholders holding less than USD5 million worth of stock, nothing in the rules prevents them from doing so. Thus, exempt solicitations have become an easy and cost-effective way for activists to amplify their voice and lobby fellow shareholders beyond the 500-word limit imposed for shareholder proposals by Rule 14a-8. To be sure, some of these filings do not have any characteristics of "solicitations" and would not be required even if they were made by large shareholders.

- **Other activism campaign** This is a catch-all category involving any campaign tactics other than a proxy contest or exempt solicitation where an activist investor agitates for corporate changes with the goal of maximizing shareholder value (through stock buybacks or dividend distributions, or calling for the sale of the company or the divestiture of a line of business) or enhancing corporate governance, executive compensation or social and environmental practices. Tactics range from issuing press releases, making public speeches, and broadcasting advertisements to publicly disclosing letters sent to target company management, and from filing a shareholder lawsuit or threatening a proxy fight for board representation to launching a hostile tender offer to all shareholders. Under Exchange Act Rule 14a-1(l), these broadly disseminated statements of how a shareholder intends to vote or the reasons for its dissent from management do not per se constitute "solicitations" for the purpose of US securities regulation.

  New technology has enabled forms of broad outreach that were unimaginable only a few years ago, and activists are perfecting their use to exercise pressure on target companies and advance their investment objectives. Examples of how investors tap into the potentials of innovation are communications via social media and electronic shareholder forums (which the SEC exempt from proxy solicitation rules if certain conditions are met[2]), the inclusion of links to websites in the 500-word supporting statements that accompany a shareholder proposal, and the use of proxy processing agents such as Broadridge for the electronic mailing of materials to investor lists (in many cases without any knowledge of the company).

- **13D filer——No publicly disclosed activism** Under Exchange Act Rule 13d-1, an investor is expected to file a beneficial ownership report on Schedule 13D within 10 days after acquiring more than 5 percent of a company's outstanding shares. The Schedule 13D should include a statement on the purpose of the transaction and should be promptly amended to report material changes to that purpose.

2 SEC Compliance and Disclosure Interpretations (Section 110. Rule 134——Communications Not Deemed a Prospectus), April 2014, available at www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm; and SEC Release No. 34-57172 ("Electronic Shareholder Forums"), January 18, 2008, at www.sec.gov/rules/final/2008/34-57172.pdf.

> Depending on the circumstances, the mere filing of a Schedule 13D by a notable activist investor, even when unaccompanied by a public statement on the investor's specific intentions to effect corporate change, may put pressure on the company to act to enhance shareholder value or adopt specific governance or sustainability practices. However, for the purpose of this report, these instances are not categorized as any of the previously described activism campaigns until an amendment to the Schedule 13D reveals the investor's specific activism motive and campaign tactics.

This section of the report reviews all publicly disclosed activism campaigns conducted by investors at SEC-registered companies that held annual or special shareholder meetings between January 1, 2018, and June 30, 2018, and that, on the campaign announcement date, were in the Russell 3000 index. For comparative purposes, the same top-level analysis is repeated for the larger companies in the S&P 500 index. Unlike other sections of the report, data analyzed in Part IV are not limited to AGMs and include special meetings as well as actions by written consent. However, the analysis is limited to activism campaigns related to a director election or a written consent solicitation or a (shareholder or management) resolution put to a vote at a shareholder meeting and does not extend to other announced campaigns unrelated to a shareholder vote or consent.

On the reasons for the selection of this sample of activism campaigns and the exclusion of other campaigns announced against Russell 3000 companies in the first six months of 2018, see "Activism Campaigns Unrelated to a Shareholder Vote or Written Consent," below.

## Activism Campaigns Unrelated to a Shareholder Vote or Written Consent

Unlike other parts of this report, data analyzed in Part IV include not only AGMs but also special meetings and actions by written consent. This is because activist investors often target extraordinary corporate decisions deliberated at special meetings of shareholders. Similarly, if the company bylaws permit, activists may bring a matter to a shareholder vote by calling a special meeting or conducting a written consent solicitation.

However, *Proxy Voting Analytics* was designed to report on shareholder voting. For this reason, the analysis in Part IV excludes activism campaigns unrelated to a director election or a written consent solicitation or a (shareholder or management) resolution put to a vote at a shareholder meeting of Russell 3000 companies held in the sample period.

There were 254 announcements of activism campaigns against Russell 3000 companies in the January 1-June 30, 2018, period, compared to 240 in 2017 and down from 261 during the same period in 2015. However, the analysis discussed in this section covers the 147 campaigns that pertained to a director election or a written consent solicitation or a (shareholder or management) resolution voted at a shareholder meeting held by a company in the Russell 3000 in the January 1-June 30, 2018 period. The sample includes both campaigns announced during the time period as well as campaigns announced prior to the time period but related to meetings held in the time period.

*(continued on next page)*

When compared to data from 2017, the number of campaign announcements in the first half of 2018 increased, while the volume of campaigns related to Russell 3000 company shareholder meetings held in the first six months of 2018 was the same as in the same period of the prior year. This apparent contradiction is easily explained by the different samples that are being compared. However, it may also reveal the increasing use by activists of public initiatives to gain the attention of the target company board and possibly induce it to the negotiating table rather than to galvanize other shareholders on the importance of a certain vote. In fact, considering the recent entry of a cadre of new funds to the activism investment business, some of these campaign announcements that are unrelated to shareholder meetings could be mere attempts to assess the actual bargaining power that a new fund exercises on its portfolio companies.

Activist hedge funds have long used the threat of proxy contests to pressure management. The tactic of filing a shareholder resolution to get a phone call returned is also far from new, as proven by the proportion of withdrawn proposals documented by this report. However, the rise of campaign announcements unrelated to a shareholder meeting may indicate that many investors are now agitating for change without even filing shareholder proposals.

By definition, proxy contests announced against Russell 3000 companies in the first months of 2018 involve a shareholder vote and are therefore included in the data analysis of this section of the report. The discussion in the following pages excludes notices of exempt solicitations that activist investors filed with the SEC on Form PX14A6G for reasons other than urging fellow shareholders to vote for or against a certain proposal or to withhold their vote at a director election. Similarly, it excludes any other public agitation tactic used to promote the investor's opinion about the need for change at the target company but unrelated to a specific matter being put to a vote at a shareholder meeting—whether an open letter to shareholders or a press conference or the appearance on a CNBC talk show or a Twitter chat.

For example, this analysis includes:

- The proxy contest waged by hedge fund Starboard Value LP at Newell Brands Inc. (NYSE: NWL). In February 2018 Starboard Value LP filed a notice of intent to nominate ten candidates for election to the board at the 2018 AGM.
- The notice of exempt solicitation filed in April 2018 against Noble Energy, Inc. (NYSE: NBL) by public pension fund California Public Employees Retirement System (CalPERS), urging shareholders to vote for the shareholder proposal on climate change at the company's 2018 AGM.
- The May 2018 letter sent by Stelliam Investment Management LP to the board of Range Resources Corporation (NYSE: RRC), announcing its intention to vote against the company's director nominees and the proposal regarding advisory vote to approve executive compensation (say on pay) at the 2018 AGM.

*(continued on next page)*

Instead, the analysis in Part IV does not include the following examples of activism campaign announcements unaccompanied by the filing of a notice of solicitation or a shareholder proposal:

- The Schedule 13D filed in March 2018 by Altai Capital Management LP, reporting a stake of 5.83 percent in Amber Road, Inc. (NYSE: AMBR) and disclosing that it engaged and expected to continue to engage with the management and board of Amber Road on the company's business, capital structure and board structure. Altai Capital noted that it intended to discuss with the company the unsolicited offer by E2open LLC and Insight Venture Partners to acquire all of the company's issued and outstanding shares not yet owned by them for $10.50/share in cash.
- The February 2018 letter sent by Barington Companies Investors LLC to the Chairman and CEO of Bloomin' Brands, Inc. (NASDAQ: BLMN), outlining a recommendation that the company should implement a variety of measures to improve shareholder value. In the letter, Barington argued that, in order to address the company's sustained period of underperformance, which included poor operating performance execution, inferior same store sales, declined unit counts, significant asset impairment charges, ineffective advertising and excessive corporate expenses, BLMN should take the following steps: 1) spin off its smaller brands; 2) enhance guest experience; 3) reduce excessive expenses; and 4) improve BLMN's corporate governance and board composition. Finally, Barington believed that BLMN would benefit substantially from the addition of a new independent directors with strong backgrounds in the restaurant industry.
- The Schedule 13D filed in February 2018 by Cove Street Capital LLC reporting a 22.1 percent stake in Cherokee Inc. (NASDAQ: CHKE). In the letter, Cove Street said that it made suggestions with regards to enhancing Cherokee's board composition in recent conversations with the company about operational improvements and strategic direction.
- The February 2018 letter sent by Upstate Shredding LLC to the board of Fenix Parts, Inc. (OTC: FENX), announcing a non-binding proposal to acquire all the outstanding shares of Fenix for $0.50/share. Further, Upstate disclosed that the offer would be funded via cash on hand and not subject to any financing conditions. Upstate stated that the proposal would provide shareholders with desired certainty and liquidity given that the offer represented an attractive premium of approximately 46 percent over Fenix's 2-8-2017 closing price of $0.27/share.

Following an introduction on general activism trends, the discussion is organized by campaign type (proxy contests, exempt solicitations, and other activism campaigns) and extends to the review of activist types (based on the sponsor categorization also used in Part II and III) as well as the stated primary reason for (or objective of) the activism campaign. In the case of proxy contests, this section includes an analysis of outcomes and success rates (by index, industry, dissident, and reason for the contest).

A review of the Russell 3000 sample of 2018 shareholder activism campaigns described previously shows an overall decline in the volume from the levels recorded in the 2015 season. Despite the increase from 2017 in the number of proxy contests (the most hostile form of shareholder activism), there were fewer exempt solicitations in 2018 than in 2017 or 2015. This finding differs from the year-over-year increase in campaign announcements made in the 2018 period and highlights instances of activism where the investor merely threatens a proxy contest or the submission of a shareholder proposal for the purpose of amplifying a contentious issue, thereby putting pressure on the target company to seek a settlement agreement.

## Shareholder Activism Campaign Volume

### Per company

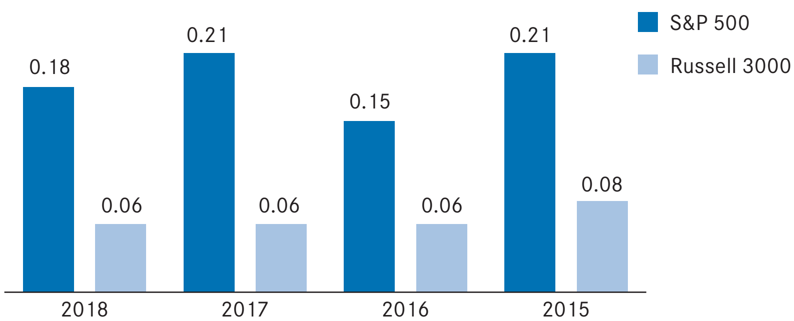
As shown in Chart 36, in the Russell 3000 sample examined for the purpose of this report, activist shareholders engaged on average in 0.06 campaign per company. This means that, for any applicable Russell 3000 company, the odds of being targeted by an activist investor in relation to the AGM were 100 to 6.

Despite the daily attention paid by the business and financial media to the activism phenomenon, Chart 36 also shows that the probability of being targeted by these investors in relation to a matter voted at a shareholder meeting has not varied significantly over the last few years. Large companies are more exposed to activism and, as expected, in the S&P 500 index such probability was higher, or 100 to 18.

Chart 36

**Shareholder Activism Campaign Volume per Company (2015-2018)**

Average number of shareholder activism campaigns per company




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By index

Shareholders engaged in 147 activism campaigns involving a shareholder meeting held between January 1, 2018 and June 30, 2018 by pubic companies that, at the time of the campaign announcement date, were in the Russell 3000 index. The number is lower than the 149 campaigns recorded in 2017 and the 155 campaigns recorded in 2015.

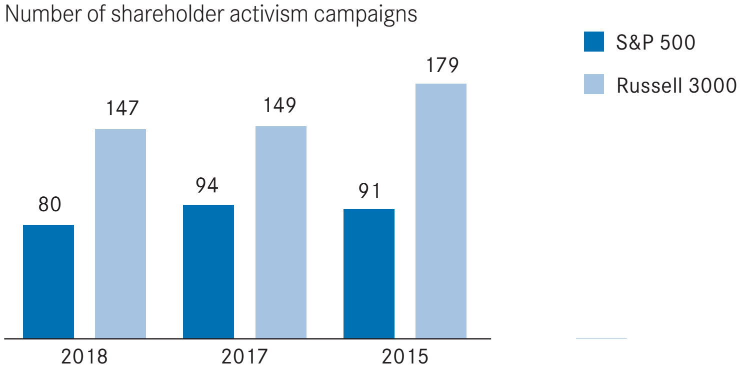
A similar decline was shown in the S&P 500, where the total number of activism campaigns involving a shareholder vote went from the record high 94 in 2017 to 80 in 2018 (Chart 37).

Despite the decline in activism campaigns involving a vote at a shareholder meeting, activist shareholders announced more campaigns in the first six months of 2018 than in the same period of 2017. Specifically, the number of announcements against Russell 3000 companies was up slightly from 240 to 254, or 5.8 percent. The reason for the discrepancy may be found in those announced campaigns where the activism does not aim at galvanizing other shareholders around a director election or an action by written consent or a vote on a specific resolution. Many announcements (whether through a press release, an appearance on a television show, or the filing of a Schedule 13D) serve the purpose of publicizing the investor's view of the business strategy or organizational performance. In these cases, the activist uses the announcement as the first step in an escalation plan that may lead to the filing of a shareholder proposal or the solicitation of proxies but that may also prove sufficient to persuade the board of directors to seek dialogue and reach a compromise.

Chart 37

**Shareholder Activism Campaign Volume by Index (2018, 2017, and 2015)**

Number of shareholder activism campaigns




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By industry

The analysis of shareholder activism campaign volume by industry shows that the 147 campaigns launched against companies in the Russell 3000 sample for 2018 were distributed across all 11 industry categories (Chart 38). The consumer discretionary and health care industries were the most targeted, with 27 and 21 new campaigns each.

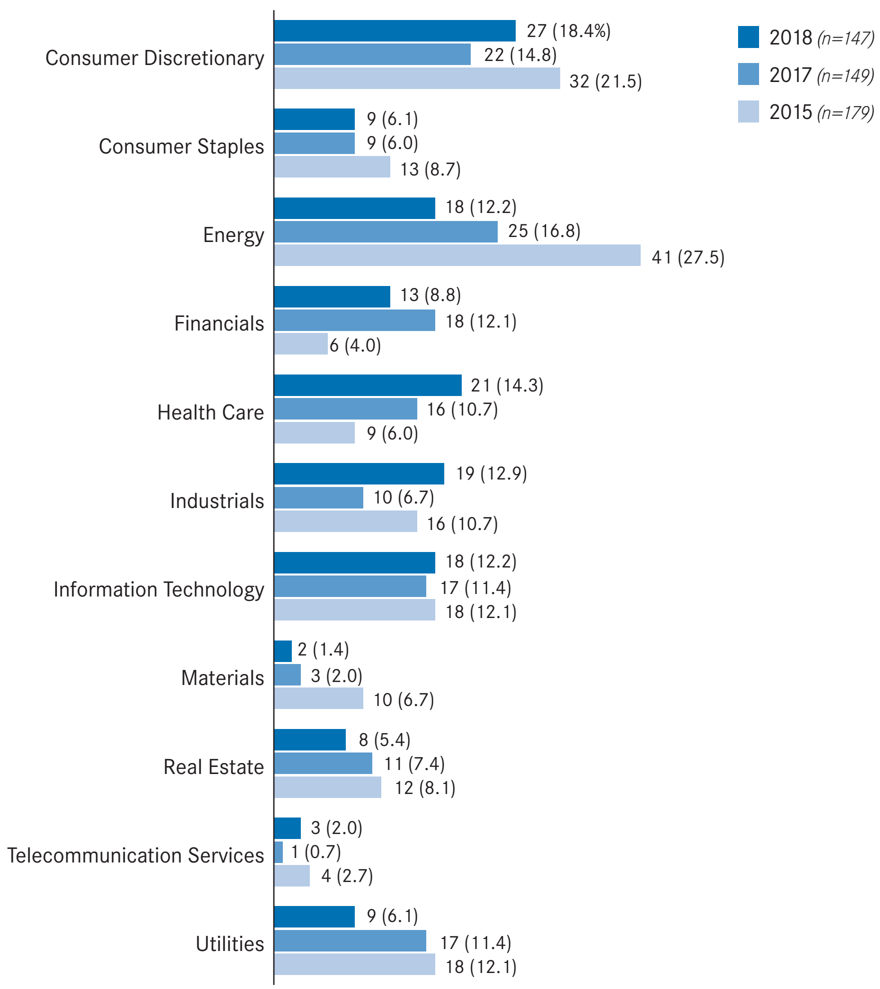
The weak stock performance of the retail sector, battled by a stronger dollar, weak emerging markets and the rise to dominance of online competitors such as Amazon, may help explain the persistent high level of interest in the consumer discretionary sector shown by activist investors over the course of the last few years. (There were 22 and 32 campaigns against this sector in 2017 and 2015, respectively).

Traditionally, information technology companies have also been among the most vulnerable to shareholder activism outside of the financial services realm, due to their large cash balance and lower-than-average dividend payout ratio. In 2018, shareholders waged 18 campaigns against companies in this sector. Instead, 18 were conducted against energy companies.

Chart 38

**Shareholder Activism Campaign Volume—by Industry (2015, 2017, and 2018)**

Number of shareholder activism campaigns (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

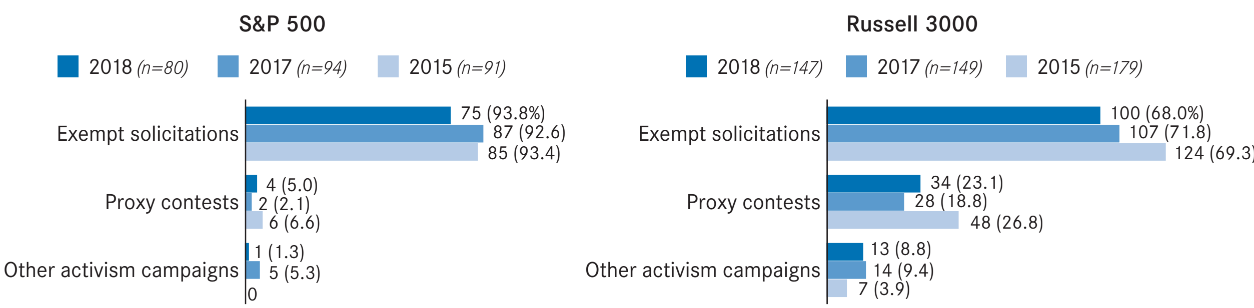
## By campaign type

Chart 39 analyzes shareholder activism by campaign type for the Russell 3000 and S&P 500 samples. This segmentation of the data reveals that, when looking at activism involving a shareholder vote, the only type that increased in 2018 was the most hostile activism that resorts to proxy fights. While in 2018 the number of new proxy contests launched against Russell 3000 and S&P 500 companies was up to 34 and four, respectively (from the 28 and two solicitations launched in 2017), the illustration shows a decline across other campaign types and indexes.

Chart 39

**Shareholder Activism Campaign Volume—by Campaign Type (2015, 2017, and 2018)**

Number of shareholder activism campaigns (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By activist

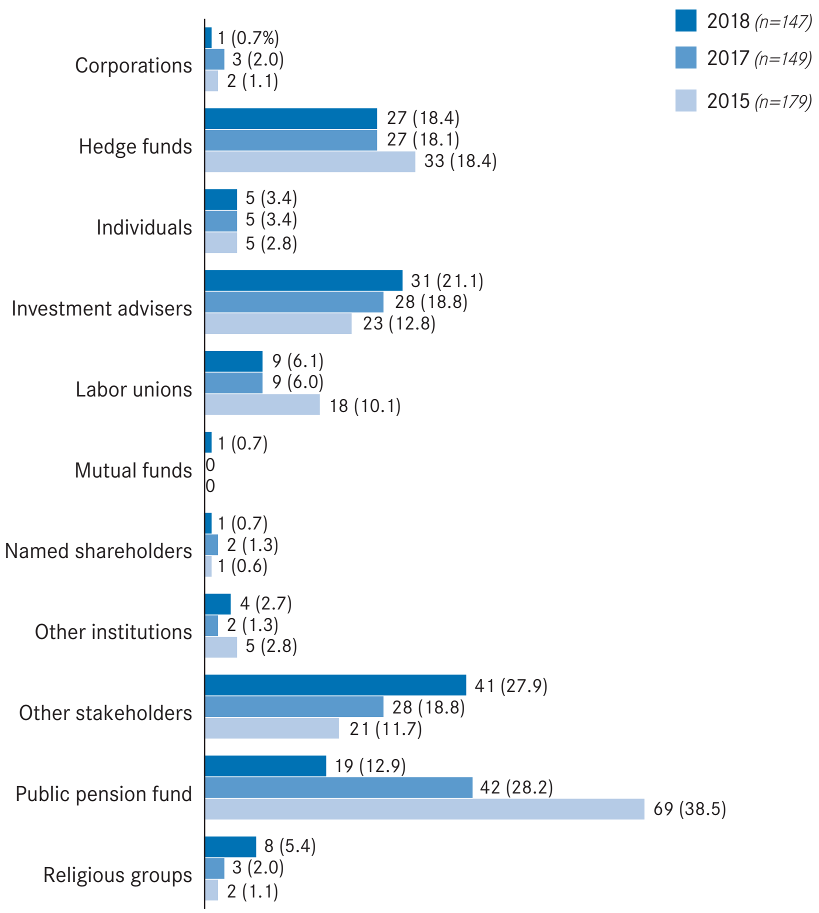
Of the 147 activism campaigns waged against Russell 3000 companies in 2018, 41 (or 27.9 percent) were announced by non-investment stakeholder groups, 27 (18.4 percent) were announced by hedge funds, and 31 (21.1 percent) were announced by investment advisers (Chart 40). It was a record year for stakeholder groups, which, according to an earlier edition of this report, had initiated only five public campaigns in the first half of 2010.

While the share of shareholder activism campaigns started by hedge funds has been fairly stable in the last three or four years (at less than 20 percent), it has significantly declined from the 36.3 percent that the edition of this study documented for the 2013 period. The percentage of campaigns involving a shareholder vote initiated by labor unions was also down to 6.1 percent, from the 13.9 that The Conference Board had found in 2014.

Chart 40

**Shareholder Activism Campaign Volume—by Activist (2015, 2017, and 2018)**

Number of shareholder activism campaigns (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By reason

For the purpose of this section of the report, shareholder activism campaigns are categorized based on the following stated reasons for dissent from management:

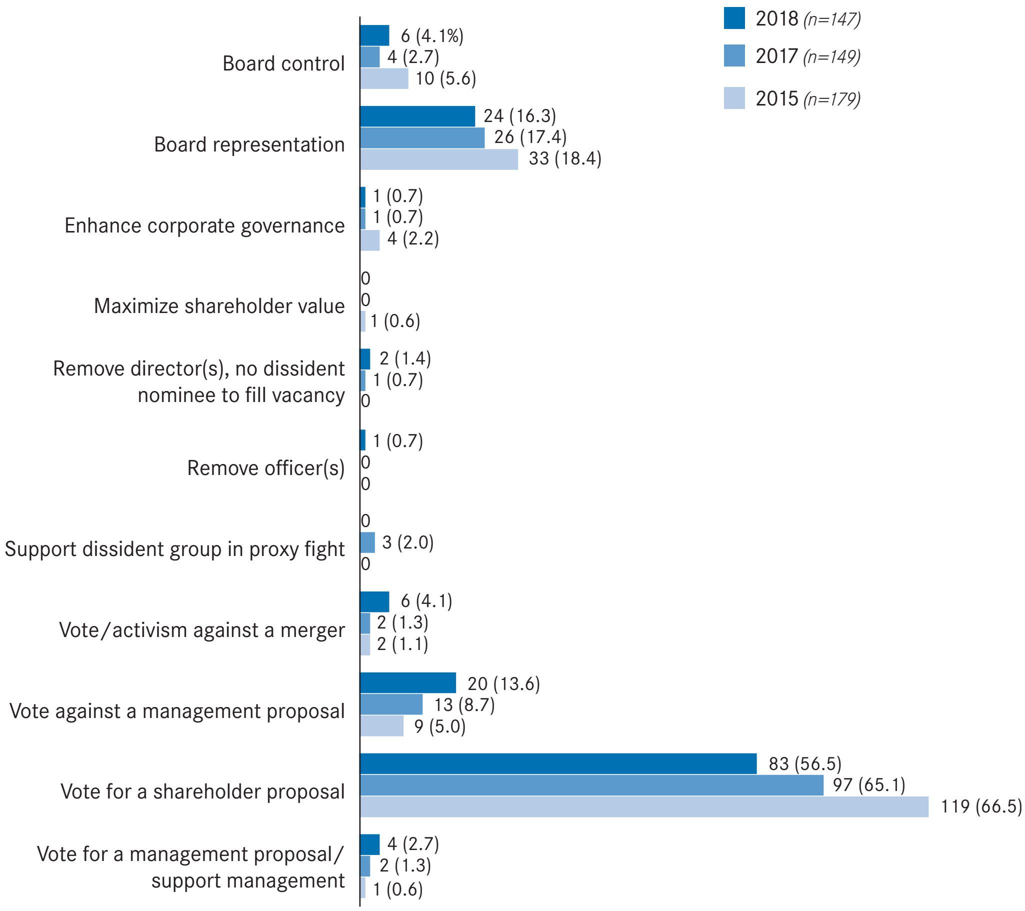
- **Board control** The activist seeks to gain control (i.e., a majority of the total seats) of the board of directors.
- **Board representation** The activist seeks representation on the board of directors by electing one or more of its nominees (but less than the majority necessary to control the board).
- **Hostile/unsolicited acquisition** The activist engages in a campaign to pursue a hostile (unsolicited) acquisition of the company.
- **Maximize shareholder value** An all-inclusive category for campaigns where the activist argues that the requested corporate action would unlock hidden business potentials and shareholder value. The plan for an additional or alternative strategic objective, the proposal of cost-saving or tax-efficiency measures, and the pursuit of the friendly sale of the company or one of its divisions are examples of reasons for the activism campaigns generally classified in this category.
- **Remove officer(s)** The activist engages in a campaign for the removal of one or more currently serving corporate officers (i.e., CEO, CFO, or president).
- **Remove director(s)** The activist engages in a campaign for the removal of one or more currently serving directors, without nominating its own board representative.
- **Vote/activism against a merger** The activist opposes a merger or other business combination transaction proposed by management or the board of directors or both.
- **Vote against a management proposal** The activist engages in a campaign against management to pursue broad voting support in favor of a certain management proposal.
- **Vote for a shareholder proposal** The activist engages in a campaign against management to pursue broad voting support in favor of a certain shareholder proposal.
- **Withhold vote for director(s)** The activist engages in a proxy solicitation or other campaign types for the purpose of having other shareholders withhold their vote for one or more director nominees.

The analysis by reason of dissent from management (Chart 41) shows that in the large majority of shareholder activism campaigns launched in the examined 2018 period, the activist sought either broad voting support of a certain shareholder proposal (it was the case for 83 of the 147 campaigns, or more than half of the total) or representation on the target company's board of director (24 campaigns, or 16.3 percent of the total). In 2018, there were six activism campaigns motivated by the opposition to a merger or other business combination proposed by management (4.1 percent of the total).

Chart 41

**Shareholder Activism Campaign Volume—by Reason (2015, 2017, and 2018)**

Number of shareholder activism campaigns (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Activist Shareholders

The categorization of activist types used for the purpose of this report was made by FactSet LionShares and is described in Part II of this report, on p. 32 (under "Sponsors.")

### By campaign tactic

Table 25 reviews campaign types by hedge funds and other investment advisory companies with an activist strategy included in FactSet's SharkWatch50 index. The SharkWatch50 is a compilation of 50 significant activist investors made by FactSet based upon the following criteria (in order of importance):

- The number of publicly disclosed campaigns waged by the activist investor, with emphasis on recent activity
- The size of companies targeted by the activist investor
- The severity of campaign tactics employed by the activist investor
- The success rate, or ability of the activist investor to affect change at targeted companies
- The value of the target company's beneficial ownership position held by the activist investor
- The frequency of Schedule 13D filings made by the activist investor
- The aggregate value of the assets under management by the activist investor

Activist investors are regularly evaluated according to the above criteria, and FactSet reconstitutes the SharkWatch50 index as needed. The analysis included in this report uses the SharkWatch50 composition as of July 1, 2018. Funds listed in Table 25 operate as individual funds or, more frequently, as part of a group of funds managed by the same investment advisory company registered with the SEC under the Investment Advisers Act of 1940. For example, Bulldog Investors LLC of Philip Goldstein is a New Jersey-based registered investment adviser managing a group of activist funds including Opportunity Partners L.P., Full Value Partners L.P., and Special Opportunities Fund, Inc.

Unlike other figures reviewed in this section of the report, Table 25 refers to the entire activism history of the investor since it first undertook an activism strategy and includes activism campaigns launched against target companies outside of the Russell 3000 index as well as campaigns unrelated to a shareholder vote or written consent. The information in Table 25 is included to provide more insight on the specific campaign tactics of this select group of investors.

When historical information is considered, GAMCO Asset Management of Mario Gabelli tops the list of the most active activist investors, with 586 companies targeted since it first engaged in shareholder activism in the 1990s. Notable cases of activism led by GAMCO over the years include those against aluminum road wheels manufacturer Superior Industries International, Inc. (NYSE: SUP) and hospitality group Gaylord Entertainment Company (NYSE: GET). In May 2018, GAMCO was defeated in its attempt to gain board representation at Cincinnati Bell (NYSE: CBB), where it had questioned the business strategy to expand in Hawaii by way of an acquisition of a local telecommunications company.

GAMCO Asset Management was one of the most hostile investors of 2018, with three proxy fights against target companies that held an AGM in the first six months of the year: in addition to telecommunications company Cincinnati Bell, at TV station group E.W. Scripps (NASDAQ: SSP), and supermarket chain Ingles Markets, Inc. (NYSE: IMKTA). However, among investors in the SharkWatch50 index, GAMCO does not lead the list of those with a track record of proxy contests. The Bulldog Investors group of funds filed 97 proxy solicitations in its history of activism, followed by the 66 of Starboard Value, the 47 of Karpus Investment Management, and the 42 of Icahn Associates Corp.

Table 25 also shows that exempt solicitations are hardly used by the established activist investors in the SharkWatch50. Aside from the smaller hedge funds that, in the last couple of years, have made use of Notices of Exempt Solicitations on Form PX14A6G as a mere channel of self-promotion, exempt solicitations are preferred by labor unions and public pension funds engaging in activism campaigns (as shown in Table 26, on p. 165). Far more common in the SharkWatch50 is the tactic of publicizing the letter sent to management or the board of target companies for the purpose of articulating an alternative strategic vision or of urging a change to the financial or organizational structures. In their history of activism, Bulldog Investors, GAMCO Asset Management, and Starboard Value sent a total of 100, 81, and 77 letters, respectively, to their targets.

Table 25 **Activist Shareholders—by Campaign Tactic (Historical)**

Number of campaigns since inception of activism strategy (where indicated, number of campaigns held in 2018)

| Activist shareholder | Key individual(s) | Recent or notable activism targets | Campaign volume | Number of companies targeted | Schedule 13D filings |
|---|---|---|---|---|---|
| Ancora Advisors LLC | Frederick David DiSanto | • UFP Technologies, Inc. (2018)<br>• UFP Technologies, Inc. (2017)<br>• Wayne Savings Bancshares, Inc. (2017) | 42 (2) | 37 (2) | 30 (1) |
| Barington Companies Investors LLC | James A. Mitarotonda | • Xerium Technologies, Inc. (2018)<br>• Bloomin' Brands, Inc. (2018)<br>• Avon Products, Inc. (2018) | 49 (2) | 41 (2) | 30 |
| Basswood Capital Management LLC | Matthew Lindenbaum<br>Bennett Lindenbaum | • Regional Management Corp. (2017)<br>• Astoria Financial Corporation (2016) | 11 | 10 | 11 |
| Biglari Capital Corp. | Sardar Biglari | • Unico American Corporation (2016)<br>• Insignia Systems, Inc. (2014) | 20 | 12 | 19 |
| Bulldog Investors LLC | Phillip Franklin Goldstein | • Aberdeen Japan Equity Fund, Inc. (2018)<br>• Putnam High Income Securities Fund (2018)<br>• The Swiss Helvetia Fund, Inc. (2018)<br>• Putnam Managed Municipal Income Trust (2017) | 199 (3) | 160 (3) | 166 (3) |
| Cannell Capital LLC | J. Carlo Cannell | • Liberty Tax, Inc. (2018)<br>• Digirad Corporation (2018) | 43 (2) | 38 (2) | 39 |
| Carlson Capital LP | Clint D. Carlson | • Archrock Inc (2016)<br>• Ultratech, Inc. (2012) | 30 | 30 | 30 |
| Clinton Group, Inc. | George E. Hall | • EVINE Live Inc. (2018)<br>• Arlington Asset Investment Corp. (2016)<br>• First NBC Bank Holding Co. (2016) | 53 (1) | 45 (1) | 32 |
| Clover Partners LP | Johnny Guerry<br>Michael C. Mewhinney | • Coastway Bancorp, Inc. (2018)<br>• Bancorp of New Jersey, Inc. (2017)<br>• Financial Institutions, Inc. (2016) | 15 (1) | 13 (1) | 13 (1) |
| Corvex Management LP | Keith Meister | • Energen Corporation (2018)<br>• Clariant AG (2017) | 20 (1) | 16 (1) | 16 (1) |
| Crescendo Advisors LLC | Eric S. Rosenfeld | • Hill International, Inc (2016)<br>• Aeropostale, Inc. (2014) | 31 | 28 | 16 |
| Discovery Group I LLC | Daniel J. Donoghue<br>Michael R. Murphy | • Aerohive Networks, Inc. (2017)<br>• Amplify Snack Brands, Inc. (2017)<br>• Foundation Medicine, Inc. (2017) | 71 | 64 | 70 |
| Elliott Management Corporation | Paul Elliott Singer<br>Jesse Cohn | • athenahealth, Inc. (2018)<br>• BHP Billiton Plc (2018)<br>• Bezeq The Israel Telecommunication Corp. Ltd. (2018)<br>• Alexion Pharmaceuticals, Inc. (2018) | 151 (16) | 141 (15) | 91 (4) |
| Engaged Capital LLC | Glenn W. Welling | • Apogee Enterprises, Inc. (2018)<br>• Aratana Therapeutics, Inc. (2018) | 27 (2) | 22 (2) | 16 (2) |

| Schedule 13D filings (No publicly disclosed activism) | Proxy fights | Threats of proxy fights | Exempt solicitations | Publicly disclosed letters to management | Letters to shareholders | Shareholder proposals | Hostile (or unsolicited) tender offers |
|---|---|---|---|---|---|---|---|
| 8 | 6 | 5 | 4 | 21 | 7 | 5 | 0 |
| 6 | 23 | 3 (1) | 0 | 33 (2) | 12 | 3 | 3 |
| 0 | 0 | 2 | 0 | 4 | 0 | 0 | 0 |
| 2 | 8 | 2 | 0 | 9 | 6 | 3 | 2 |
| 21 | 97 (3) | 15 | 0 | 100 (3) | 48 (2) | 65 (2) | 4 |
| 8 (1) | 7 | 4 | 0 | 24 | 4 | 2 | 1 |
| 14 | 2 | 0 | 1 | 5 | 1 | 0 | 0 |
| 5 | 18 | 7 | 0 | 32 | 8 | 5 | 1 |
| 1 | 5 (1) | 0 | 0 | 6 (1) | 3 | 1 | 0 |
| 0 | 6 (1) | 2 | 0 | 9 (1) | 5 | 2 | 1 |
| 3 | 16 | 2 | 0 | 10 | 8 | 5 | 0 |
| 47 | 4 | 0 | 1 | 19 | 2 | 10 | 1 |
| 27 | 16 (1) | 5 | 1 | 50 (10) | 15 (2) | 5 | 8 (1) |
| 0 | 13 (1) | 2 | 0 | 13 | 5 | 0 | 0 |

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Table 25 **Activist Shareholders—by Campaign Tactic (Historical)** (continued)

Number of campaigns since inception of activism strategy (where indicated, number of campaigns held in 2018)

| Activist shareholder | Key individual(s) | Recent or notable activism targets | Campaign volume | Number of companies targeted | Schedule 13D filings |
|---|---|---|---|---|---|
| Engine Capital Management LLC | Arnaud Ajdler | • InnerWorkings, Inc. (2018)<br>• Navigant Consulting, Inc. (2018)<br>• Hill International, Inc. (2017) | 20 (1) | 19 (1) | 5 |
| FrontFour Capital Group LLC | David A. Lorber<br>Stephen Loukas<br>Zachary R. George | • ILG, Inc (2018)<br>• Obsidian Energy Ltd. (2018) | 21 (2) | 16 (2) | 6 (1) |
| GAMCO Asset Management, Inc. | Mario J. Gabelli | • Cincinnati Bell Inc. (2018)<br>• EnPro Industries, Inc. (2018)<br>• Calgon Carbon Corporation (2018)<br>• Greif (2018)<br>• Kaman Corporation (2018) | 586 (16) | 515 (16) | 583 (16) |
| Greenlight Capital, Inc. | David Einhorn | • Assured Guaranty Ltd. (2018)<br>• General Motors Company (2017)<br>• Caterpillar Inc. (2017)<br>• Core Laboratories N.V. (2017) | 41 (1) | 37 (1) | 23 |
| Highland Capital Management, L.P. | James D. Dondero | • Ocean Rig UDW Inc. (2017)<br>• RAIT Financial Trust (2017)<br>• NexPoint Real Estate Strategies Fund (2016) | 24 | 21 | 23 |
| Icahn Associates Corp. | Carl C. Icahn | • SandRidge Energy, Inc. (2018)<br>• Newell Brands Inc (2018)<br>• Xerox Corporation (2018)<br>• AmTrust Financial Services Inc. (2018) | 144 (6) | 116 (4) | 124 (6) |
| JANA Partners LLC | Barry S. Rosenstein | • Apple Inc. (2018)<br>• Jack in the Box Inc. (2018)<br>• Pinnacle Foods, Inc. (2018) | 62 (3) | 61 (3) | 44 (2) |
| JCP Investment Management LLC | James Pappas | • Crius Energy Trust (2018)<br>• Casey's General Stores, Inc. (2018)<br>• Wheeler Real Estate Investment Trust, Inc. (2018)<br>• Fiesta Restaurant Group, Inc. (2017) | 19 (3) | 19 (3) | 12 (1) |
| Karpus Investment Management | George W. Karpus | • Madison Covered Call & Equity Strategy Fund (2018)<br>• Managed Duration Investment Grade Municipal Fund (2018)<br>• Franklin Ltd. Duration Income Trust (2018)<br>• Morgan Stanley Income Securities, Inc. (2018) | 127 (6) | 108 (6) | 127 (6) |
| Land & Buildings Investment Management LLC | Jonathan I. Litt | • Hudson's Bay Co. (2018)<br>• Life Storage, Inc. (2018)<br>• Taubman Centers, Inc. (2018) | 24 (5) | 18 (5) | 3 |

| Schedule 13D filings (No publicly disclosed activism) | Proxy fights | Threats of proxy fights | Exempt solicitations | Publicly disclosed letters to management | Letters to shareholders | Shareholder proposals | Hostile (or unsolicited) tender offers |
|---|---|---|---|---|---|---|---|
| 0 | 7 (1) | 1 | 0 | 11 (1) | 1 (1) | 0 | 0 |
| 0 | 13 (2) | 2 | 0 | 11 (2) | 7 (2) | 2 | 0 |
| 446 (9) | 31 (3) | 7 | 0 | 81 (6) | 7 (1) | 38 (4) | 0 |
| 10 | 4 | 0 | 1 | 9 | 4 | 3 | 1 |
| 7 | 3 | 0 | 0 | 8 | 2 | 2 | 1 |
| 32 | 42 (4) | 13 (1) | 1 | 58 (4) | 36 (4) | 15 | 24 |
| 8 | 8 (1) | 12 (1) | 2 | 22 | 7 | 2 | 1 |
| 5 | 8 (1) | 0 | 0 | 5 | 6 (2) | 0 | 0 |
| 35 (3) | 47 (1) | 2 | 0 | 65 (2) | 10 | 34 | 0 |
| 0 | 9 (2) | 3 (1) | 1 | 12 (1) | 14 (4) | 1 | 0 |

continued on next page

Table 25 **Activist Shareholders—by Campaign Tactic (Historical)** (continued)

Number of campaigns since inception of activism strategy (where indicated, number of campaigns held in 2018)

| Activist shareholder | Key individual(s) | Recent or notable activism targets | Campaign volume | Number of companies targeted | Schedule 13D filings |
|---|---|---|---|---|---|
| Lone Star Value Management, LLC | Jeffrey E. Eberwein | • CIBER, Inc. (2017)<br>• Superior Drilling Products, Inc (2017)<br>• Harris & Harris Group, Inc. (2016) | 36 | 29 | 21 |
| Lucus Advisors LLC | Schuster Brett Tanger | • Capital Senior Living Corporation (2015) | 6 | 6 | 3 |
| Marcato Capital Management LP | Richard T. McGuire | • Horizon Global Corp. (2018)<br>• Rayonier Advanced Materials, Inc. (2018)<br>• Rent-A-Center, Inc. (2017) | 25 (2) | 23 (2) | 13 |
| Northern Right Capital Management LP | Steve R. Becker<br>Matthew A. Drapkin | • Great Elm Capital Group, Inc. (2017)<br>• PRGX Global, Inc. (2016)<br>• TeleCommunication Systems, Inc. (2015) | 29 | 28 | 28 |
| Osmium Partners LLC | John H. Lewis | • Diversicare Healthcare Services, Inc. (2017)<br>• CRA International, Inc. (2016)<br>• Rosetta Stone Inc. (2015) | 14 | 12 | 14 |
| Pershing Square Capital Management LP | William A. Ackman | • Automatic Data Processing, Inc. (2017)<br>• Chipotle Mexican Grill, Inc. (2016)<br>• Mondelez International, Inc. (2015) | 60 | 53 | 52 |
| PL Capital Advisors LLC | Richard J. Lashley<br>John W. Palmer | • BNCCORP, INC. (2016)<br>• Old Point Financial Corporation (2016) | 53 | 40 | 50 |
| Potomac Capital Management, Inc. | Paul J. Solit | • PLX Technology, Inc. (2013)<br>• STEC, Inc. (2013) | 9 | 8 | 9 |
| Privet Fund Management LLC | Ryan Levenson | • Potbelly Corp. (2018)<br>• Hardinge Inc. (2017)<br>• Norsat International Inc. (2017) | 23 (1) | 17 (1) | 23 (1) |
| Raging Capital Management, LLC | Bill C. Martin | • Immersion Corporation (2017)<br>• Rentech, Inc. (2017)<br>• A. M. Castle & Co. (2016) | 32 | 28 | 27 |
| Red Mountain Capital Partners LLC | Willem Mesdag | • Deckers Outdoor Corporation (2017)<br>• iRobot Corporation (2016)<br>• Yuma Energy, Inc. (2016) | 16 | 16 | 15 |
| Sandell Asset Management Corp. | Thomas E. Sandell | • Booker Group PLC (2018)<br>• Barnes & Noble, Inc. (2017)<br>• Viavi Solutions Inc (2016) | 40 (1) | 34 (1) | 22 |
| Sarissa Capital Management LP | Alexander J. Denner | • Innoviva, Inc. (2018)<br>• Ironwood Pharmaceuticals, Inc. (2018)<br>• Innoviva, Inc (2017)<br>• Novelion Therapeutics Inc. (2016)<br>• The Medicines Company (2016) | 12 (2) | 10 (2) | 7 |

| Schedule 13D filings (No publicly disclosed activism) | Proxy fights | Threats of proxy fights | Exempt solicitations | Publicly disclosed letters to management | Letters to shareholders | Shareholder proposals | Hostile (or unsolicited) tender offers |
|---|---|---|---|---|---|---|---|
| 4 | 14 | 5 | 0 | 6 | 9 | 3 | 2 |
| 0 | 1 | 1 | 0 | 4 | 0 | 0 | 0 |
| 1 | 3 | 0 | 0 | 10 (1) | 3 | 1 | 0 |
| 6 | 7 | 3 | 0 | 10 | 1 | 0 | 0 |
| 3 | 1 | 1 | 0 | 4 | 2 | 0 | 0 |
| 20 | 6 | 2 | 0 | 17 | 4 | 2 | 1 |
| 2 | 18 | 4 | 3 | 33 | 10 | 4 | 0 |
| 1 | 3 | 1 | 0 | 4 | 3 | 0 | 0 |
| 5 | 5 (1) | 2 | 0 | 11 (1) | 3 | 0 | 1 |
| 4 | 8 | 1 | 0 | 8 | 3 | 1 | 0 |
| 0 | 1 | 1 | 0 | 4 | 1 | 0 | 0 |
| 1 | 10 | 7 | 0 | 34 | 5 | 3 | 1 |
| 3 | 4 (1) | 0 | 0 | 1 | 2 | 1 | 0 |

continued on next page

Table 25 **Activist Shareholders—by Campaign Tactic (Historical)** (continued)

Number of campaigns since inception of activism strategy (where indicated, number of campaigns held in 2018)

| Activist shareholder | Key individual(s) | Recent or notable activism targets | Campaign volume | Number of companies targeted | Schedule 13D filings |
|---|---|---|---|---|---|
| Southeastern Asset Management, Inc. | O. Mason Hawkins | • Actuant Corporation (2018)<br>• Deltic Timber Corporation (2017)<br>• Sonic Corp. (2017) | 31 (1) | 28 (1) | 30 (1) |
| Starboard Value LP | Jeffrey C. Smith<br>Mark R. Mitchell<br>Peter A. Feld | • Cars.com, Inc. (2018)<br>• Forest City Realty Trust Inc (2018)<br>• Mellanox Technologies, Ltd. (2018)<br>• Monotype Imaging Holdings Inc. (2018) | 144 (7) | 115 (7) | 126 (5) |
| Steel Partners, L.L.C. | Warren G. Lichtenstein | • Babcock & Wilcox Enterprises, Inc. (2018)<br>• School Specialty, Inc. (2016) | 136 (1) | 115 (1) | 106 (1) |
| Stilwell Value LLC | Joseph David Stilwell | • Ben Franklin Financial, Inc. (2018)<br>• Delanco Bancorp, Inc. (2017) | 87 (5) | 63 (5) | 87 (5) |
| TCI Fund Management Ltd. | Christopher Anthony Hohn | • Altaba, Inc. (2018)<br>• Infigen Energy Limited (2018)<br>• London Stock Exchange Group plc (2017) | 23 (2) | 16 (2) | 3 (1) |
| Third Point LLC | Daniel S. Loeb | • United Technologies Corporation (2018)<br>• The Dow Chemical Company (2017)<br>• Honeywell International Inc (2017) | 64 (2) | 61 (2) | 49 (1) |
| Trian Fund Management, L.P. | Nelson Peltz<br>Peter W. May<br>Edward P. Garden | • nVent Electric Plc (2018)<br>• General Electric Company (2015) | 26 (1) | 23 (1) | 11 (1) |
| ValueAct Capital Management LP | Jeffrey W. Ubben | • The AES Corporation (2018)<br>• Sealy Corporation (2018) | 106 (3) | 99 (3) | 99 (2) |
| Veteri Place Corp. | Lawrence B. Seidman | • HV Bancorp, Inc. (2017)<br>• Pilgrim Bancshares, Inc. (2017) | 51 (4) | 47 (4) | 45 (3) |
| VIEX Capital Advisors, LLC | Eric Brandon Singer | • A10 Networks, Inc. (2018)<br>• Bazaarvoice, Inc. (2017) | 24 (1) | 20 (1) | 21 (1) |
| Voce Capital Management LLC | Dan Plants | • Calix, Inc. (2018)<br>• Nanometrics Incorporated (2017) | 20 (2) | 16 (2) | 5 |
| Western Investment LLC | Arthur D. Lipson | • Advent/Claymore Enhanced Growth & Income Fund (2016)<br>• Deutsche Multi-Market Income Trust (2016) | 66 | 48 | 52 |
| Wynnefield Capital Management LLC | Nelson Obus<br>Joshua H. Landes | • Jason Industries, Inc. (2018)<br>• Landec Corporation (2018)<br>• MusclePharm Corporation (2018) | 97 (4) | 78 (4) | 87 (4) |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

| Schedule 13D filings (No publicly disclosed activism) | Proxy fights | Threats of proxy fights | Exempt solicitations | Publicly disclosed letters to management | Letters to shareholders | Shareholder proposals | Hostile (or unsolicited) tender offers |
|---|---|---|---|---|---|---|---|
| 0 | 2 | 0 | 2 | 5 | 2 | 1 | 2 |
| 29 (1) | 66 (4) | 6 | 0 | 77 (2) | 32 (1) | 17 | 6 |
| 40 | 32 | 9 | 1 | 58 (1) | 20 (3) | 9 | 22 (1) |
| 1 | 25 (3) | 20 | 0 | 23 (1) | 23 (2) | 2 | 0 |
| 0 | 3 | 0 | 0 | 9 (2) | 2 | 10 | 0 |
| 17 (1) | 7 | 7 | 0 | 26 | 6 | 0 | 0 |
| 1 (1) | 4 | 3 | 0 | 8 | 3 | 2 | 2 |
| 56 | 1 | 2 | 0 | 12 | 2 | 0 | 5 |
| 3 | 18 (1) | 6 (1) | 1 | 19 (2) | 9 (1) | 1 | 0 |
| 5 | 7 | 2 | 0 | 2 | 4 | 1 | 0 |
| 0 | 10 (1) | 0 | 0 | 10 | 4 (1) | 1 (1) | 0 |
| 1 | 51 | 1 | 0 | 24 | 28 | 19 | 0 |
| 20 | 13 (1) | 4 | 1 | 36 (1) | 8 | 5 | 0 |

## Most frequent activist shareholders

Table 26 ranks the most active activist shareholders in the 2018 sample period. The data are compiled based on an analysis of activism campaigns related to a director election or an action by written consent or a (shareholder or management) proposal put to a vote at a shareholder meeting. The table includes information on: the activist type; the number of campaigns started at Russell 3000 companies during the 2018 period; the target company name; the campaign type; and the reason for the campaign. In those situations where more than one activist investor initiated the same number of campaigns, the activists are ranked equally. Activists with fewer than three campaigns were omitted from the table.

Public pension fund California Public Employee Retirement System (CalPERS) and stakeholder group Ray T. Chevedden and Veronica G. Chevedden Family Trust were the most prolific activist investors in the examined 2018 period.

All campaigns started by these two investors were exempt solicitations, and most were mounted against companies in the energy, healthcare and financial services businesses. All of the CalPERS campaigns sought a vote for a shareholder proposal, while the Chevedden Family Trust also waged campaigns meant to add support or object to certain management proposals. For example, CalPERS urged Netflix (NASDAQ: NFLX) shareholders to vote at the AGM held on June 6, 2018 in favor of a nonbinding proxy access proposal sponsored by New York City Employees' Retirement System. Thanks to the solicitation, the proxy access proposal was approved with 57.7 percent of votes cast in favor.

Three of the campaigns listed in Table 26 as launched by GAMCO-managed funds were the proxy contests mentioned above, at Cincinnati Bell, E.W. Scripps and Ingles Markets, Inc. While none of GAMCO's nominees to the Cincinnati Bell and E.W. Scripps boards were elected, the investor reached an agreement for the inclusion of Mr. John "Jack" L. Lowden, one of GAMCO's two nominees, to the slate of nominees supported by the company's management. In the other campaigns listed in Table 26, GAMCO chose other forms of public agitations to put pressure on their targets. For example, in the campaign against National Fuel Gas Company (NYSE: NFG), the activist submitted a nonbinding proposal (requesting the board to examine and take active steps to participate in consolidating natural gas local distribution sector) that was widely defeated at the March 8, 2018 AGM.

Table 26 **Most Frequent Activist Shareholders (2018)**

| Rank | Activist shareholders | Company | Campaign type | Reason for campaign |
|---|---|---|---|---|
| 1 | ACTIVIST NAME **California Public Employees Retirement System** ACTIVIST TYPE **Public pension fund** NUMBER OF ACTIVISM CAMPAIGNS **15** | 2U, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Anadarko Petroleum Corporation | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Chesapeake Energy Corporation | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | First Hawaiian, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Kinder Morgan, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | MGE Energy, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | New Senior Investment Group, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Noble Energy, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Old Republic International Corporation | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | PNM Resources, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Utah Medical Products, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Charter Communications, Inc.[a] | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Hospitality Properties Trusta | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Netflix, Inc.[a] | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Universal Health Services, Inc.[a] | Exempt Solicitation | Vote For a Stockholder Proposal |
| 2 | ACTIVIST NAME **Ray T. Chevedden and Veronica G. Chevedden Family Trust** ACTIVIST TYPE **Other stakeholder** NUMBER OF ACTIVISM CAMPAIGNS **12** | Capital One Financial Corporation | Exempt Solicitation | Vote Against a Management Proposal |
| | | CF Industries Holdings, Inc. | Exempt Solicitation | Vote Against a Management Proposal |
| | | Duke Energy Corporation | Exempt Solicitation | Vote For a Management Proposal/ Support Management |
| | | eBay Inc. | Exempt Solicitation | Vote Against a Management Proposal |
| | | Eli Lilly and Company | Exempt Solicitation | Vote For a Management Proposal/ Support Management |
| | | FirstEnergy Corp. | Exempt Solicitation | Vote Against a Management Proposal |
| | | HP Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | JPMorgan Chase & Co. | Exempt Solicitation | Vote Against a Management Proposal |
| | | L Brands, Inc. | Exempt Solicitation | Vote For a Management Proposal/ Support Management |
| | | PPG Industries, Inc. | Exempt Solicitation | Vote For a Management Proposal/ Support Management |
| | | Skyworks Solutions, Inc. | Exempt Solicitation | Vote Against a Management Proposal |
| | | The AES Corporation | Exempt Solicitation | Vote Against a Management Proposal |
| 3 | ACTIVIST NAME **AS You Sow** ACTIVIST TYPE **Other stakeholder** NUMBER OF ACTIVISM CAMPAIGNS **9** | Anadarko Petroleum Corporation | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Denny's Corporation | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Ford Motor Company | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | General Motors Company | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Monster Beverage Corporation | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Sanderson Farms, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Starbucks Corporation | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | The Kroger Co. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Chevron Corporation[b] | Exempt Solicitation | Vote For a Stockholder Proposal |

continued on next page

Table 26 **Most Frequent Activist Shareholders (2018)** (continued)

| Rank | Activist shareholders | Company | Campaign type | Reason for campaign |
|---|---|---|---|---|
| 4 | ACTIVIST NAME **Mercy Investment Services, Inc.** ACTIVIST TYPE **Religious group** NUMBER OF ACTIVISM CAMPAIGNS **9** | Biogen Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Bristol-Myers Squibb Company[c] | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Eli Lilly and Company[c] | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Pfizer Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | The AES Corporation | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | AbbVie Inc.[d] | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Amgen Inc.[e] | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Pilgrim's Pride Corporation[f] | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Chevron Corporation[g] | Exempt Solicitation | Vote For a Stockholder Proposal |
| 5 | ACTIVIST NAME **GAMCO Asset Management, Inc.** ACTIVIST TYPE **Investment adviser** NUMBER OF ACTIVISM CAMPAIGNS **7** | Cincinnati Bell Inc. | Proxy Fight | Board Representation |
| | | Ingles Markets, Incorporated | Proxy Fight | Board Representation |
| | | Kaman Corporation | Other Stockholder Campaign | Vote For a Stockholder Proposal |
| | | Lennar Corporation | Other Stockholder Campaign | Vote For a Stockholder Proposal |
| | | National Fuel Gas Company | Other Stockholder Campaign | Vote For a Stockholder Proposal |
| | | Ryman Hospitality Properties, Inc. | Other Stockholder Campaign | Vote For a Stockholder Proposal |
| | | The E.W. Scripps Company | Proxy Fight | Board Representation |
| 6 | ACTIVIST NAME **Trillium Asset Management LLC** ACTIVIST TYPE **Investment adviser** NUMBER OF ACTIVISM CAMPAIGNS **6** | Facebook, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | J.B. Hunt Transport Services, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Starbucks Corporation | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | The Middleby Corporation | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Acuity Brands, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Verizon Communications Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| 7 | ACTIVIST NAME **New York City Employees' Retirement System** ACTIVIST TYPE **Public pension fund** NUMBER OF ACTIVISM CAMPAIGNS **5** | Charter Communications, Inc.[h] | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Exxon Mobil Corporation | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Hospitality Properties Trust[h] | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Netflix, Inc.[h] | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Universal Health Services, Inc.[h] | Exempt Solicitation | Vote For a Stockholder Proposal |
| 8 | ACTIVIST NAME **SumOfUs** ACTIVIST TYPE **Other stakeholder** NUMBER OF ACTIVISM CAMPAIGNS **4** | Amazon.com, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | Facebook, Inc. | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | McDonald's Corporation | Exempt Solicitation | Vote For a Stockholder Proposal |
| | | The Kroger Co. | Exempt Solicitation | Vote For a Stockholder Proposal |

a In conjunction with New York City Employees' Retirement System (Public pension fund)

b In conjunction with Arjuna Capital (Other stakeholder)

c In conjunction with UAW Retiree Medical Benefits Trust (Labor union)

d In conjunction with Claire L. Bateman 1991 Trust (Hedge fund), Mercy Investment Services, Inc. (Religious group), Sisters of St. Joseph of Orange (Religious group), The Sisters of St. Francis of Philadelphia (Religious group), Trinity Health (Religious group) and UAW Retiree Medical Benefits Trust (Labor union)

e In conjunction with Dana Investment Advisors, Inc. (Investment adviser), Friends Fiduciary Corporation (Other institution), Mount St. Scholastica Benedictine Sisters (Religious group), The Benedictine Sisters of Pan De Vida (Other stakeholder), Trinity Health (Religious group) and UAW Retiree Medical Benefits Trust (Labor unions)

f In conjunction with Adrian Dominican Sisters (Religious group), FALKENBERG ANNA (Individual), Friends Fiduciary Corporation (Other institution), Oblate International Pastoral Investment Trust (Other stakeholder) and Park Foundation (Other stakeholder)

g In conjunction with Azzad Asset Management, Inc. (Investment adviser), Benedictine Sisters of Baltimore (Religious group), Dana Investment Advisors, Inc. (Investment adviser), First Affirmative Financial Network LLC (Investment adviser) and The Benedictine Sisters of Boerne, Texas (Religious group)

h In conjunction with California Public Employees Retirement System (Public pension fund)

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Proxy Contest Volume

### By index

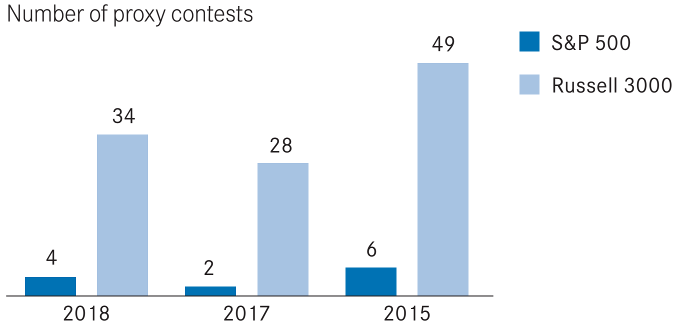
In the 2018 period examined for the purpose of this report, shareholders engaged in 34 proxy contests against management of Russell 3000 companies, compared to 28 launched in the corresponding 2017 period and 49 in 2015. In the S&P 500 sample, the number of contests mounted in the three examined periods was four, two, and six (Chart 42).

The index comparison confirms a common observation about the typical profile of the target company in a solicitation contest. Specifically, to be credible in its tactic of threatening a proxy fight, an activist investor needs to accumulate (alone or through a group of fellow investors) a relatively large percentage of the company's shares, which is obviously easier to do with small-capitalization targets. Furthermore, larger companies are more likely to deploy the resources necessary to prevail in a public campaign against the dissident shareholder.

Chart 42

**Proxy Contest Volume—by Index (2015, 2017, and 2018)**

Number of proxy contests




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By industry

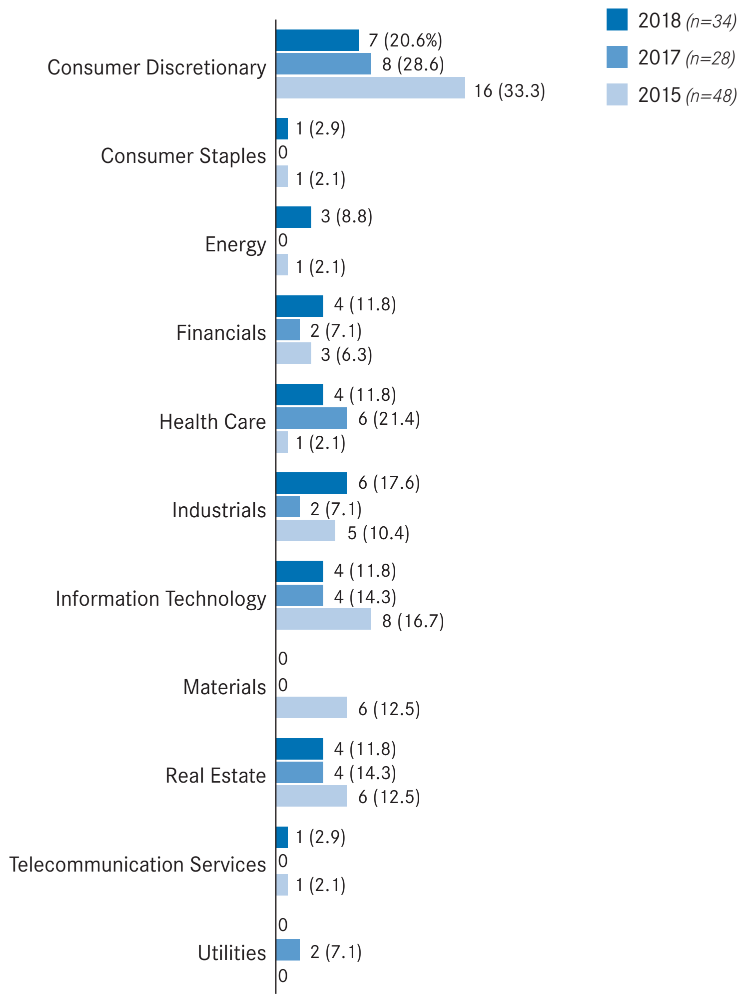
The analysis of proxy contest volume by industry shows that the 33 contests held in 2014 in the Russell 3000 targeted companies across nine of the 11 GICS business sectors (Chart 43). Companies in the consumer discretionary sector faced seven solicitations and companies in the industrials sector were exposed to six. There were four contests in each of the energy, financials, real estate and information technology sectors, while only one in the telecommunications sector.

In each of the three years documented (2018, 2017, and 2015), all but one sector represented in the sample segmentation of Exhibit 1 (p. 8)—utilities—experienced one or more instances of proxy contests. Two of the industry groups represented in the Russell 3000 sample faced no contests in 2018: in addition to utilities, the materials sector.

Chart 43

**Proxy Contest Volume—by Industry (2015, 2017, and 2018)**

Number of proxy contests (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

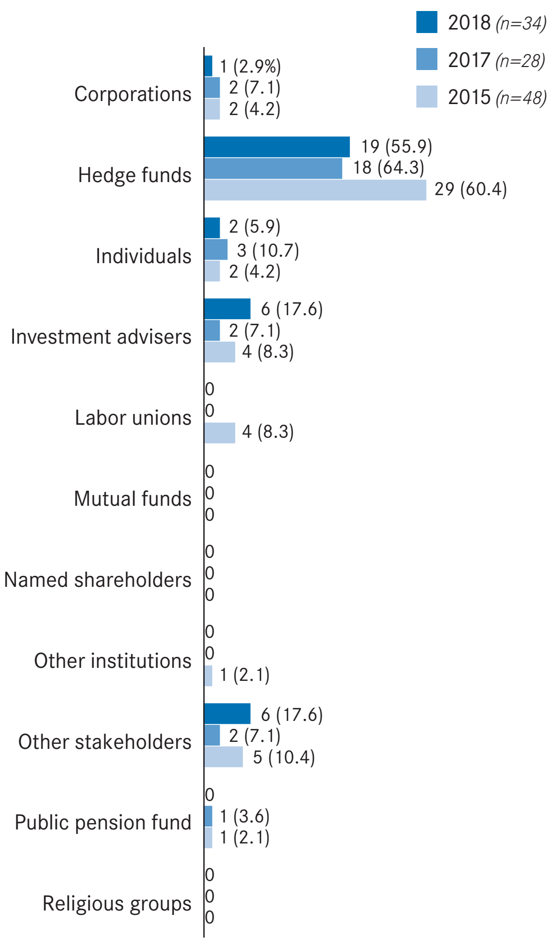
## By dissident

The historical comparison of proxy contest volume shows that hedge funds have consistently been the most active dissident type. In 2018, they mounted 19 (or 55.9 percent of the total) of the voting fights against management, followed by other stakeholders (6 proxy contests, or 18.2 percent of the total), investment advisers (six contests, or 17.6 percent), and individuals (2 contests, or 5.9 percent). A similar breakdown was observed for earlier years (Chart 44).

Chart 44

**Proxy Contest Volume–by Dissident (2015, 2017, and 2018)**

Number of proxy contests (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/ FactSet/IRGS Analytics, 2018.

In 2018, of the 11 sponsor types represented in Chart 8 (p. 34), five have conducted at least one proxy contest during the examined periods. None of the contests were led by mutual funds, public pension funds, or religious groups: the first group has become more vocal in recent years, despite its tradition of passive investment, but does so through letters sent to the CEO or other direct communications with portfolio companies and does not engage in outright proxy solicitations; whereas, when they engage in activism, pension funds and religious groups do so by lending their support to other proxy solicitations or opt for other activism campaign types (including exempt solicitations and public manifestations of dissent).

For proxy contests with multiple dissidents, the analysis by dissident is based on the investor named as the lead dissident by FactSet, determined primarily by stake size.

See "Sponsors," on p. 32, for more information on the categorization of dissident types used for the purpose of this report.

## By reason

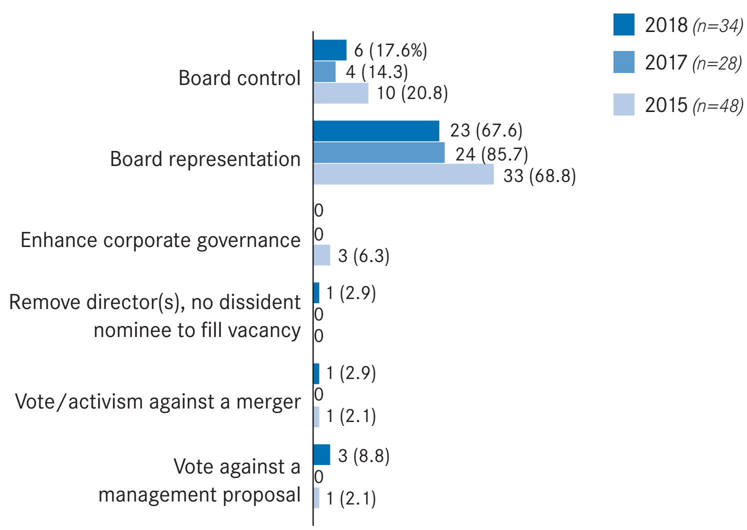
Chart 45 illustrates the frequency of the reasons for the dissent that led to the instances of proxy fights reported in recent years. For all of the examined periods, the vast majority of contests were motivated by an attempt to gain a seat on the board of directors (23, or 67.6 percent of the total in 2018; 24, or 85.7 percent in 2017; and 33, or 68.8 percent in 2015).

As shown in Chart 45, in 2018, six fights (or 17.6 percent of the total) sought to obtain control of the board to foster a broader range of strategic, organizational, and governance changes, whereas the others were waged to oppose a merger (at AmTrust Financial Services, Inc. (NASDAQ: AFSI), by Carl Icahn), to seek board control (at Aqua Metals, Inc. (NASDAQ: AQMS), by Kanen Wealth Management), and to vote against a management proposal (at HomeStreet, Inc. (NASDAQ: HMST), by Roaring Blue Lion Capital Management).

Chart 45

**Proxy Contest Volume—by Reason (2015, 2017, and 2018)**

Number of proxy contests (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Proxy Contest Dissidents

The categorization of dissident types used for the purpose of this report was made by FactSet LionShares and is described in Part II of this report, on p. 32 (under "Sponsors.")

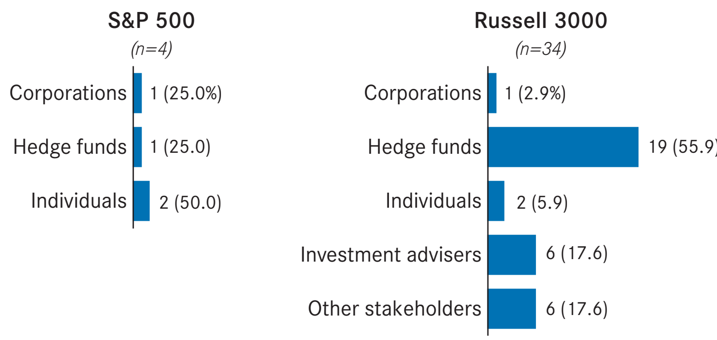
### By index

The analysis by dissident type confirms that hedge funds are more likely to escalate their request for corporate change to a proxy battle against smaller companies. As shown in Chart 46, 19 of the 34 proxy contests (or 55.9 percent) that took place in 2018 in the Russell 3000 were initiated by hedge funds. Moreover, hedge funds were responsible for one of the four proxy contests mounted in 2018 against S&P 500 companies.

Chart 46

**Dissident Type—by Index (2018)**

Number of proxy contests (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

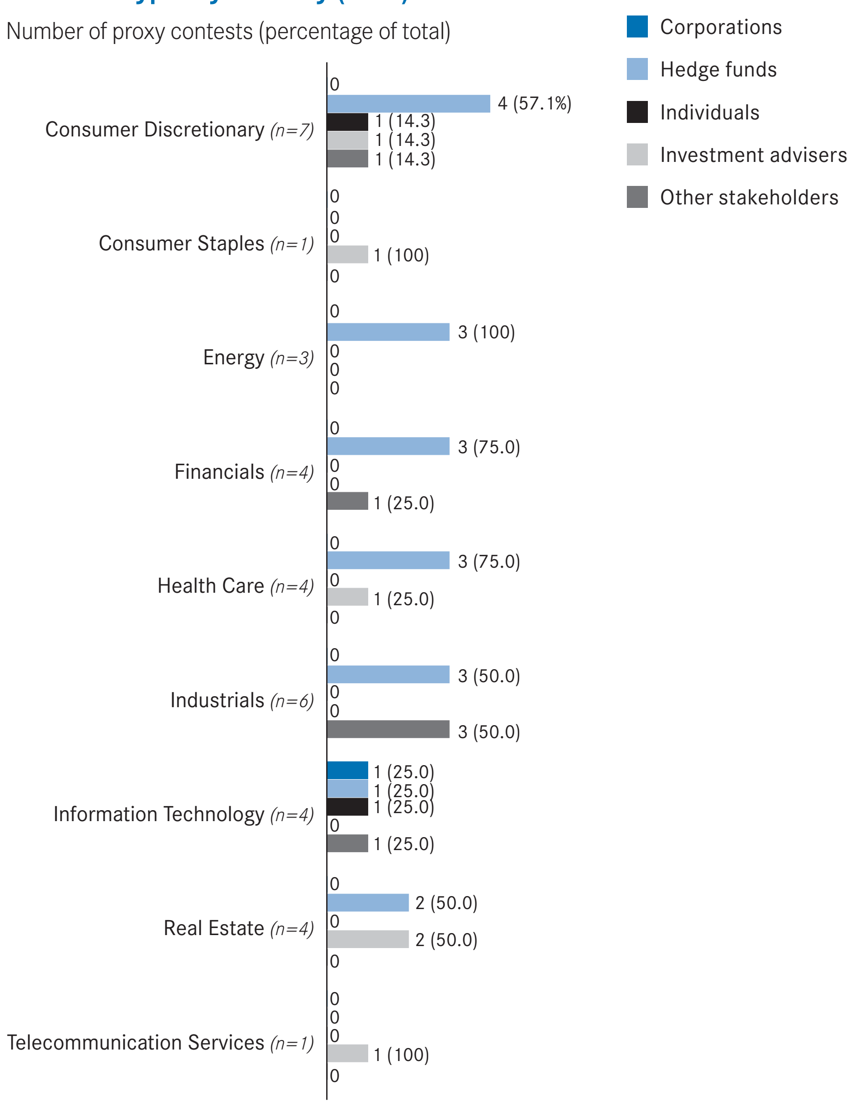
## By industry

Across most business sectors where proxy contests were held, hedge funds ranked consistently as the most prevalent dissident type in 2018. For example, they were responsible for four of the seven fights waged against consumer discretionary companies (57.1 percent of the total) and for all of the three at energy companies (Chart 47).

Chart 47

**Dissident Type—by Industry (2018)**

Number of proxy contests (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By reason

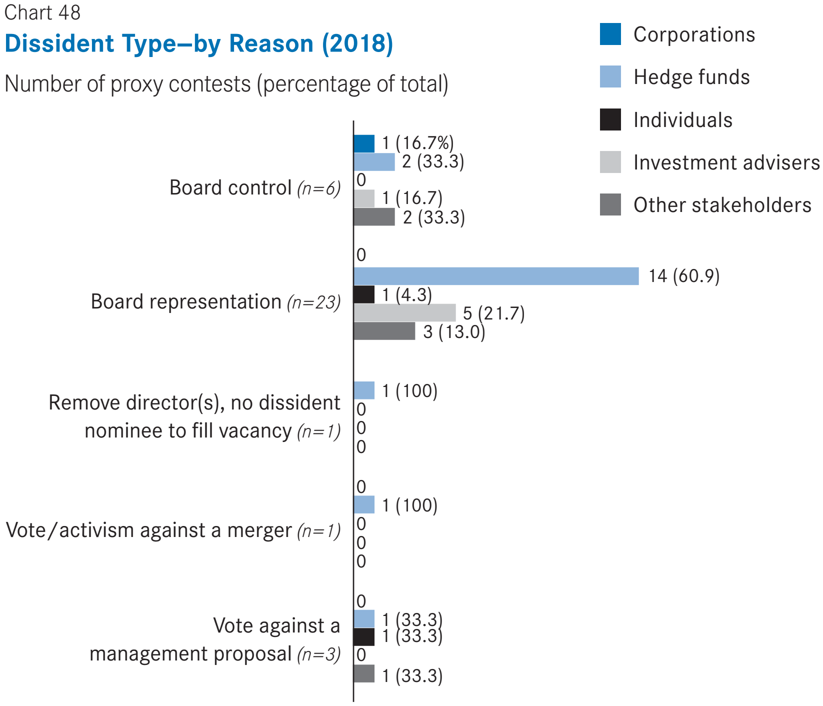
The dissident type analysis by reason of Chart 48 shows that activist hedge funds led the majority of the proxy contests seeking board representation in 2018. The 14 proxy contests mounted by hedge funds for that stated purpose represent 60.9 percent of the 23 activist solicitations motivated by the election of a dissident's nominee to the board of directors and 67.6 percent of the 34 contests launched by hedge funds in the 2018 sample period.

In six cases, the reason for the solicitation was even more hostile, with the investor attempting to gain full control of the board. Two of these cases were mounted by hedge funds.

Chart 48

**Dissident Type—by Reason (2018)**

Number of proxy contests (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent dissidents

Table 27 ranks by type the most frequent dissidents that led the proxy contests in 2018. In the table, the dissident name is followed by the reason for the dissent and the number of contests launched. In those situations where more than one investor initiated the same number of proxy contests, dissidents are ranked equally; as a result, more than 10 dissident names may be listed under a single rank. Where there was more than one dissident involved, the table lists the lead dissident (primarily by stake size); additional dissidents are listed in the footnotes.

In 2018, three hedge funds—Icahn Associates Corp., Starboard Value, and Lands & Buildings Investment Management—made the list with four, four, and two proxy contests, respectively. The other investor on the list is GAMCO Asset Management (a registered investment advisers included in the SharkWatch50 index as it acts as general partner and manages assets for a number of activist hedge funds).

Table 27 **Most Frequent Proxy Contest Dissidents (2018)**

| Rank | Proxy contest dissidents | Company | Reason for proxy contest | Outcome |
|---|---|---|---|---|
| 1 | DISSIDENT NAME<br>Icahn Associates Corp.[a]<br>DISSIDENT TYPE<br>Hedge fund<br>NUMBER OF PROXY CONTESTS<br>4 | AmTrust Financial Services Inc. | Vote/Activism Against a Merger | Settled/Concessions Made |
| | | SandRidge Energy, Inc. | Board Control | Settled/Concessions Made |
| | | SandRidge Energy, Inc. | Remove Director(s), No Dissident Nominee to Fill Vacancy | Withdrawn |
| | | Xerox Corporation | Board Representation | Settled/Concessions Made |
| 2 | DISSIDENT NAME<br>Starboard Value LP[b]<br>DISSIDENT TYPE<br>Hedge fund<br>NUMBER OF PROXY CONTESTS<br>4 | Cars.com, Inc. | Board Representation | Settled/Concessions Made |
| | | Newell Brands Inc | Board Representation | Settled/Concessions Made |
| | | Stewart Information Services Corporation | Board Representation | Withdrawn |
| | | Monotype Imaging Holdings Inc. | Board Representation | Settled/Concessions Made |
| 3 | DISSIDENT NAME<br>GAMCO Asset Management, Inc.<br>DISSIDENT TYPE<br>Investment adviser<br>NUMBER OF PROXY CONTESTS<br>3 | Cincinnati Bell Inc. | Board Representation | Management |
| | | The E.W. Scripps Company | Board Representation | Management |
| | | Ingles Markets, Incorporated | Board Representation | Settled/Concessions Made |
| 4 | DISSIDENT NAME<br>Land & Buildings Investment Management LLC<br>DISSIDENT TYPE<br>Hedge fund<br>NUMBER OF PROXY CONTESTS<br>2 | RLJ Lodging Trust | Board Representation | Management |
| | | Taubman Centers, Inc. | Board Representation | Dissident |

a In conjunction with Darwin Deason (Individual) in Xerox Corporation

b In conjunction with BLR Capital Partners LP (Hedge fund), Edward Terino (Individual), George Andrew Riedel (Individual), Kristen O'Hara (Individual) and Oliver Press Partners LLC (Hedge fund) in Monotype Imaging Holdings Inc.

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Reasons for Proxy Contests

For the purpose of this report, proxy contests are categorized based on the following stated reasons for dissent:

- **Board control** The dissident seeks to gain control (i.e., a majority of the total seats) of the board of directors.
- **Board representation** The dissident seeks representation on the board of directors by electing one or more of its nominees (but less than the majority necessary to control the board).
- **Hostile/unsolicited acquisition** The dissident engages in a proxy solicitation to pursue a hostile (unsolicited) acquisition of the company.
- **Maximize shareholder value** An all-inclusive category for proxy solicitations where the dissident argues that the requested corporate action would unlock hidden business potentials and shareholder value. The plan for an additional or alternative strategic objective, the proposal of cost-saving or tax-efficiency measures, and the pursuit of the friendly sale of the company or one of its divisions are examples of reasons for proxy contests generally classified in this category.
- **Remove officer(s**) The dissident engages in a proxy solicitation for the removal of one or more currently serving corporate officers (i.e., CEO, CFO, or president).
- **Remove director(s)** The dissident engages in a proxy solicitation for the removal of one or more currently serving directors, without nominating its own board representative.
- **Vote/activism against a merger** The dissident opposes a merger or other business combination transaction proposed by management or the board of directors or both.
- **Vote against a management proposal** The dissident engages in a proxy solicitation against management to pursue broad voting support in favor of a certain management proposal.
- **Vote for a shareholder proposal** The dissident engages in a proxy solicitation against management to pursue broad voting support in favor of a certain shareholder proposal.
- **Withhold vote for director(s)** The dissident solicits other shareholders for withholding their vote for one or more director nominees.

## By index

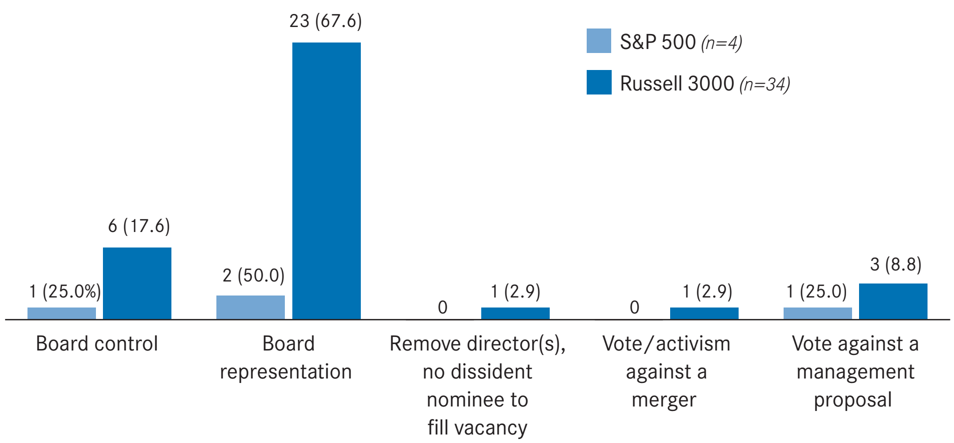
The reason analysis by index shows that, in 2018, smaller companies in the Russell 3000 were more likely than their larger S&P counterparts to become the subject of a proxy contest launched for the purpose of obtaining control of the board (Chart 49). Russell 3000 companies were exposed to six contests for that stated purpose (or 17.6 percent of the total), compared to one at S&P 500 companies.

However, two of the four fights (50 percent) conducted in 2018 against S&P companies sought board representation, compared to 23 of the 34 contests (67.6 percent) at Russell 3000 companies. Proxy contests to vote against a proposed merger are expensive and less common. However, there was one such contest during the 2018 sample period (waged by Carl C. Icahn against the merger of AmTrust Financial Services (NASDAQ: AFSI) with Evergreen Parent, and resulting in a settlement among the three entities, where the purchase price under the merger agreement was increased).

Chart 49

**Reason for Proxy Contest–by Index (2018)**

Number of proxy contests (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By industry

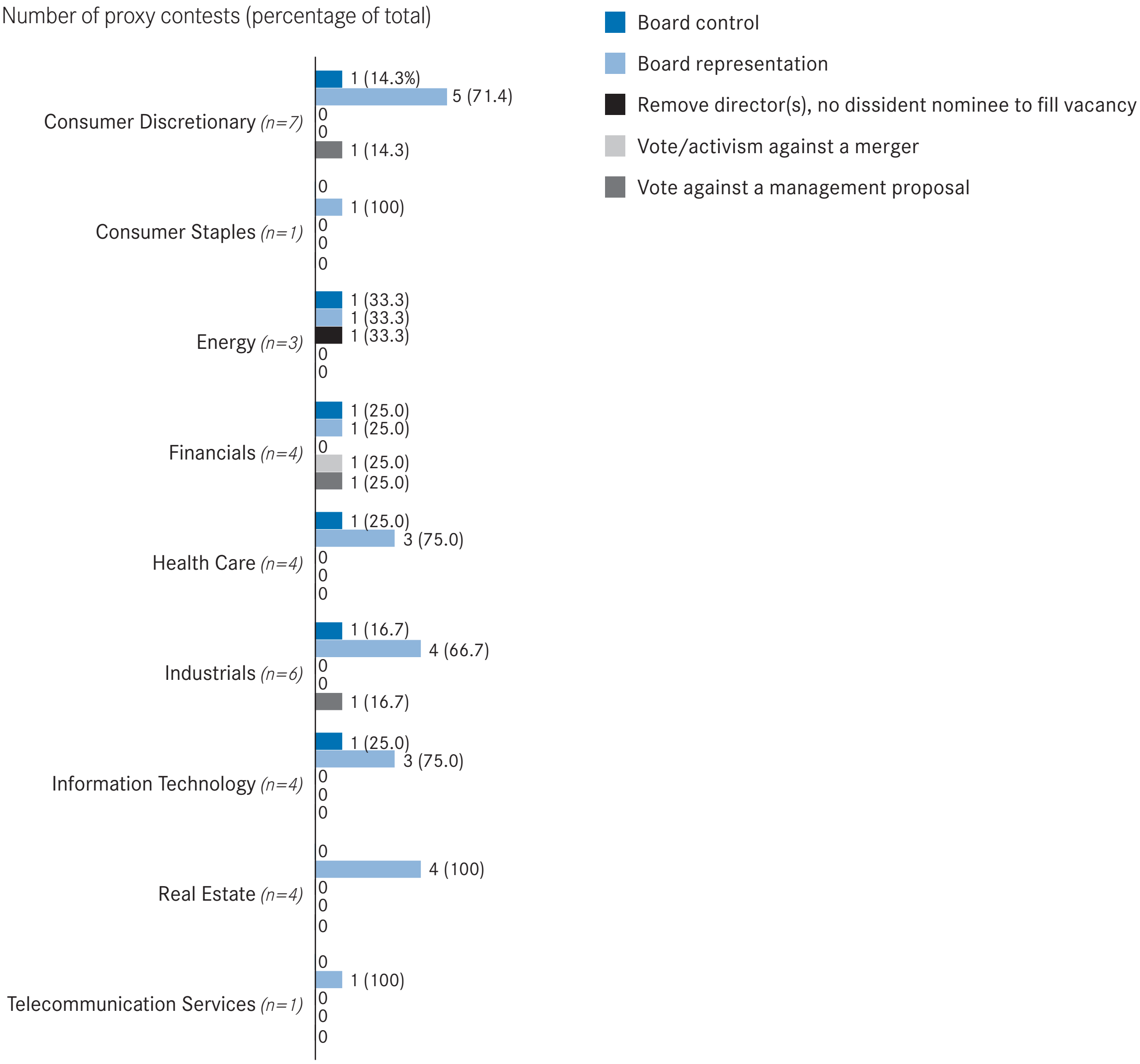
As shown in Chart 50, during the examined 2018 period, the consumer discretionary industry was the most targeted by proxy contests for board representation; six of the seven contests against companies in the industry were of this type, representing 71.4 percent of the total number of contests mounted for that reason. Companies in the real estate and industrials sectors faced four contests each for this reason, compared to three of those in health care and in information technology.

The only instance of contests to oppose a merger occurred in the financial services industry (against AmTrust, as described above), representing 25 percent of all proxy solicitations waged in 2018 in that sector.

Chart 50

**Reason for Proxy Contest–by Industry (2018)**

Number of proxy contests (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By dissident

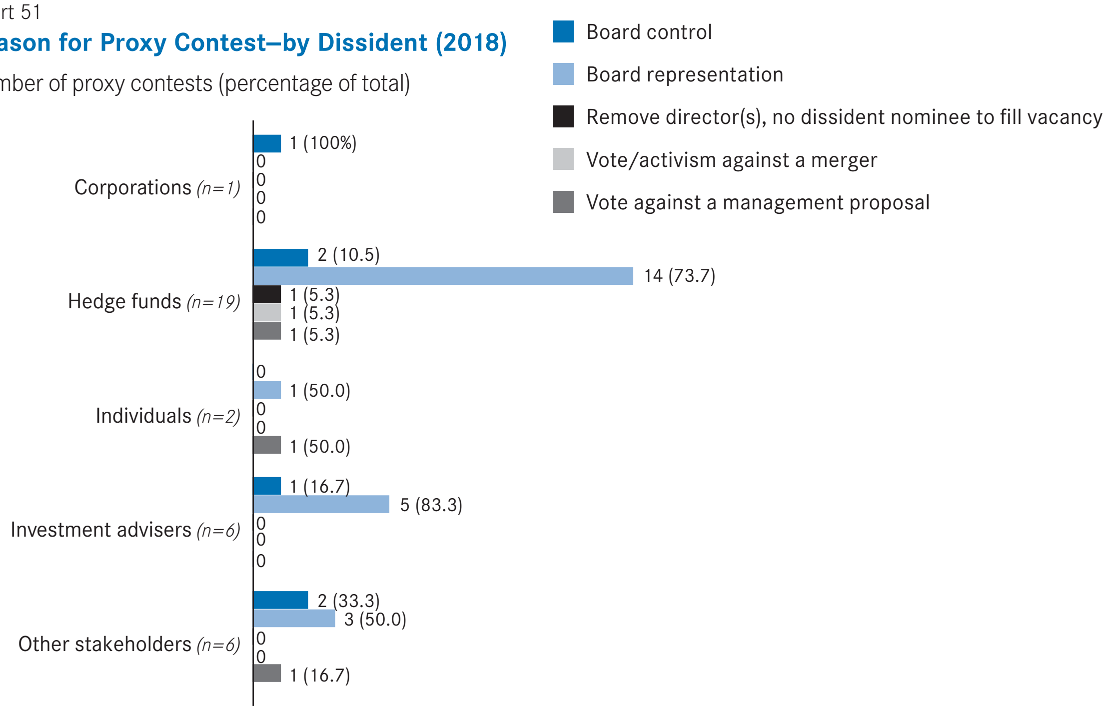
The analysis of reason by dissident highlights that proxy contests for board representation are promoted by multiple types of investors. The highest concentration of contests for board representation was among hedge funds, with 14 (or 73.7 percent) of the 19 contests sponsored by this investor type, followed by investment advisers, for which one out of five sponsored contests were meant to seek a board seat (Chart 51).

One-tenth of the contests conducted by hedge funds were for the purpose of obtaining full control of the board of directors. Investment advisers, corporations, and other stakeholders were the other dissident types to launch a fight for that reason in 2018. The remaining contests led by hedge funds during the period were to oppose a merger, to remove directors, or to seek proxies in support of a shareholder proposal. In addition to hedge funds, individuals and other shareholder group were the only other dissident types to engage in a proxy fight to support the vote for a shareholder proposal during the period.

Chart 51

**Reason for Proxy Contest—by Dissident (2018)**

Number of proxy contests (percentage of total)




Percentages may not add up to 100 due to rounding.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Proxy Contest Outcomes

This section extends the proxy contest analysis to the outcome of these contests, with a focus on dissident success rates. For the purpose of this report, a "dissident success rate" is the number of outright victories, partial victories, or settlements by the dissident as a percentage of all proxy fights where an outcome was reached.

In 2018, for the first time since The Conference Board began tracking proxy contest outcomes, the majority of initiated proxy contests resulted in a settlement between the dissident and the company, where the company made certain concessions to obtain the support of the activist investor. By the same token, in 2018 the outright success rate by dissidents was the lowest recorded by The Conference Board since 2010.

### By index

Table 28 displays proxy contest outcomes by index, and Chart 52 corroborates the index-based analysis by illustrating the recent historical evolution of the dissident success rate. In the Russell 3000, dissidents scored an outright win in only 2 of the 34 (or a mere 5.9 percent) proxy contests where an outcome was reached in 2018, down from a percentage of 17.9 in the same period of 2017 and of 12.5 in 2015.

By way of comparison, according to an earlier edition of this study, dissidents succeeded in 7 of the 41 (17.1 percent) of the proxy contests held during the same period in 2014 and in 5 out of the 35 proxy contests of 2013 (14.3 percent). The dissident success rate of 2018 was the lowest recorded by The Conference Board since 2010, where dissidents won only one of the 23 proxy contests mounted then against Russell 3000 companies (or 4.3 percent). In 2018, three contests (8.8 percent) were withdrawn and eight (or 23.5 percent) resulted in a victory for management. Most importantly, the table also shows that almost 60 percent of the Russell 3000 proxy contests in 2018 concluded with a settlement—the highest share of proxy fight settlements found by this periodic study (previously, the highest percentage of settlements had been found in 2015, and it was 47.9 percent).

In the S&P 500, no dissident succeeded in the four proxy solicitations conducted in 2018, which led to one management win, one withdrawal, and two settlements.

Table 28

## Proxy Contest Outcome—by Index (2015, 2017, and 2018)

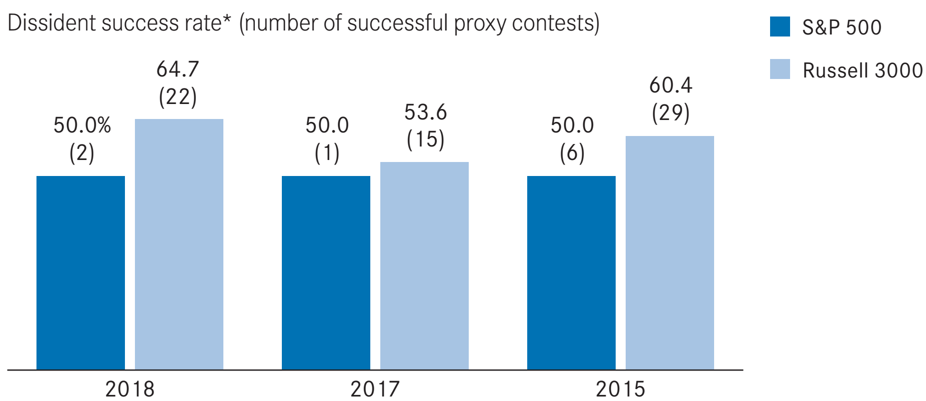
| Proxy contest outcome | Russell 3000 Number of proxy contests | Russell 3000 Percentage of total contests | S&P 500 Number of proxy contests | S&P 500 Percentage of total contests |
|---|---|---|---|---|
| **2018** | | | | |
| Dissident win | 2 | 5.9 | 0 | 0.0 |
| Management win | 8 | 23.5 | 1 | 25.0 |
| Settled/concessions made | 20 | 58.8 | 2 | 50.0 |
| Split | 1 | 2.9 | 0 | 0.0 |
| Withdrawn | 3 | 8.8 | 1 | 25.0 |
| | n=34 | 100.0% | n=4 | 100.0% |
| **2017** | | | | |
| Dissident win | 5 | 17.9 | 0 | 0.0 |
| Management win | 4 | 14.3 | 1 | 50.0 |
| Settled/concessions made | 10 | 35.7 | 1 | 50.0 |
| Split | 1 | 3.6 | 0 | 0.0 |
| Withdrawn | 8 | 28.6 | 0 | 0.0 |
| | n=28 | 100.0% | n=2 | 100.0% |
| **2015** | | | | |
| Dissident win | 6 | 12.5 | 0 | 0.0 |
| Management win | 8 | 16.7 | 2 | 33.3 |
| Settled/concessions made | 23 | 47.9 | 3 | 50.0 |
| Split | 1 | 2.1 | 0 | 0.0 |
| Withdrawn | 10 | 20.8 | 1 | 16.7 |
| | n=48 | 100.0% | n=6 | 100.0% |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

Chart 52

## Dissident Success Rate–by Index (2015, 2017, and 2018)

Dissident success rate* (number of successful proxy contests)




* Dissident success rate is the number of outright victories, partial victories, or settlements by the dissident as a percentage of all proxy fights where an outcome was reached.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By industry

The outcome analysis by industry (Table 29) shows that the two dissident wins in 2018 were at an industrial and at a real estate company. Energy, financials and information technology had each a case of proxy contest withdrawal. The highest concentration of settlements was seen at industrials and at consumer discretionary companies.

Chart 53 displays a success rate that is inclusive not only of outright victories by dissidents but also partial victories and settlements. The highest rate, or 100 percent, was seen in the consumer staples and industrials sectors (the latter reported six cases of outright victories by dissidents, partial victories or settlements out of six contests held against companies in the sector). The lowest success rate found in 2018 among sectors with at least one proxy contest was against companies in the real estate sector sector (one out of four contests had some successful outcome for the dissident, or 25 percent of the total).

Table 29

### Proxy Contest Outcome—by Industry (2018)

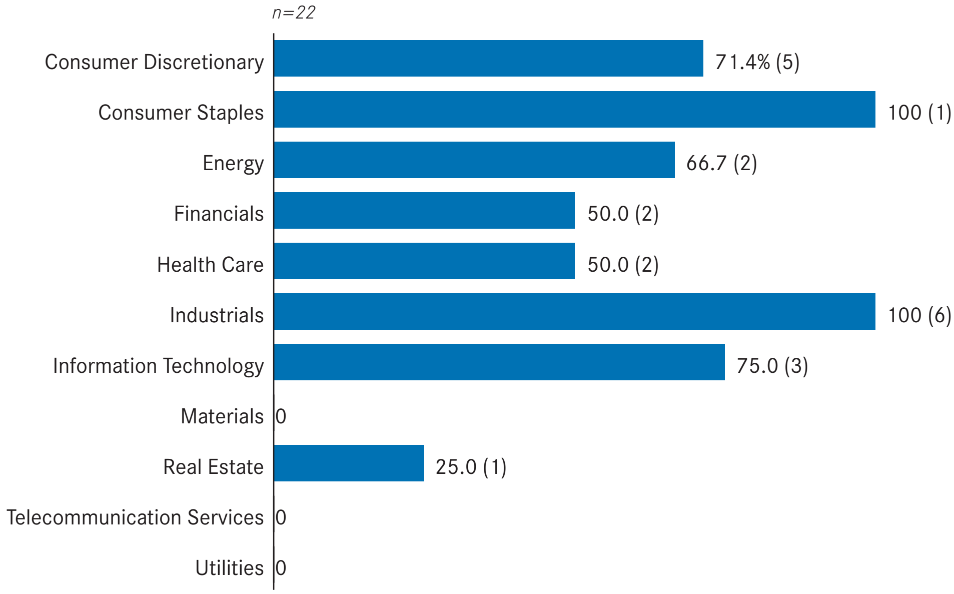
| | | Dissident win | | Management win | | Settled/ concessions made | | Split | | Withdrawn | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Industry | Number of proxy contests | Number of proxy contests | Percentage of total contests | Number of proxy contests | Percentage of total contests | Number of proxy contests | Percentage of total contests | Number of proxy contests | Percentage of total contests | Number of proxy contests | Percentage of total contests |
| Consumer discretionary | 7 | 0 | 0.0 | 2 | 25.0 | 5 | 25.0 | 0 | 0 | 0 | 0.0 |
| Consumer staples | 1 | 0 | 0.0 | 0 | 0.0 | 1 | 5.0 | 0 | 0 | 0 | 0.0 |
| Energy | 3 | 0 | 0.0 | 0 | 0.0 | 2 | 10.0 | 0 | 0 | 1 | 33.3 |
| Financials | 4 | 0 | 0.0 | 1 | 12.5 | 2 | 10.0 | 0 | 0 | 1 | 33.3 |
| Health Care | 4 | 0 | 0.0 | 1 | 12.5 | 2 | 10.0 | 1 | 100 | 0 | 0.0 |
| Industrials | 6 | 1 | 50.0 | 0 | 0.0 | 5 | 25.0 | 0 | 0 | 0 | 0.0 |
| Information technology | 4 | 0 | 0.0 | 0 | 0.0 | 3 | 15.0 | 0 | 0 | 1 | 33.3 |
| Materials | 0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0 | 0 | 0.0 |
| Real estate | 4 | 1 | 50.0 | 3 | 37.5 | 0 | 0.0 | 0 | 0 | 0 | 0.0 |
| Telecommunication services | 1 | 0 | 0.0 | 1 | 12.5 | 0 | 0.0 | 0 | 0 | 0 | 0.0 |
| Utilities | 0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0 | 0 | 0.0 |
| | n=34 | n=2 | 100% | n=8 | 100% | n=20 | 100% | n=1 | 100% | n=3 | 100% |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

Chart 53

## Dissident Success Rate—by Industry (2018)

Dissident success rate* (number of successful proxy contests)




* Dissident success rate is the number of outright victories, partial victories, or settlements by the dissident as a percentage of all proxy fights where an outcome was reached.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By dissident

The outcome analysis by dissident type (Table 30) shows that one of the two outright proxy contest victories during the 2018 period went to a hedge fund, while the other was won by a nonfinancial stakeholder group.

Twelve of the 20 settled proxy contests were led by hedge funds (constituting 60 percent of the total contests that led to a settlement in 2018). Hedge funds also had the highest rate of withdrawals (66.7 percent, or all but one of the withdrawn contests), as well as the only contest where the outcome was split.

Table 30

**Proxy Contest Outcome—by Dissident (2018)**

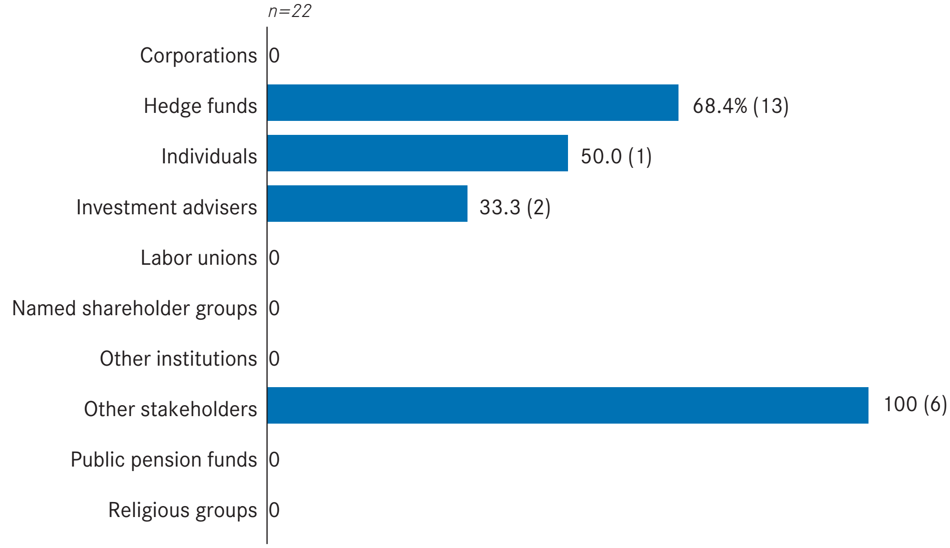
| | | Dissident win | | Management win | | Settled/ concessions made | | Split | | Withdrawn | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Dissident type | Number of proxy contests | Number of proxy contests | Percentage of total contests | Number of proxy contests | Percentage of total contests | Number of proxy contests | Percentage of total contests | Number of proxy contests | Percentage of total contests | Number of proxy contests | Percentage of total contests |
| Corporations | 1 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 1 | 33.3 |
| Hedge funds | 19 | 1 | 50.0 | 3 | 37.5 | 12 | 60.0 | 1 | 100.0 | 2 | 66.7 |
| Individuals | 2 | 0 | 0.0 | 1 | 12.5 | 1 | 5.0 | 0 | 0.0 | 0 | 0.0 |
| Investment advisers | 6 | 0 | 0.0 | 4 | 50.0 | 2 | 10.0 | 0 | 0.0 | 0 | 0.0 |
| Labor unions | 0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Mutual fund managers | 0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Named shareholder groups | 0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Other institutions | 0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Other stakeholders | 6 | 1 | 50.0 | 0 | 0.0 | 5 | 25.0 | 0 | 0.0 | 0 | 0.0 |
| Public pension funds | 0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Religious groups | 0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| | n=34 | n=2 | 100% | n=8 | 100% | n=20 | 100% | n=1 | 100% | n=3 | 100% |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

Chart 54 shows that hedge funds had an overall success rate of 68.4 percent (13 of the 22 proxy contests that were either won or settled in 2018). Two of the contests led by an investment adviser were somewhat successful (a 33.3 percent overall success rate).

Chart 54
**Dissident Success Rate—by Dissident (2018)**

Dissident success rate* (number of successful proxy contests)




* Dissident success rate is the number of outright victories, partial victories, or settlements by the dissident as a percentage of all proxy fights where an outcome was reached.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By reason

The proxy contest outcome analysis by reason (Table 31) shows that most of the settled proxy contests were mounted to gain representation on the board of directors (13 of the 20 settlements, or 65 percent). Board representation was also the reason for dissent in one of the six contests won by management, while both contests won by dissidents were mounted to gain control of the board.

Table 31
### Proxy Contest Outcome—by Reason (2018)

| | | Dissident win | | Management win | | Settled/ concessions made | | Split | | Withdrawn | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Reason | Number of proxy contests | Number of proxy contests | Percentage of total contests | Number of proxy contests | Percentage of total contests | Number of proxy contests | Percentage of total contests | Number of proxy contests | Percentage of total contests | Number of proxy contests | Percentage of total contests |
| Board control | 6 | 2 | 100.0 | 0 | 0.0 | 5 | 25.0 | 0 | 0.0 | 1 | 33.3 |
| Board representation | 23 | 0 | 0.0 | 6 | 75.0 | 13 | 65.0 | 1 | 100.0 | 1 | 33.3 |
| Enhance corporate governance | 0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Remove director(s), no dissident nominee to fill vacancy | 1 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 1 | 33.3 |
| Vote against a management proposal | 3 | 0 | 0.0 | 2 | 25.0 | 1 | 5.0 | 0 | 0.0 | 0 | 0.0 |
| Vote/activism against a merger | 1 | 0 | 0.0 | 0 | 0.0 | 1 | 5.0 | 0 | 0.0 | 0 | 0.0 |
| Vote for a stockholder proposal | 0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Vote/activism against a merger | 0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Withhold vote for director(s) | 0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | |
| | n=34 | n=2 | 100% | n=8 | 100% | n=20 | 100% | n=1 | 100% | n=3 | 100% |

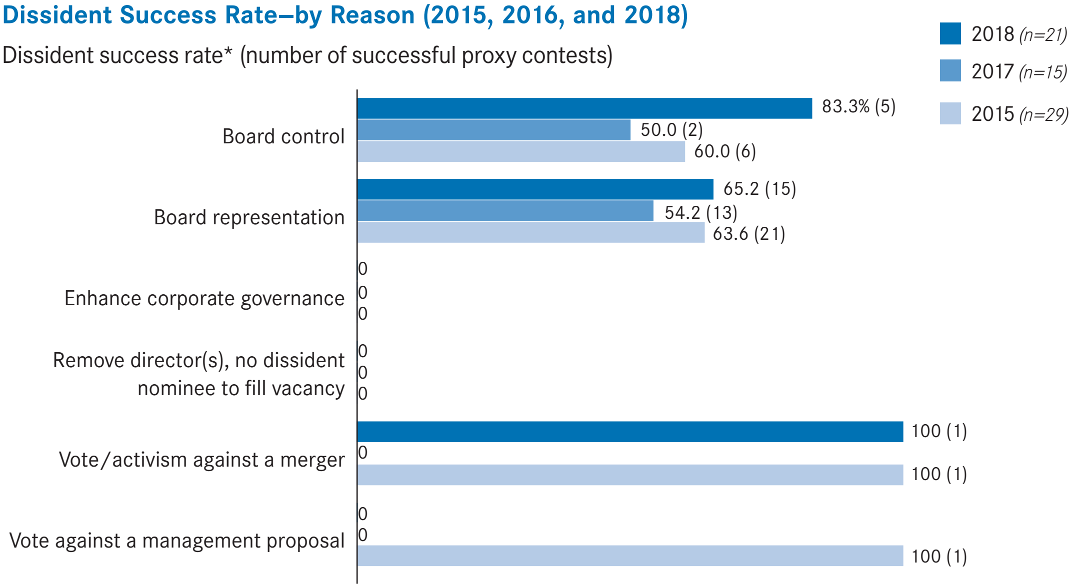
*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

Chart 55 illustrates that the dissident success rates in proxy contests for board control and board representation is consistent with the levels registered in 2017 and 2015 but also, according to earlier edition of this report, in prior years. In 2018, the success rate for contests seeking board representation was 65.2 percent, slightly lower than the success rate of 2017 (54.2 percent) and substantially similar to that of 2015 (63.6 percent). The success rate for board control was 83.3 percent in 2018, up from 50 percent in 2017 but similar to the 77.8 percent reported for 2014 in an earlier edition of this study.

Chart 55

**Dissident Success Rate—by Reason (2015, 2016, and 2018)**

Dissident success rate* (number of successful proxy contests)




* Dissident success rate is the number of outright victories, partial victories, or settlements by the dissident as a percentage of all proxy fights where an outcome was reached.

*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Exempt Solicitations

Considering the cost of conducting proxy contests, some activist investors choose exempt solicitations to seek the support of fellow shareholders. Pursuant to Rule 14a-2(b)(1) under the Securities Exchange Act of 1934, unless it is requesting proxy voting authority and providing its own proxy cards, any investor can freely communicate its views to fellow shareholders without having to comply with the proxy filing and disclosure rules of contested solicitations.

An exempt solicitation generally takes the form of a letter to individual shareholders attempting to persuade them to vote for a shareholder proposal, to vote against a management proposal, or to withhold votes for directors. An activist wishing to send such materials is required to file electronically with the SEC a Notice of Exempt Solicitation on Form PX14A6G if it holds more than $5 million worth of the target company's shares. Once submitted, the form will appear on the SEC's EDGAR filing system alongside the company's filings.

In the last couple of years, EDGAR has reported multiple cases of voluntary filings from activists with far smaller positions than the requisite $5 million seeking an inexpensive way to amplify their voice and lobby fellow owners beyond the 500-word limit imposed by securities regulations on shareholder proposals. Furthermore, in some of those cases, the Form PX14A6G appears to have been used by the filing activist as a mere expedient to publicize its stance on the company's business strategy (or the performance of the management team or the adequacy of organizational practices), with no explicit statement urging other investors to vote for or against a certain resolution or to withhold its vote at a director election.

Data analyzed in this section refer exclusively to exempt solicitation filings related to a director election or a matter put to a vote at a shareholder meeting.

## By index

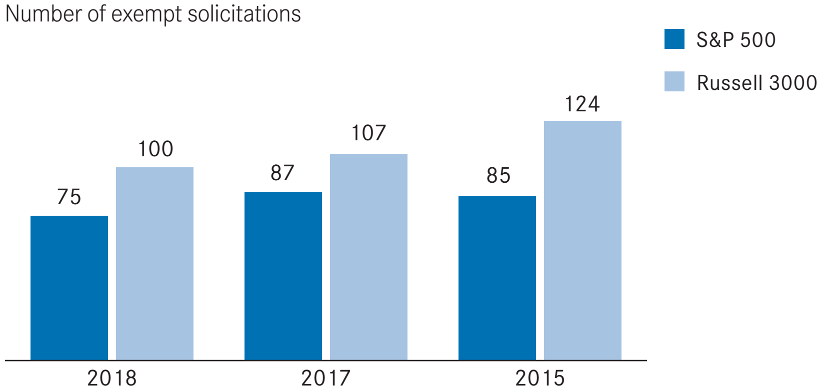
The last few years have shown a surge in exempt solicitations, especially those in the form of "just vote no" campaigns (where a shareholder solicits others to withhold their votes at a director election or to vote against a management proposal or a nomination to the board of directors submitted by management, but does not circulate a dissident's proxy card) and those to solicit votes against a say-on-pay proposal by management. In the 2018 period examined for the purpose of this report, shareholders engaged in 100 exempt solicitations against management of Russell 3000 companies, compared to 107 of the corresponding period of 2017 and 124 of 2015. By way of comparison, according to an earlier edition of this study, there were only 47 in the corresponding 2013 period and 18 in 2010. In the S&P 500 sample, the number of exempt solicitations in 2018 was 75, down from the record 87 of the 2017 period, but up from only 29 in 2014 and 15 in 2010 (Chart 56).

The index comparison shows a concentration of notices of exempt solicitations filed against larger companies. This campaign tactic is less common among activist hedge funds, which traditionally pursue smaller targets, and is preferred by labor unions and public pension funds, which are widely invested in blue chip stocks. Table 25, on p. 156, in particular, shows that it is rarely used by activist funds in the SharkWatch50.

Chart 56

**Exempt Solicitation Volume—by Index (2015, 2017, and 2018)**

Number of exempt solicitations




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

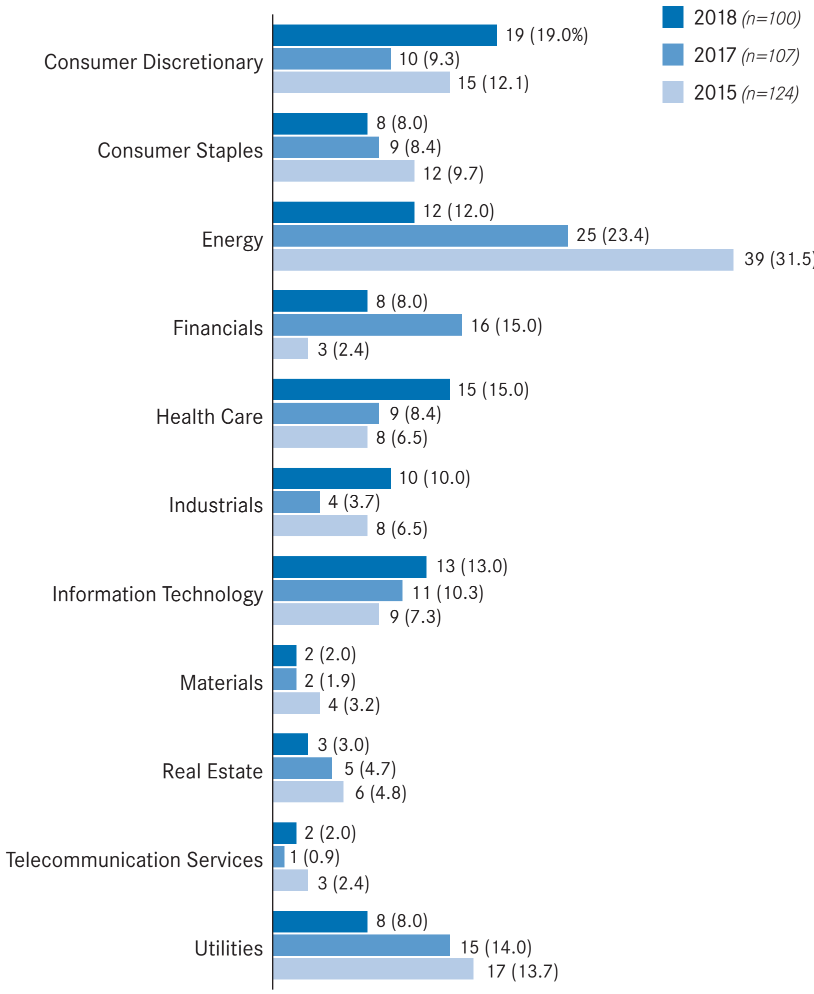
## By industry

The analysis of exempt solicitation volume by industry shows that the consumer discretionary, health care, and information technology industries reported the highest number of these notices in 2018 (19, 15, and 13, respectively), followed by energy and industrials (eight each) (Chart 57). Energy and consumer discretionary companies have traditionally attracted a significant number of these solicitations, according to the historical analysis illustrated in Chart 57 and an earlier edition of this study.

Chart 57

**Exempt Solicitation Volume—by Industry (2015, 2017, and 2018)**

Number of exempt solicitations (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By activist

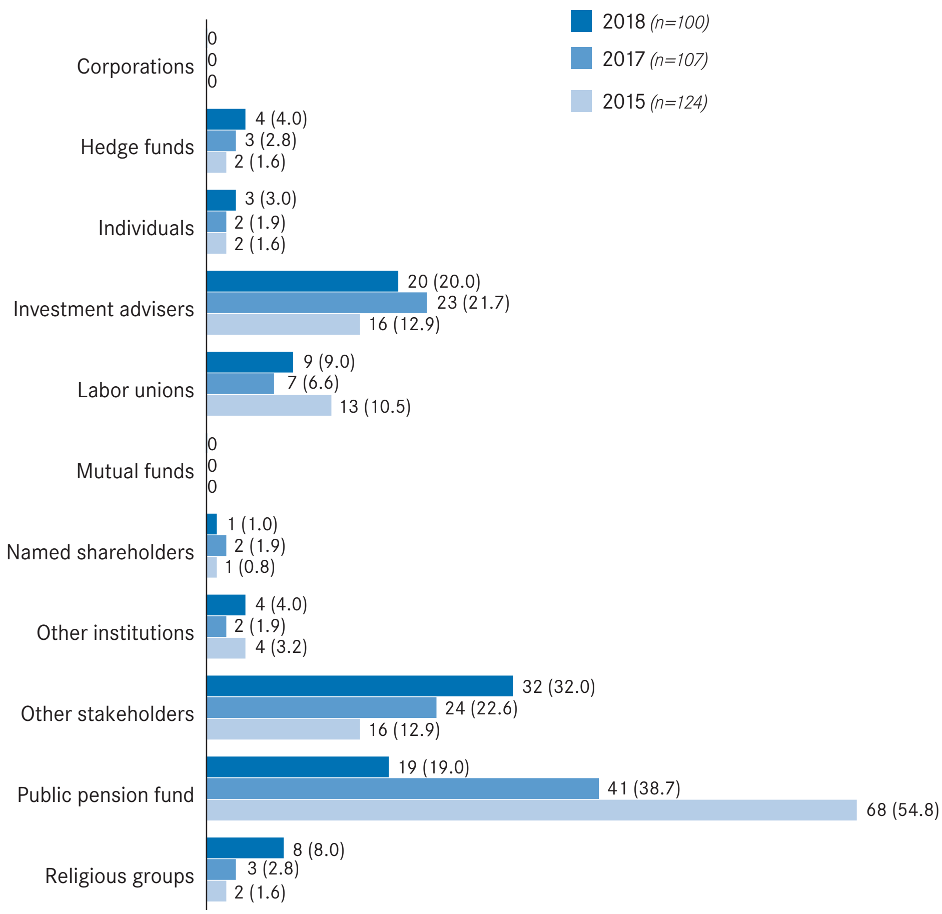
The historical volume comparison by activist type illustrates the rise of other stakeholders among the most frequent filers of notices of exempt solicitations. In 2018, in the Russell 3000 universe examined for the purpose of this report, noninvestment stakeholder groups submitted the largest share of exempt solicitations (32 solicitations, or 32 percent of the total number), followed by investment advisers (20 solicitations, or 20 percent). Notably, public pension funds had filed 68 solicitations in 2015 (more than half the total number of 117 recorded in the first six months of that year) and 41 in 2017 (or 38.7 percent of the total), and were down to 19 in 2018 (19 percent) (Chart 58).

See "Sponsors," on p. 32, for more information on the categorization of activist types used for the purpose of this report.

Chart 58

**Exempt Solicitation Volume—by Activist (2015, 2017, and 2018)**

Number of exempt solicitations (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By reason

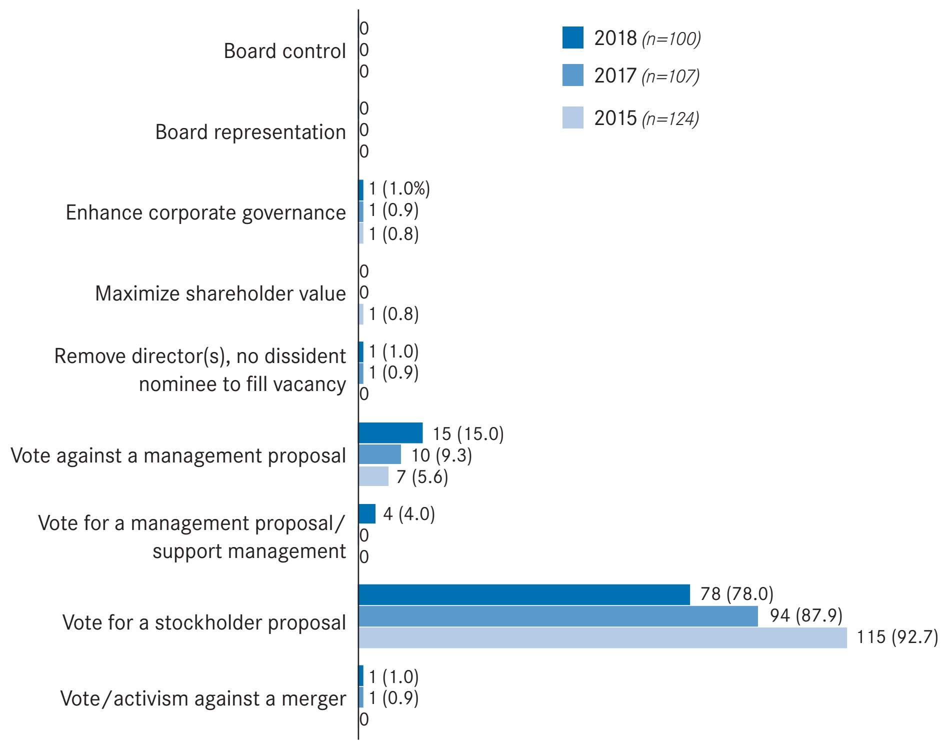
Chart 59 illustrates the frequency of the reasons for the dissent that led to the instances of exempt solicitations reported in recent years. For all of the examined periods, in the vast majority of these campaign types, activists individually urged fellow investors to vote for a shareholder proposal (78, or 78 percent of the total in 2018; 94, or 87.9 percent in 2017; and 115, or 92.7 percent in 2015; according to an earlier edition of this study, this category represented the lion's share even in earlier year and was 74.5 percent of the total, in particular, in 2013).

In 2018, the other activism campaigns that took the form of exempt solicitations were waged to vote against a management proposal, to propose a corporate governance enhancement, or to vote against a proposed merger transaction. In particular, there were 15 exempt solicitations to vote against a management proposal (or 15 percent of the total), compared to 10 solicitations in 2017 (or 9.3 percent of the total) and seven solicitations in 2015 (or 5.6 percent of the total).

Chart 59

**Exempt Solicitation Volume—by Reason (2015, 2017, and 2018)**

Number of exempt solicitations (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Other Activism Campaigns

Securities laws in the United States do not prevent shareholders from broadly disseminating statements of how they intend to vote at a shareholder meeting or on the reasons for their dissent from management, as long as the statement in question neither seeks the power to act as proxy for other shareholders nor urges other shareholders to vote in a certain way. Therefore, aside from conducting proxy contests and exempt solicitations, activists often orchestrate agitations meant to influence the public and put pressure on target companies.

Tactics of this type include issuing press releases, making public announcements (on TV or radio broadcasts, at press conferences, or through the web), publicly disclosing letters sent to target company management, filing a shareholder lawsuits, threatening a proxy fight, or launching a hostile tender offer to all shareholders. Activists have become quite sophisticated in accessing the public arena and using media outlets to pursue their investment agenda. The proliferation of social media has only accentuated this phenomenon, offering additional channels of communication that were unavailable only a few years ago.

Data reviewed for the purpose of this section of the report only refer to "other activism campaigns" related to director elections or actions by written consent or (shareholder or management) resolutions put to a vote at a 2018 shareholder meeting of companies in the Russell 3000 index. Other activism campaigns unrelated to a shareholder vote or written consent and announced for other agitation purposes, including inducing the board and management into some form of dialogue, are excluded from the analysis.

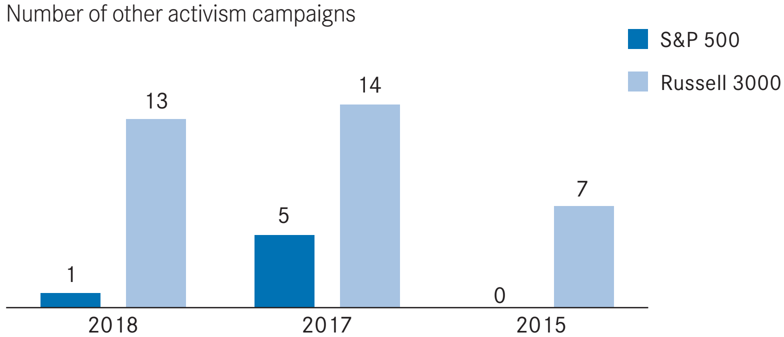
## By index

As shown in Chart 36 (p. 147) and 37 (p. 148), in 2018 the total number of activist campaigns related to a shareholder vote (147 campaigns) was slightly lower than in 2017 (149 campaigns) and in 2015 (when there were 155 activist campaigns).

Chart 60 shows that, in the Russell 3000, in the first six months of 2018, there were 13 public agitations in any of the forms aggregated in the all-inclusive category of "other activism campaigns"; even in this case, the number was slightly lower than the one recorded for 2017, while it increased from the seven found in 2015. The chart also shows that, in the S&P 500 sample, the number of these public agitations declined to one, from five during the same period in 2017 and zero in 2015; in 2010, it was eight (Chart 60).

Chart 60
**Other Activism Campaign Volume—by Index (2015, 2017, and 2018)**

Number of other activism campaigns




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

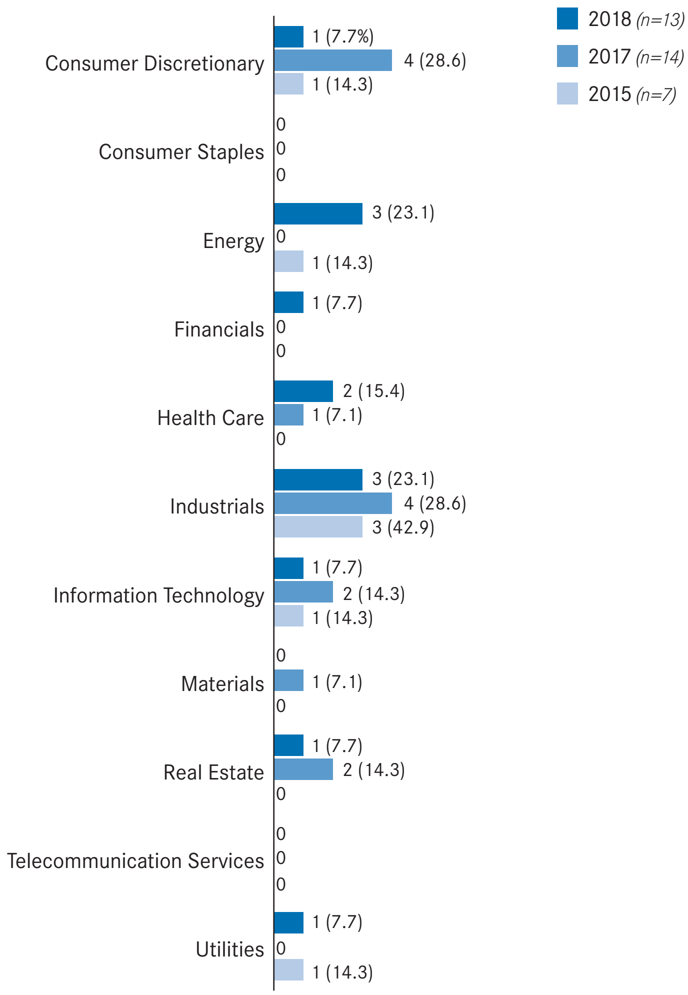
## By industry

The analysis of other activism campaigns' volume by industry shows that energy companies were subject to three of the 13 public agitations involving a shareholder vote (23.1 percent of the total number of campaigns of this type), the same as in the industrials sector. The business sector with the second-highest number of campaigns was health care (two public campaigns, 15.4 percent of the total). Other activism campaigns were more evenly distributed across industry groups, with only three GICS sectors reporting none, than in previous years (Chart 61).

Chart 61

**Other Activism Campaign Volume—by Industry (2015, 2017, and 2018)**

Number of other activism campaigns (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By activist

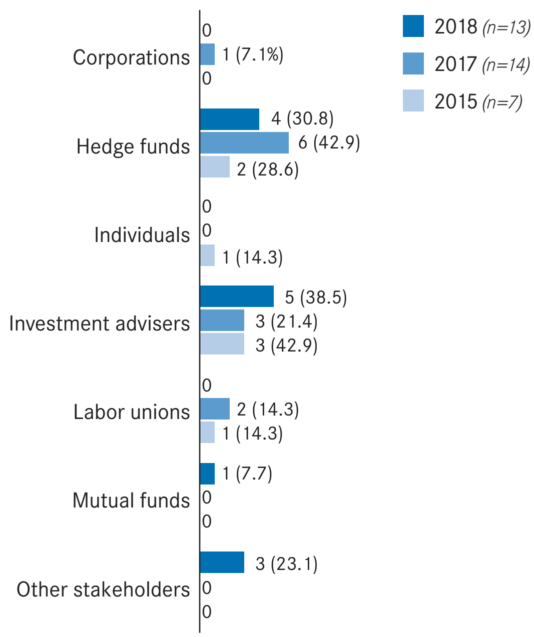
The historical volume comparison by activist type shows that investment advisers and hedge funds are the most prone to shareholder activism in the form public agitations. In 2018, in the Russell 3000 universe examined for the purpose of this report, 38.5 percent of these types of campaigns (five out of 13) were announced by investment advisers, compared to the 30.8 percent (four campaigns) announced by hedge funds and 23.1 percent (three) by other, nonfinancial stakeholder-affiliated funds. A similar prominent role was found for these investors in the 2017 and 2015 analyses, as well as in an earlier edition of this report for the years 2010-2014. Notably, in 2018 there were no campaigns of this type initiated by labor unions, which had appeared on the list for each of the prior years since 2010 (Chart 62).

See "Sponsors," on p. 32, for more information on the categorization of activist types used for the purpose of this report.

Chart 62

**Other Activism Campaign Volume—by Activist (2015, 2017, and 2018)**

Number of other activism campaigns (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By reason

Chart 63 illustrates the reasons for the activist dissent that have led to the instances of public agitations involving a shareholder vote reported in recent years.

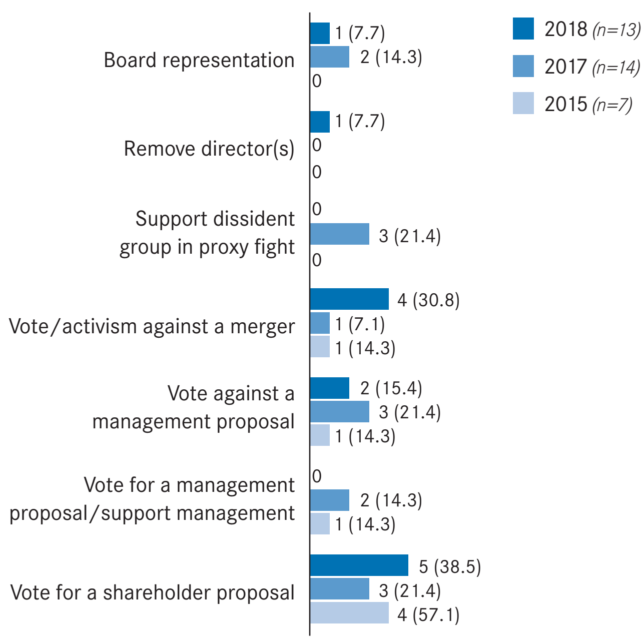
In 2018, the most frequent reason for this type of activism campaign was to object to a merger. More specifically, there were four instances (or 30.8 percent of the total number) of agitations motivated by the opposition to a proposed merger or business combination transaction. In an earlier edition of this report, The Conference Board had found seven and 10 campaigns of this type in 2010 and 2013, respectively, but the number went down to one for each of the examined 2015 and 2017 periods.

Five public activist campaigns were announced in 2018 to urge investors to review and support a certain shareholder resolution submitted to a vote at a shareholder meeting. These campaigns represented 38.5 percent of the total number of public agitations announced in the sample time period, compared to 21.4 in 2017.

Chart 63

**Other Activism Campaign Volume—by Reason (2015, 2017, and 2018)**

Number of other activism campaigns (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

# PART V
# Issues in Focus

Each proxy season has its highlights, which are often dependent upon the business performance of companies, the political climate and financial market conditions, and the evolving investment strategies of activist shareholders. In general, the shareholder proposals that are more likely to succeed at an AGM are those that seek to align the governance policies of the company with standards widely recognized by the investor community as best practices (from the adoption of majority voting in director elections to the declassification of boards, and from the separation of CEO and chairman positions to the elimination of supermajority vote requirements). Recent proxy seasons have also been noteworthy for the increasing volume of shareholder proposals on environmental and social policy issues, including those seeking disclosure of corporate political spending and lobbying and those on sustainability reporting. In addition, shareholders have increasingly made use of their ability to submit proposals on "proxy access" (i.e., the right of qualified shareholders to have their director nominee added to those proposed by management and included in company's proxy materials).

This section of the report expands on the discussion of shareholder proposals included in Part II to bring more focus to the key issues of the 2018 proxy season. The section segments (by index, industry, and sponsorship) data on the volume of each proposal type, including information on the most frequent sponsors and those cases in which the proposal received the highest (or lowest) support level. The data analyzed in this section is integrated with references to the voting guidelines offered by proxy advisory firm ISS on the issue in question.

With the exception of proposals on the election of a dissident's director nominee, the proposals discussed in this section are typically precatory (or nonbinding). However, when the proposals pass, board members may face the prospect of negative recommendations from proxy advisory firms or future opposition from shareholders for not taking action deemed sufficiently responsive to the proposal.

## Majority Voting

Under Section 216 of the Delaware General Corporation Law, director elections are held using a default system of plurality voting. The nominees with the largest number of votes are elected as directors, up to the maximum number of directors to be chosen at the election and without regard to votes "withheld" or not cast. This means that nominees could theoretically win a board seat by receiving as little as one affirmative vote (often their own). The benefit of plurality voting is that someone always wins—all vacant seats are filled. However, the role of shareholders in the selection process is purely formal, as their vote against a nominee is meaningless. As designed, the system ensures that, in uncontested elections, candidates nominated by the board fill all vacant seats. Due to the expense and complexity of mounting a proxy contest, this is often the norm when a system of plurality voting applies.

In the past, virtually all directors of US public companies were elected according to the plurality voting mechanism. However, recent years have witnessed a gradual departure from such default rule, by means of revising internal governance policies, amending bylaws or charter provisions, or a combination of both. In a relatively short period, investor pressure has made majority voting—whereby directors who fail to win a majority of votes would lose the election—the prevailing standard among larger SEC-registered corporations. Variations of the majority voting model also exist, depending on whether the incumbent receiving more votes *against* than votes *for* must tender his or her resignation to the board of directors or automatically ceases to be a director after a certain time period.

According to recently published statistics, as of August 31, 2018, majority voting had been adopted by 89 percent of S&P 500 companies and 50 percent of Russell 3000 companies.[1]

On average, when put to a vote, shareholder proposals requesting that the election model be changed from plurality to majority voting receive the support of the majority of shareholders.

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1 *Corporate Governance by the Numbers*, EY Center for Board Matters, 2018, available at www.ey.com/boardmatters.

## Volume by index

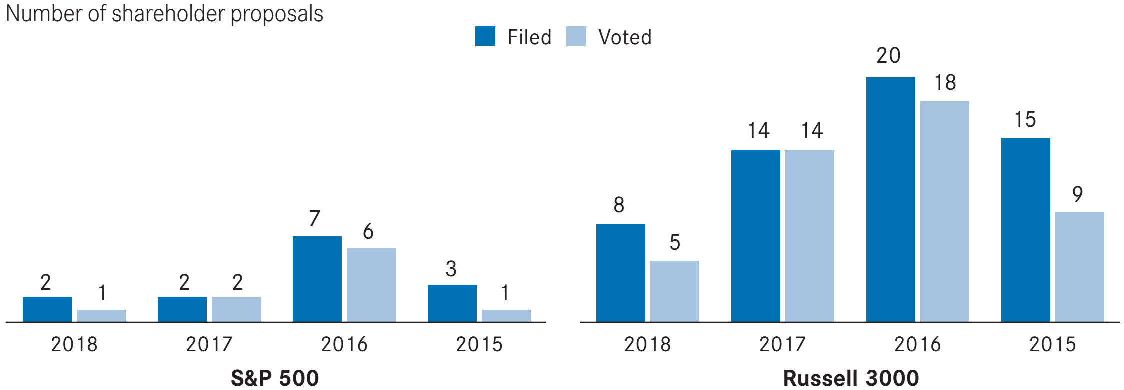
As shown in Chart 64, in the Russell 3000 sample examined for the purpose of this report (i.e., AGMs held between January 1 and June 30, 2018), shareholders filed only eight proposals requesting that the company change its director election system from plurality to majority voting, of which five percent were voted. The number has been declining dramatically over the last few years: Shareholders filed 14 proposals in 2017, 20 in 2016, and 31 in 2014, down from the 42 proposals that, according to an earlier edition of this report, were filed on this topic in 2012 and from the high of 49 were filed in 2009.

By comparison, in the S&P 500 sample of larger companies, where majority voting is already prevalent, investors submitted only two proposals, of which one went to a vote during the examined period.

Chart 64

**Majority Voting–Shareholder Proposal Volume, by Index (2015–2018)**

Number of shareholder proposals




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

ISS PROXY VOTING GUIDELINES

## Majority Vote Standard for the Election of Directors

Generally, vote *for* management proposals to adopt a majority-of-votes-cast standard for directors in uncontested elections. Vote *against* if no carve-out for a plurality vote standard in contested elections is included.

Generally, vote *for* precatory and binding shareholder resolutions requesting that the board change the company's bylaws to stipulate that directors need to be elected with an affirmative majority of votes cast, provided it does not conflict with the state law where the company is incorporated. Binding resolutions need to allow for a carve-out for a plurality vote standard when there are more nominees than board seats.

Companies are strongly encouraged to also adopt a post-election policy (also known as a director resignation policy) that will provide guidelines so that the company will promptly address the situation of a holdover director.

*Source: 2018 U.S. Proxy Voting Guidelines. Benchmark Policy Recommendations*, ISS, January 4, 2018, p. 20 (www.issgovernance.com).

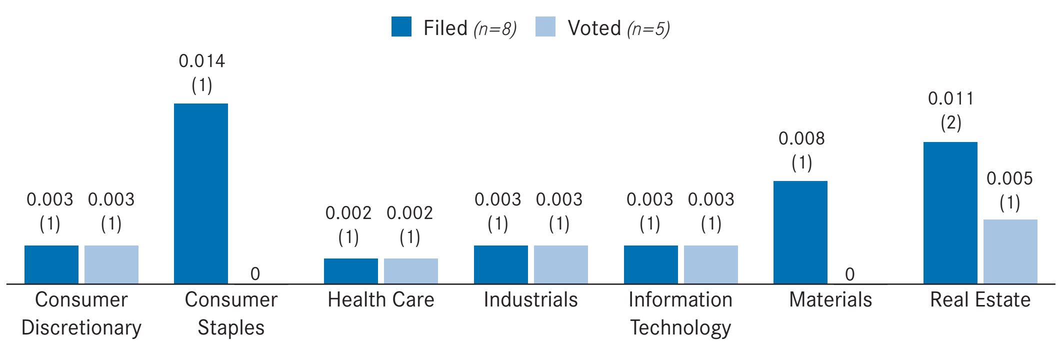
## Volume by industry

Chart 65 shows the average number of shareholder proposals per company by industry, and also the industry averages for proposals that went to a vote. In the Russell 3000 sample, only seven of the 11 GICS industries received proposals of this type in 2018. Consumer staples, real estate and materials companies were the most exposed to shareholder proposals on majority voting: companies in these sectors reported a number of proposals per companies higher than the average of 0.006 seen across industries. No companies in the telecommunications, financials, and utilities sectors received a shareholder proposal on majority voting during the examined 2018 period.

Chart 65

**Majority Voting–Shareholder Proposal Volume, by Industry (2018)**

Average number of shareholder proposals per company (number of proposals)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

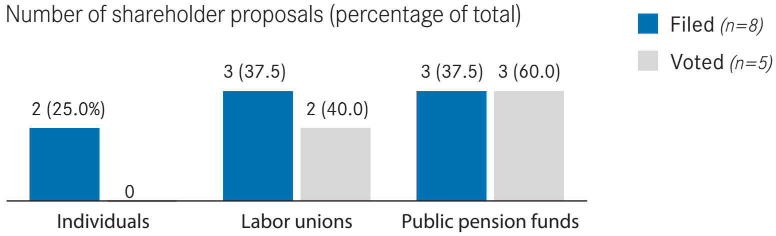
## Volume by sponsor

As shown in Chart 66, these proposals were initiated by labor union-affiliated investment funds, public pension funds, and individuals. Neither of the two proposals submitted by individuals went to a vote. Overall, 62.5 percent of the submitted proposals went to a vote.

Chart 66

**Majority Voting–Shareholder Proposal Volume, by Sponsor (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent sponsors

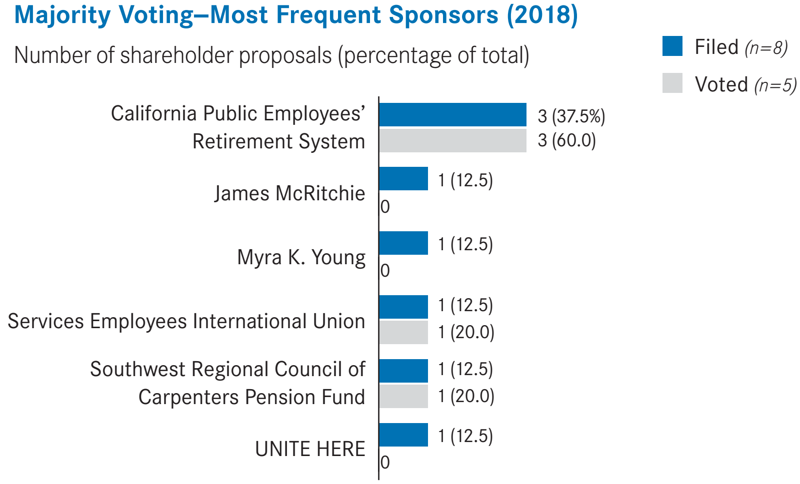
Chart 67 ranks the most frequent sponsors of shareholder proposals on majority voting. Also see Table 10 on p. 80 for a comprehensive list of proponents across key proposal types.

The California Public Employees' Retirement System (CalPERS) was responsible for three of the five proposals that went to a vote in the 2018 period. The individual proponents were James McRitchie and Myra K. Young, but neither of their proposals ended up on the voting ballot.

Chart 67

**Majority Voting–Most Frequent Sponsors (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By support level

Among the Russell 3000 companies in the sample, average support for shareholder proposals seeking the adoption of majority voting in 2018 was 73.9 percent of votes cast, up from 62.8 percent in 2017 and 69.6 percent in 2015, and the highest seen by The Conference Board since 2010. This indicates that the volume decline of the last few years is due to the saturation of investor demand, not the waning support received by the proposals in the investment community (Table 12, on p. 83).

As shown in Table 32, among resolutions on this topic, the highest support level (92.2 percent of votes cast) was received by a proposal submitted by the California Public Employees' Retirement System (CalPERS) at New Senior Investment Group Inc. (NYSE: SNR). The lowest support level (39.1 percent) was for a proposal submitted by the Southwest Regional Council of Carpenters Pension Fund, a labor-union affiliated investment vehicle; the proposal did not pass.

Table 32 **Majority Voting—Shareholder Proposals, by Support Level (2018)**

| Company | Sponsor | Meeting date | Proposal outcome (pass/ fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **HIGHEST SUPPORT** | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| New Senior Investment Group Inc | California Public Employees' Retirement System | 6/11/2018 | Pass | 92.2% | 1.5% | 6.3% | 59.7% | 1.0% | 4.1% | 27.6% |
| 2U, Inc. | California Public Employees' Retirement System | 6/26/2018 | Pass | 86.4 | 13.4 | 0.2 | 75.5 | 11.7 | 0.2 | 10.1 |
| Utah Medical Products, Inc. | California Public Employees' Retirement System | 5/4/2018 | Pass | 80.1 | 19.4 | 0.5 | 62.6 | 15.1 | 0.4 | 14.9 |
| Netflix, Inc. | Services Employees International Union | 6/6/2018 | Pass | 71.4 | 28.3 | 0.3 | 50.4 | 19.9 | 0.2 | 17.9 |
| **LOWEST SUPPORT** | | | | | | | | | | |
| Kaman Corporation | Southwest Regional Council of Carpenters Pension Fund | 4/18/2018 | Fail | 39.1 | 60.6 | 0.4 | 34.1 | 52.8 | 0.3 | 5.7 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Board Declassification

In a classified structure, board members are divided into classes, and directors in each class serve staggered terms typically running three years; as a result, only one class of board members stands for election each year. In addition, classification is used as a defensive measure against hostile takeovers: When a board is staggered, hostile bidders must win more than one proxy contest at successive shareholder meetings to exercise control of the target. However, in classified boards, directors also tend to develop closer relations among each other, which may be conducive to complacency and reduced productivity.

Declassification proposals seek the adoption of a model where all corporate directors face a confidence vote on an annual basis. When put to a vote, average support for these proposals has been among the highest of all precatory proposal types. The success of these resolutions has resulted in a steady decline in staggered boards over the last decade. Especially among the larger companies in the S&P 500, classified boards are far less common today than they used to be.

According to recently released statistics, as of August 31, 2018, 88 percent of S&P 500 companies and 59 percent of Russell 3000 companies held annual director election for members of a declassified board.[2]

The Shareholder Rights Project (SRP), a clinical program sponsored by Harvard Law School to represent public pension funds and other institutional investors seeking to improve corporate governance at publicly traded companies in which they are shareholders, was responsible for much of the success of these requests. The SRP ran from 2012 to 2014, sponsoring tens of board declassification proposals on behalf of its institutional clients.

2 *Corporate Governance by the Numbers*, EY Center for Board Matters, 2018, available at www.ey.com/boardmatters.

## Harvard Law School Shareholder Rights Project

Founded by Professor Lucian Bebchuk as a clinical program for Harvard Law School students, the Shareholder Rights Project (SRP) inaugurated a novel approach to shareholder activism by bringing together and supporting the common interests of institutional investors seeking engagement with their portfolio companies, especially on issues of board declassification and annual director elections. As part of the program, SRP-represented investors have been offered assistance in connection with selecting the targets of shareholder proposals, designing and filing proposals, and negotiating agreements with companies to bring management declassification proposals to a vote or to amend bylaws prescribing staggered terms for directors.

The program, which ran from 2012 to 2014, was criticized by Wachtell, Lipton, Rosen & Katz's founding partner, Martin Lipton, for its attempt to force across a wide spectrum of business organizations a practice that may not work well in the long run. In particular, Lipton argued that, in some cases, a declassified structure can reduce the board's negotiating leverage in cases of opportunistic takeover bids.[a] In response, Bebchuk cited the body of empirical research that has found an association between classified boards and lower shareholder value,[b] and announced his plan to carry out new studies that will further corroborate those conclusions.[c]

Whatever the merits of this controversy, the impact that the SRP has had on the governance landscape in less than three years of operation is undisputable. During 2012, 2013, and the first half of 2014, shareholder activism by the SRP-led investors at S&P 500 companies resulted in:[d]

- Submission of declassification proposals to more than 129 companies (in a number of cases, earlier unsuccessful proposals were resubmitted at the following AGMs)
- Successful engagements with 121 companies (or over 90 percent of those targeted), which agreed to move towards annual elections following the submission of a declassification proposal
- Board declassifications at two-thirds of the S&P 500 companies that had classified board when the SRP was inaugurated, in 2012
- Average support exceeding 79 percent of votes cast in each of the years of activity of the SRP, with a record average support of 88 percent of votes cast recorded for the seven proposals passed in the first half of 2014

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a Martin Lipton, et al., "Harvard's Shareholder Rights Project Is Still Wrong," Wachtell, Lipton, Rosen & Katz Client Memorandum, November, 30, 2012; and Martin Lipton, Theodore N. Mirvis, Daniel A. Neff, and David A. Katz, "Harvard's Shareholder Rights Project Is Wrong," Wachtell, Lipton, Rosen & Katz Client Memorandum, March 21, 2012.

b For example: Lucian A. Bebchuk and Alma Cohen, "The Costs of Entrenched Boards," *Journal of Financial Economics*, Vol. 78, 2005, pp. 409–433, on the correlation between board classification and lower company value; Bebchuk, John C. Coates, and Guhan Subramanian, "The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence, and Policy," *Stanford Law Review*, Vol. 54, 2002, pp. 887–951, on the link with lower return to shareholders in the event of an unsolicited offer; Olubunmi Faleye, "Classified Boards, Firm Value, and Managerial Entrenchment," *Journal of Financial Economics*, Vol. 83, 2007, pp. 501–529, on the lower sensitivity of CEO turnover to company performance.

c Bebchuk, "Wachtell Lipton Was Wrong About the Shareholder Rights Project," The Harvard Law School Forum on Corporate Governance and Financial Regulation, April 9, 2013; followed by Bebchuk, Alon Brav, and Wei Jiang, "The Long Term Effects of Shareholder Activism," July 9, 2013 (http://ssrn.com/abstract=2291577).

d *Shareholder Rights Project*, Harvard Law School, August 12, 2014 (srp.law.harvard.edu).

## Volume by index

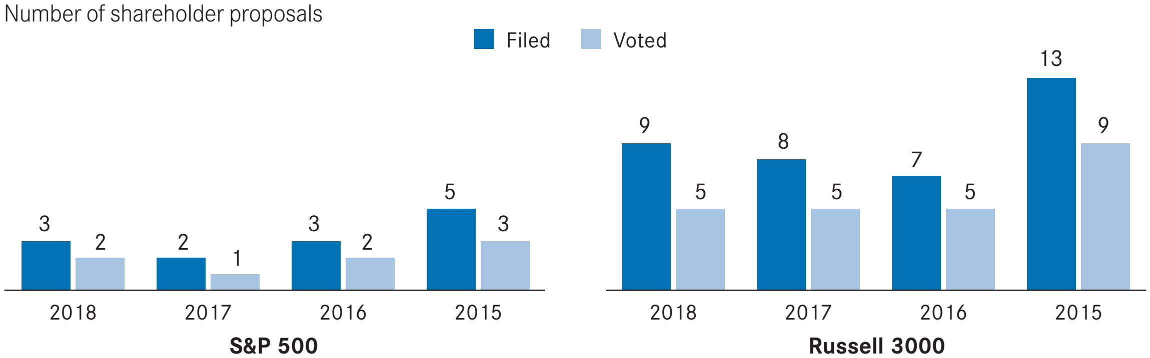
As shown in Chart 68, in the Russell 3000 sample examined for the purpose of this report, shareholders submitted nine proposals to eliminate classified board structures in favor of annual director elections, and of those five went to a vote. Proposal volume has been declining since the completion of the SRP. As for proposals on majority voting, this is mostly due to the rapid rate of adoption of declassification practices observed over the last few years. By way of comparison, there were 16 proposals in the same period of 2014 and 32 proposals in 2013. As explained, the adoption by proxy advisory firm ISS of guidelines on board responsiveness is inducing companies to preempt any negative voting recommendation that could compromise the election of management's nominees to the board. To be sure, multiple management-sponsored board declassification proposals were voted at Russell 3000 companies in recent years—55 of these proposals went to a vote in the 2018 period alone, as per Table 21 on page 132.

In the S&P 500, where classified boards were much less common in the first place, the number of shareholder proposals on this topic decreased further, from 17 in 2013 to only three in 2018, two of which went to a vote.

Chart 68

**Board Declassification–Shareholder Proposal Volume, by Index (2015–2018)**

Number of shareholder proposals




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

### Classification/Declassification of the Board

Vote *against* proposals to classify (stagger) the board.

Vote *for* proposals to repeal classified boards and to elect all directors annually.

*Source: 2018 U.S. Proxy Voting Guidelines. Benchmark Policy Recommendations*, ISS, January 4, 2018, p. 17 (www.issgovernance.com).

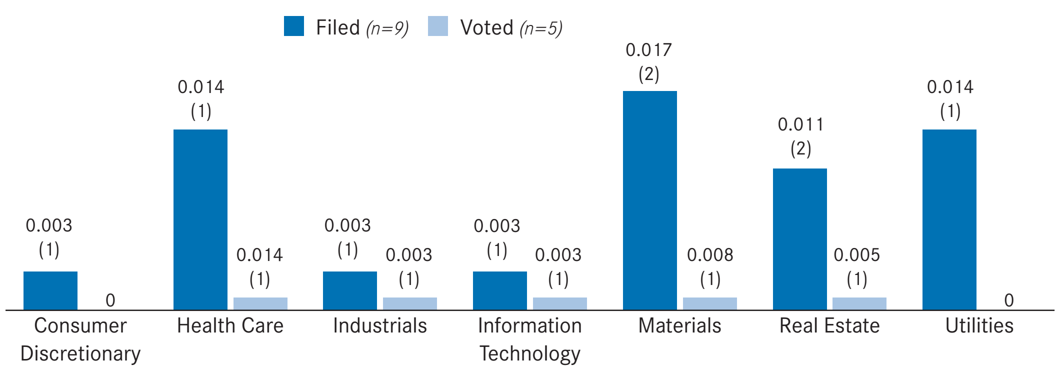
## Volume by industry

In the Russell 3000 sample, companies in the materials sectors were the most exposed to shareholder proposals on board declassification, with 1.7 percent of them receiving a resolution on this topic in 2018 (Chart 69). Companies in four of the 11 industries examined during the period did not face any shareholder proposals to declassify the board.

Chart 69

**Board Declassification—Shareholder Proposal Volume, by Industry (2018)**

Average number of shareholder proposals per company (number of proposals)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

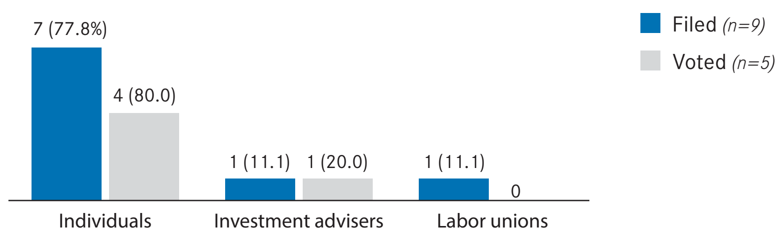
## Volume by sponsor

As shown in Chart 70, individuals were the most frequent proponents. Only a few years ago, this type of proposals was primarily initiated by public pension funds and labor union-affiliated funds, often operating in conjunction with Harvard's SRP. Management-sponsored board declassification proposals were also voted in 2018 at multiple companies where shareholder-sponsored precatory proposals on the same topic had received majority support in 2017.

Chart 70

**Board Declassification—Shareholder Proposal Volume, by Sponsor (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent sponsors

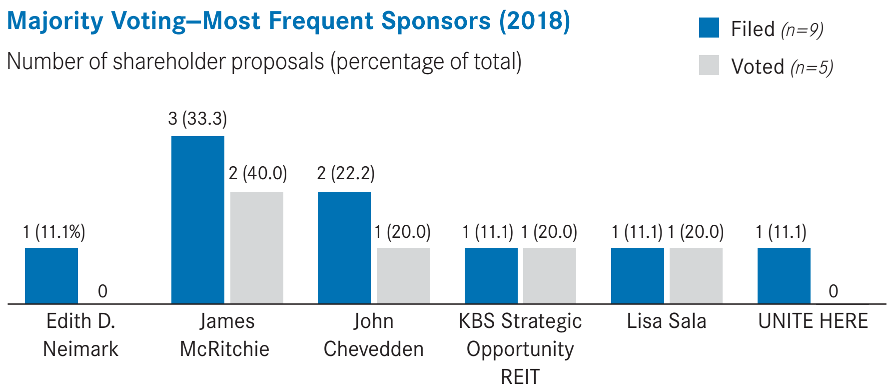
Chart 71 ranks the most frequent sponsors of shareholder proposals on board declassification. Also see Table 10 on p. 80 for a comprehensive list of proponents across key proposal types.

James McRitchie sponsored three of the nine proposals submitted on this topic in 2018, of which two went to a vote. The proposals filed by Edith D. Nelmark and labor union UNITE HERE were not voted.

Chart 71

**Majority Voting—Most Frequent Sponsors (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By support level

In the Russell 3000 sample, in the examined 2018 period, the average support level for shareholder proposals seeking board declassification was 82 percent of votes cast, up from 60.4 percent in 2017 and 69.6 percent in 2015 (Table 12, p. 83).

As shown in Table 33, among resolutions on this topic, the highest support level (89.4 percent of votes cast) was recorded at Hecla Mining Company (NYSE: HL) at the company's May 2018 AGM. The lowest support level (66.4 percent of votes cast) was submitted by Jim McRitchie at Axon Enterprise Inc. (NASDAQ: AAXN).

Table 33 **Board Declassification—Shareholder Proposals, by Support Level (2018)**

| Company | Sponsor | Meeting date | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Hecla Mining Company | Lisa Sala | 5/24/2018 | Pass | 89.4% | 5.7% | 4.8% | 51.4% | 3.3% | 2.8% | 25.0% |
| FleetCor Technologies, Inc. | John Chevedden | 6/6/2018 | Pass | 88.4 | 11.6 | 0.0 | 73.6 | 9.7 | 0.0 | 4.5 |
| Illumina, Inc. | James McRitchie | 5/23/2018 | Pass | 84.6 | 15.1 | 0.3 | 71.9 | 12.9 | 0.3 | 6.6 |
| Whitestone REIT | KBS Strategic Opportunity REIT | 5/17/2018 | Pass | 81.3 | 12.3 | 6.4 | 55.2 | 8.4 | 4.4 | 0.0 |
| Axon Enterprise Inc | James McRitchie | 5/24/2018 | Pass | 66.4 | 32.3 | 1.3 | 46.0 | 22.4 | 0.9 | 24.0 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Supermajority Vote Requirements

Supermajority vote requirements are a traditional defensive measure. Corporations may limit the effects of tender offers and other stock acquisitions of stock by including "business combination provisions" in the certificate of incorporation or other organizational documents. Such provisions may impose a supermajority vote of shareholders or continuing director approval for any material business transaction requiring a charter or bylaw amendment.

Shareholder proposals filed on this topic request that the vote requirements be eliminated or lowered. On average, when put to a vote, these proposals receive the support of the majority of shareholders.

### Volume by index

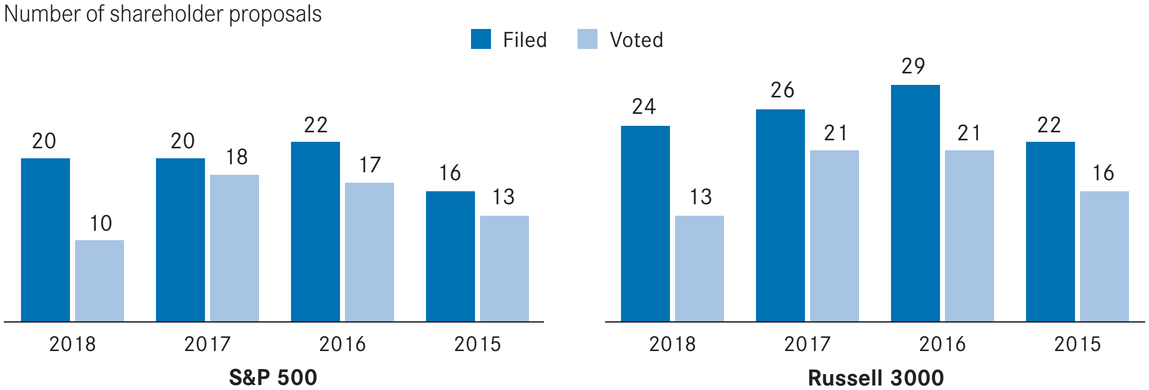
As shown in Chart 72, in the Russell 3000 sample examined for the purpose of this report, shareholders submitted 24 proposals requesting that the company eliminate (or reduce) supermajority vote requirements and apply a simple majority (or lower supermajority) standard in the voting on certain matter by shareholders, down from 26 in 2017, 29 in 2015, and 35 during the same period in 2013. Only 13 (or 65 percent) of those proposals went to a vote by June 30, 2018. During the same period, management sponsored 42 proposals to eliminate a supermajority vote requirement to amend the company charter or bylaws (Tables 21 and 22, pages 132 and 134); there were only 24 in 2014, according to an earlier edition of this study.

S&P 500 companies received 20 proposals of this type in 2018, the same number as in 2017 and down from 22 in 2016. Of the 20 proposals filed in 2018, 10 (50 percent) went to a vote.

Chart 72

**Supermajority Vote Requirements—Shareholder Proposal Volume, by Index (2015–2018)**

Number of shareholder proposals




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Supermajority Vote Requirements

Vote *against* proposals to require a supermajority shareholder vote.

Vote *for* management or shareholder proposals to reduce supermajority vote requirements. However, for companies with shareholder(s) who have significant ownership levels, vote *case-by-case*, taking into account:

- Ownership structure.
- Quorum requirements.
- Vote requirements.

*Source: 2018 U.S. Proxy Voting Guidelines. Benchmark Policy Recommendations*, ISS, January 4, 2018, p. 28 (www.issgovernance.com).

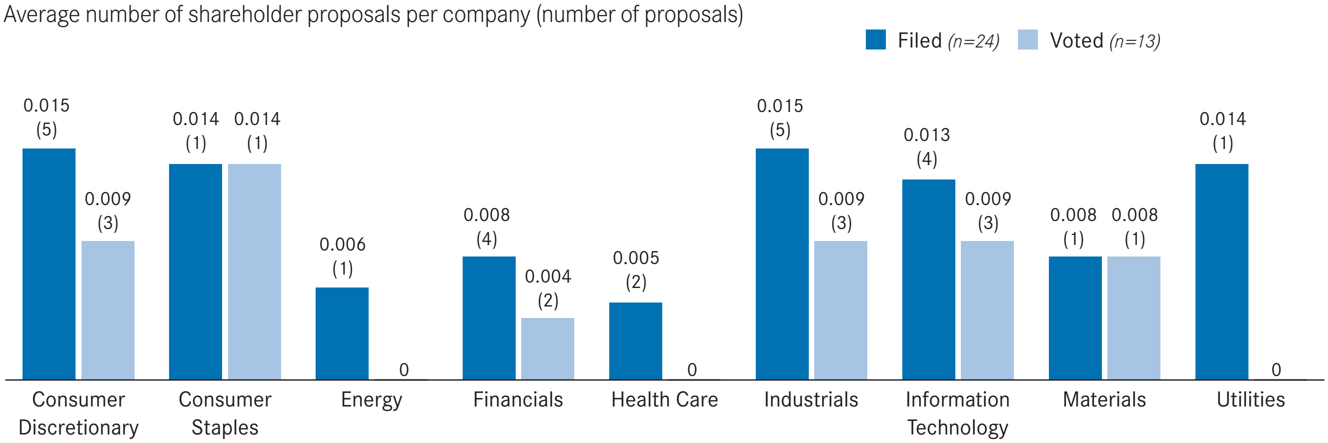
## Volume by industry

In the Russell 3000 sample, companies in the consumer discretionary and industrials sectors were the most exposed to shareholder proposals related to supermajority vote requirements. Specifically, 1.5 percent of consumer discretionary companies and 1.5 percent of those in the industrials sector received a proposal on this topic during the January 1-June 30, 2018 period. Several sectors in the Russell 3000 were unaffected by shareholder demands on supermajority vote, including telecommunications and real estate (Chart 73).

Chart 73

**Supermajority Vote Requirements—Shareholder Proposal Volume, by Industry (2018)**

Average number of shareholder proposals per company (number of proposals)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

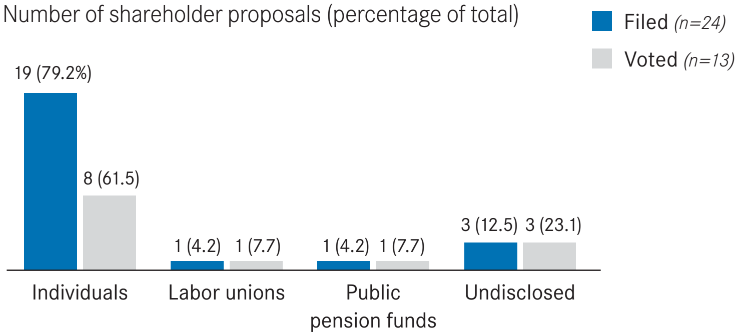
## Volume by sponsor

The analysis by sponsor type in Chart 74 shows that 19 (or 79.1 percent) of the 24 proposals submitted at Russell 3000 companies were sponsored by individuals. Eight of those proposals went to a vote. The other sponsors of this proposal type were a labor union and a public pension fund (three sponsors were undisclosed). Of all proposals filed, only 13 went to a vote (54.2 percent of the total).

Chart 74

**Supermajority Vote Requirements—Shareholder Proposal Volume, by Sponsor (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent sponsors

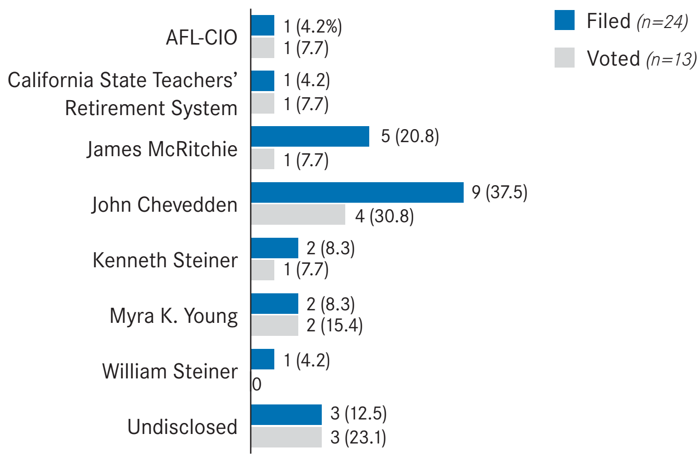
Chart 75 ranks up the most frequent sponsors of shareholder proposals on supermajority vote requirements. Also see Table 10 on p. 80 for a comprehensive list of proponents across key proposal types.

Five individuals were responsible for 19 of the 21 proposals with a disclosed sponsor submitted at Russell 3000 companies during the examined 2018 period, and of those eight ultimately went to a vote. Four of the nine proposals submitted by James McRitchie were voted (see Table 34, on p. 213).

Chart 75

**Supermajority Vote Requirements—Most Frequent Sponsors (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By support level

For the 12 voted proposals seeking to repeal supermajority vote rules, the average support level was 60.7 percent of votes cast, up from 44.5 percent in 2017 and 42.8 in 2010 (Table 12, on p. 83).

As shown in Table 34, the highest level of support (86.5 percent of votes cast) was for a proposal filed at Costco Wholesale Corporation (NASDAQ: COST) by an undisclosed sponsor. It was followed by a proposal at Netflix (NASDAQ: NFLX) filed by the California State Teachers' Retirement System (84.6 percent of votes cast in favor). The lowest support level (7.8 percent of votes cast) was for a proposal submitted at Amazon (NASDAQ: AMZN) by an undisclosed sponsor. A proposal by John Chevedden at Alphabet Inc., Google's parent company (NASDAQ: GOOGL) failed after receiving more than 90 percent of votes *against*.

In addition, at a number of companies where shareholder proposals to eliminate super-majority voting requirements passed in 2017, management submitted board-sponsored proposals to a vote in 2018.

Table 34 **Supermajority Vote Requirements—Shareholder Proposals, by Support Level (2018)**

| Company | Sponsor | Meeting date | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Costco Wholesale Corporation | Undisclosed | 1/30/2018 | Pass | 86.5% | 13.1% | 0.4% | 58.9% | 8.9% | 0.2% | 16.5% |
| Netflix, Inc. | California State Teachers' Retirement System | 6/6/2018 | Pass | 84.6 | 15.2 | 0.3 | 59.7 | 10.7 | 0.2 | 17.9 |
| salesforce.com, inc. | Myra K. Young | 6/12/2018 | Pass | 79.9 | 19.9 | 0.1 | 65.4 | 16.3 | 0.1 | 8.8 |
| Discover Financial Services | Myra K. Young | 5/2/2018 | Pass | 79.1 | 20.6 | 0.2 | 65.2 | 17.0 | 0.2 | 8.6 |
| Invesco Ltd. | James McRitchie | 5/10/2018 | Pass | 79.0 | 18.7 | 2.3 | 59.2 | 14.0 | 1.8 | 10.1 |
| Ryder System, Inc. | John Chevedden | 5/4/2018 | Pass | 74.8 | 24.8 | 0.3 | 62.0 | 20.6 | 0.3 | 6.2 |
| Manitowoc Company, Inc. | John Chevedden | 5/1/2018 | Pass | 73.5 | 19.6 | 6.9 | 54.8 | 14.6 | 5.1 | 18.5 |
| DowDuPont Inc. | Kenneth Steiner | 4/25/2018 | Pass | 71.0 | 28.1 | 0.9 | 51.7 | 20.4 | 0.7 | 13.9 |
| Kaman Corporation | John Chevedden | 4/18/2018 | Pass | 58.9 | 40.6 | 0.5 | 51.4 | 35.4 | 0.4 | 5.7 |
| Facebook, Inc | Undisclosed | 5/31/2018 | Fail | 20.7 | 79.2 | 0.1 | 16.9 | 64.8 | 0.1 | 6.0 |
| Alphabet Inc. | John Chevedden | 6/6/2018 | Fail | 8.7 | 91.2 | 0.1 | 7.6 | 79.0 | 0.1 | 4.8 |
| Amazon.com, Inc. | Undisclosed | 5/30/2018 | Fail | 7.8 | 92.0 | 0.2 | 5.6 | 67.0 | 0.2 | 15.9 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Independent Board Chair

In some companies, the CEO also serves as chair of the board of directors. In others, the chairman position is held by a different person—usually, a nonexecutive board member who meets the independence standards defined by the rules of the securities exchange on which the company is listed or more stringent company standards. Under securities laws, companies are required to explain in their disclosure to shareholders the rationale for the chosen leadership structure.

According to recently released statistics, as of August 31, 2018, 50 percent of S&P 500 companies and 61 percent of Russell 3000 companies separate their CEO and board chairperson positions, while the share of companies with an independent chairpersons are 31 percent and 41 percent, respectively. In the S&P 500, 59 percent of the companies have appointed an independent lead director, compared to 42 percent of Russell 3000 companies.[3]

Proposals on this topic usually request that the CEO be fully removed from his or her board chairmanship responsibilities, which are assumed by an independent board member. Their volume has risen steadily over the years, contributing to the progressive erosion of the traditional model of dual leadership, especially among corporate boards of smaller companies. In 2018, proposals on independent board chairs were confirmed as the second most frequent type of corporate governance-related proposals voted by investors, following proposals to allow shareholders to call special meetings. When put to a vote, these proposals tend to receive solid support by shareholders, but unlike other popular board-related proposals, relatively few reach the majority of *for* votes and actually pass; in 2018, in fact, none of them did.

Proponents are typically individuals, noninvestment stakeholder groups, and labor unions, while voting policies by proxy advisors and major pension funds recognize the progress made by many companies in counterbalancing the combination of the CEO and board chairman functions through the introduction of other governance measures—including the diversification of director qualifications and skills, as well as the appointment of a lead independent director with the authority to approve board agendas and information sent to the board. For this reason, the decision for many institutional shareholders on how to vote is ultimately based on a broader assessment of firm performance and adopted governance practices. ISS, in particular, pays close attention to the responsibilities stated in the charter of a lead independent director and recommends voting in favor of a CEO/chairman separation proposal if, for example, the lead director is tasked with the mere review rather than the approval of board agendas. Similarly, the proxy advisory firm recommends a *for* vote to an independent board chair proposal if the company is an underperformer (see box on p. 216).

3 *Corporate Governance by the Numbers*, EY Center for Board Matters, 2018, available at www.ey.com/boardmatters.

Finally, independent board chair proposals have been the topic of frequent SEC interpretive guidance in recent years. In particular, in a series of no-action letters, the Commission has deemed "vague and indefinite" and therefore excludable proposals that include in their formulation generic references to the independence standards used by New York Stock Exchange or NASDAQ; whereas the same proposal type is non-excludable if it briefly describes in writing the independence standards that, according to the proponent, the company should adopt for its board leadership, or even if it merely includes the phrase "independent director" without any definition at all.[4]

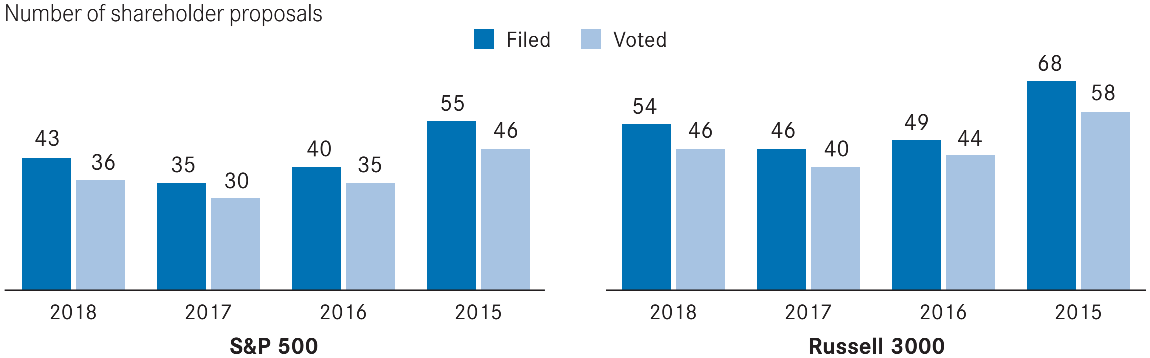
## Volume by index

As shown in Chart 76, in 2018 shareholders voted on 46 independent board chair proposals at Russell 3000 companies and on 36 proposals at S&P 500 companies. Volume has declined since its record year—2014—when, according to an earlier edition of this report the number of voted proposals in the two indexes was 62 and 48, respectively. However, it's up from the 21 and 19 proposals recorded in 2011.

Chart 76

**Independent Board Chair–Shareholder Proposal Volume, by Index (2015–2018)**

Number of shareholder proposals




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

4 *First Energy Corp.*, SEC Rule 14a-8 no-action letter, March 10, 2014; *McKesson Corp.*, April 17, 2013; *KeyCorp*, March 15, 2013); *Aetna Inc.*, March 1, 2013, available at www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml.

## Independent Chair (Separate Chair/CEO)

Generally vote for shareholder proposals requiring that the chairman's position be filled by an independent director, taking into consideration the following:

- The scope of the proposal;
- The company's current board leadership structure;
- The company's governance structure and practices;
- Company performance; and
- Any other relevant factors that may be applicable.

Regarding the scope of the proposal, consider whether the proposal is precatory or binding and whether the proposal is seeking an immediate change in the chairman role or the policy can be implemented at the next CEO transition.

Under the review of the company's board leadership structure, ISS may support the proposal under the following scenarios absent a compelling rationale: the presence of an executive or non-independent chair in addition to the CEO; a recent recombination of the role of CEO and chair; and/or departure from a structure with an independent chair. ISS will also consider any recent transitions in board leadership and the effect such transitions may have on independent board leadership as well as the designation of a lead director role.

When considering the governance structure, ISS will consider the overall independence of the board, the independence of key committees, the establishment of governance guidelines, board tenure and its relationship to CEO tenure, and any other factors that may be relevant. Any concerns about a company's governance structure will weigh in favor of support for the proposal.

The review of the company's governance practices may include, but is not limited to: poor compensation practices, material failures of governance and risk oversight, related-party transactions or other issues putting director independence at risk, corporate or management scandals, and actions by management or the board with potential or realized negative impact on shareholders. Any such practices may suggest a need for more independent oversight at the company thus warranting support of the proposal.

ISS' performance assessment will generally consider one-, three-, and five-year TSR compared to the company's peers and the market as a whole. While poor performance will weigh in favor of the adoption of an independent chair policy, strong performance over the long term will be considered a mitigating factor when determining whether the proposed leadership change warrants support.

*Source: 2018 U.S. Proxy Voting Guidelines. Benchmark Policy Recommendations*, ISS, January 4, 2018, p. 19 (www.issgovernance.com).

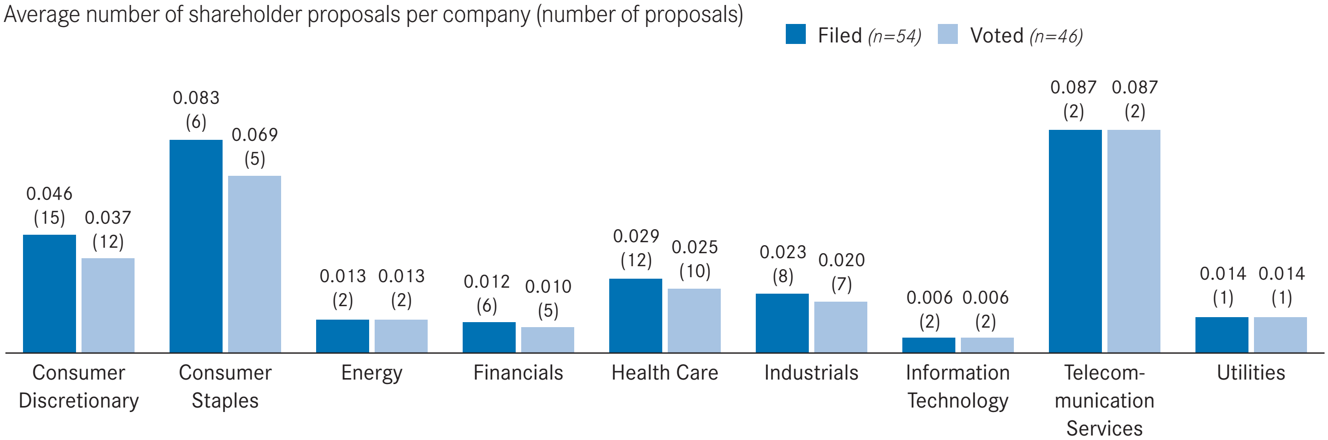
## Volume by industry

In the Russell 3000 sample, on average, companies in the consumer staples and telecommunication services industries were the most exposed to shareholder proposals on the separation of CEO and board chairman positions (Chart 77). Among telecommunications companies in the index, 8.7 percent received a proposal of this type in the 2018 proxy season; the percentage was only slightly lower, 8.3 percent, in the consumer staples industry. Only two industries (real estate and materials) did not face any shareholder proposals seeking an independent board chair during the examined 2018 period.

Chart 77

**Independent Board Chair–Shareholder Proposal Volume, by Industry (2018)**

Average number of shareholder proposals per company (number of proposals)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

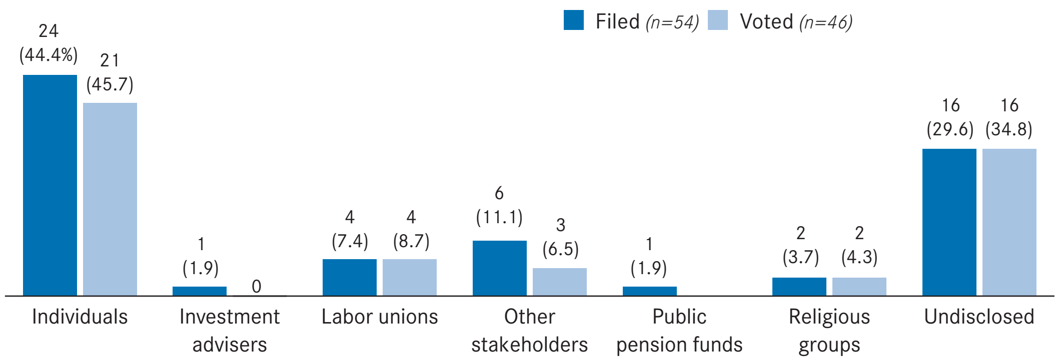
## Volume by sponsor

As shown in Chart 78, in the Russell 3000 sample, individuals submitted the majority of the 54 proposals on the independence of the board chair (24 proposals, or 44.4 percent of the total), followed by other stakeholder groups (six proposals, or 11.1 percent). Labor unions submitted four proposals, while religious groups initiated two. There were, however, 16 proposals from undisclosed shareholders. Investments advisers submitted only one proposal during the period. All proposals sponsored by religious groups and labor unions during the period went to a vote, while 21 of the 24 (or 87.5 percent) backed by individual investors were voted.

Chart 78

**Independent Board Chair—Shareholder Proposal Volume, by Sponsor (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent sponsors

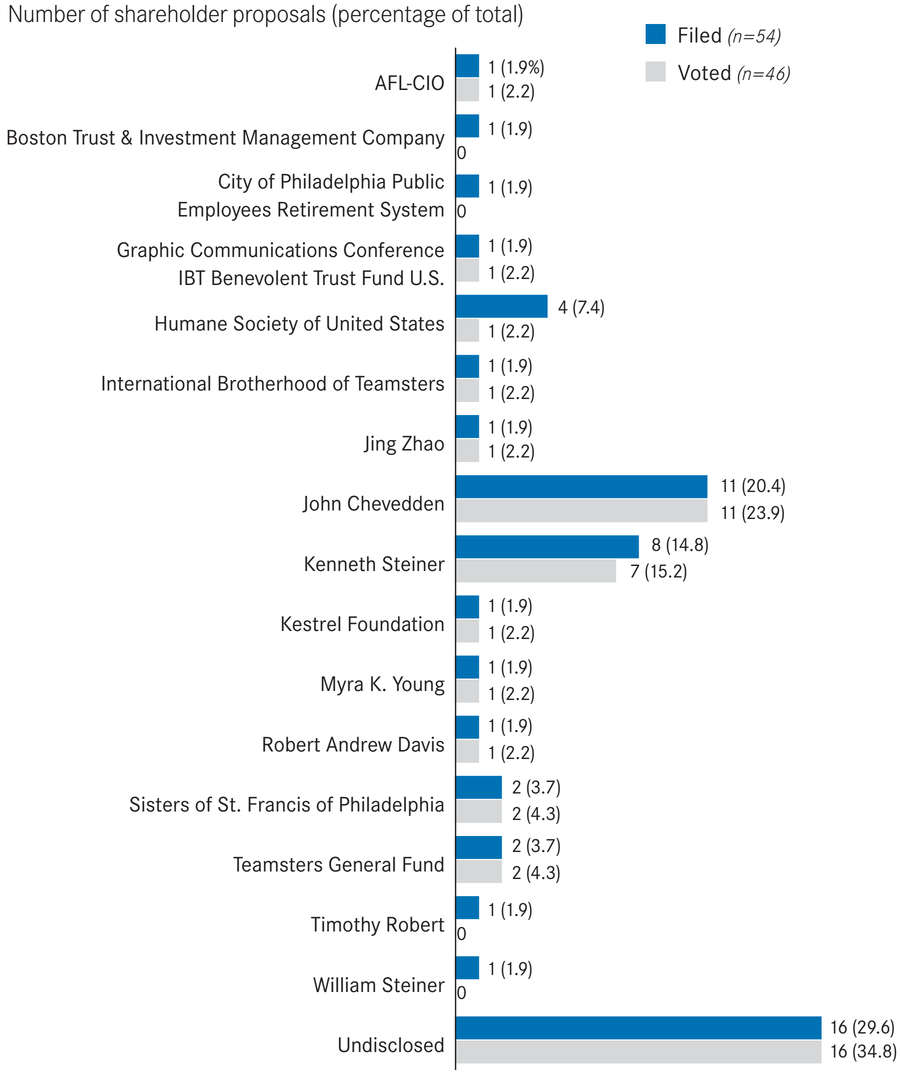
Chart 79 ranks the most frequent sponsors of shareholder proposals on board chair independence. Also see Table 10 on p. 80 for a comprehensive list of proponents across key proposal types.

The top two sponsors of these proposals were both individuals and the same who ranked as top sponsors of these proposals in 2013: John Chevedden (with 11 proposals in 2018) and Kenneth Steiner (eight proposals). The next most frequent sponsor on this topic was a noninvestment stakeholder group, Humane Society of the United States, which submitted four proposals (of which, shareholder voted on only one).

Chart 79

**Independent Board Chair–Most Frequent Sponsors (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By support level

Despite the high proposal volume, the average support level for resolutions seeking an independent chair has remained steady over the years at around 30 percent of votes cast, or far below the majority threshold necessary for the proposals to pass: it was 30.7 percent in 2018, 28.8 percent in 2015 and, according to an earlier edition of this study, 28.6 in 2010 (Table 12, p. 83). None of the voted shareholder proposals received majority support. This finding may reflect the recognition that a number of companies have made persuading arguments for keeping the CEO at the helm of their boards while increasing roles and responsibilities of their lead independent director. Notably, eight proposals of this type received more than 40 percent of votes cast.

As shown in Table 35, the highest support level, of 47.9 percent of votes cast, was for a proposal submitted at Celgene Corporation (NASDAQ: CELG) by gadfly investor John Chevedden. The lowest support level was recorded for a proposal submitted at Sears Holdings Corporation (NASDAQ: SHLD), which scored only 5.7 percent of *for* votes.

Table 35 **Independent Board Chair—Shareholder Proposals, by Support Level (2018)**

| Company | Sponsor | Meeting date | Proposal outcome (pass/ fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **HIGHEST SUPPORT** | | | | | | | | | | |
| Celgene Corporation | John Chevedden | 6/13/2018 | Fail | 47.9% | 51.5% | 0.5% | 34.0% | 36.5% | 0.4% | 13.5% |
| Verizon Communications Inc. | AFL-CIO | 5/3/2018 | Fail | 47.2 | 51.9 | 1.0 | 3.2 | 3.5 | 0.1 | 1.9 |
| Gilead Sciences, Inc. | John Chevedden | 5/9/2018 | Fail | 44.5 | 54.9 | 0.6 | 32.6 | 40.3 | 0.4 | 12.3 |
| Emerson Electric Co. | Undisclosed | 2/6/2018 | Fail | 44.0 | 51.2 | 4.8 | 31.9 | 37.2 | 3.5 | 16.1 |
| Sanderson Farms, Inc. | Undisclosed | 2/15/2018 | Fail | 43.3 | 53.2 | 3.6 | 36.1 | 44.3 | 3.0 | 6.8 |
| International Business Machines Corporation | Kenneth Steiner | 4/24/2018 | Fail | 41.3 | 57.3 | 1.4 | 25.0 | 34.6 | 0.8 | 19.2 |
| General Electric Company | Kenneth Steiner | 4/25/2018 | Fail | 40.8 | 58.3 | 0.8 | 22.7 | 32.4 | 0.5 | 18.6 |
| Service Corporation International | Teamsters General Fund | 5/23/2018 | Fail | 40.5 | 59.2 | 0.4 | 33.8 | 49.4 | 0.3 | 8.1 |
| Prudential Financial, Inc. | John Chevedden | 5/8/2018 | Fail | 39.4 | 59.8 | 0.8 | 25.3 | 38.3 | 0.5 | 9.5 |
| Allergan plc | Undisclosed | 5/2/2018 | Fail | 39.3 | 53.7 | 7.0 | 30.5 | 41.7 | 5.4 | 8.4 |
| **LOWEST SUPPORT** | | | | | | | | | | |
| Chevron Corporation | Undisclosed | 5/30/2018 | Fail | 23.8 | 75.5 | 0.7 | 16.1 | 51.1 | 0.5 | 17.4 |
| Flowers Foods, Inc. | Undisclosed | 5/24/2018 | Fail | 21.6 | 77.7 | 0.7 | 17.6 | 63.1 | 0.5 | 12.7 |
| Charter Communications, Inc | Undisclosed | 4/25/2018 | Fail | 20.4 | 77.5 | 2.1 | 10.7 | 40.5 | 1.1 | 1.5 |
| Tenet Healthcare Corporation | Graphic Communications Conference IBT Benevolent Trust Fund U.S. | 5/3/2018 | Fail | 19.1 | 80.5 | 0.3 | 15.3 | 64.6 | 0.3 | 10.4 |
| Interpublic Group of Companies, Inc. | Kenneth Steiner | 5/24/2018 | Fail | 17.2 | 82.6 | 0.1 | 15.4 | 74.0 | 0.1 | 3.9 |
| Honeywell International Inc. | Teamsters General Fund | 4/23/2018 | Fail | 16.6 | 82.7 | 0.7 | 12.9 | 64.2 | 0.5 | 11.7 |
| Tesla Inc | Jing Zhao | 6/5/2018 | Fail | 16.2 | 83.3 | 0.5 | 9.8 | 50.7 | 0.3 | 21.9 |
| Walmart Inc. | Undisclosed | 5/30/2018 | Fail | 16.1 | 83.7 | 0.2 | 13.7 | 71.1 | 0.2 | 8.5 |
| PNM Resources, Inc. | Robert Andrew Davis | 5/22/2018 | Fail | 12.3 | 83.6 | 4.1 | 10.4 | 71.0 | 3.5 | 6.2 |
| Sears Holdings Corporation | Undisclosed | 5/9/2018 | Fail | 5.7 | 76.3 | 18.0 | 4.1 | 55.7 | 13.1 | 0.0 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Proxy Access

"Proxy access" is the right of qualified shareholders to add the names of their own director nominees among those submitted by management to a general vote at the AGM. Securities regulations in the United States do not grant shareholders access to company proxy statements. When in place at companies, a proxy access mechanism is therefore regulated only by internal organizational documents (including the charter or bylaws or the company's governance guidelines).

According to recently released statistics, as of August 31, 2018, 65 percent of S&P 500 companies and 16 percent of Russell 3000 companies adopted a proxy access bylaw.[5]

This proxy season marked the seventh year during which shareholders were able to submit proxy access proposals. In August 2010, the SEC adopted Rule 14a-11, a mandatory proxy access rule that would have allowed shareholders (or groups of shareholders) holding at least three percent of the company's voting securities for a three-year period to include director nominees in the company's proxy materials.[6] In July 2011, the U.S. Court of Appeals for the D.C. Circuit vacated Rule 14a-11 in its entirety, holding that the SEC had not adequately assessed its costs and benefits.[7] However, an amendment to Rule 14a-8(i)(8) (the "election exclusion") survived the vacating of the mandatory access rule and took effect in September 2011. Previously, Rule 14a-8(i)(8) allowed a company to exclude from the proxy voting materials a shareholder proposal that related to the company's election or nomination procedures. The amendment narrowed 14a- 8(i)(8) so that only proposals that relate to specific elections are excludable.

In addition to precatory shareholder proposals on proxy access (where the sponsoring shareholder requests that the board amend the bylaws to permit the inclusion of qualifying shareholder nominees in the proxy materials), under the law of most states shareholders may introduce binding resolutions that directly amend the bylaws. Many institutional investors tend to prefer the precatory version as less intrusive. However, some shareholders have been opting for the binding proposal type, arguing that the impact of the proposal could be diluted in the drafting of the bylaws.

Over the years, shareholders have become far more successful in getting such proposals onto company ballots, and support level has been on the rise as well. The 2015 proxy season, in particular, marked a record number of submissions, voted proposals, and passed proposals. Number declined afterwards, mostly because management began to introduce its own resolutions on the topic; nonetheless, 47 new shareholder proposals on proxy access were filed in the Russell 3000 in the first half of 2018 alone.

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5 *Corporate Governance by the Numbers*, EY Center for Board Matters, 2018, available at www.ey.com/boardmatters.

6 SEC Release No. 33-9259; 34-65543 ("Facilitating Shareholder Director Nominations"), September 15, 2011 (as corrected to confirm to the Federal Register version) (www.sec.gov).

7 *Business Roundtable and Chamber of Commerce of the United States of America v. SEC*, 647 F. 3rd 1144 (D.C. Cir. 2011).

## Volume by index

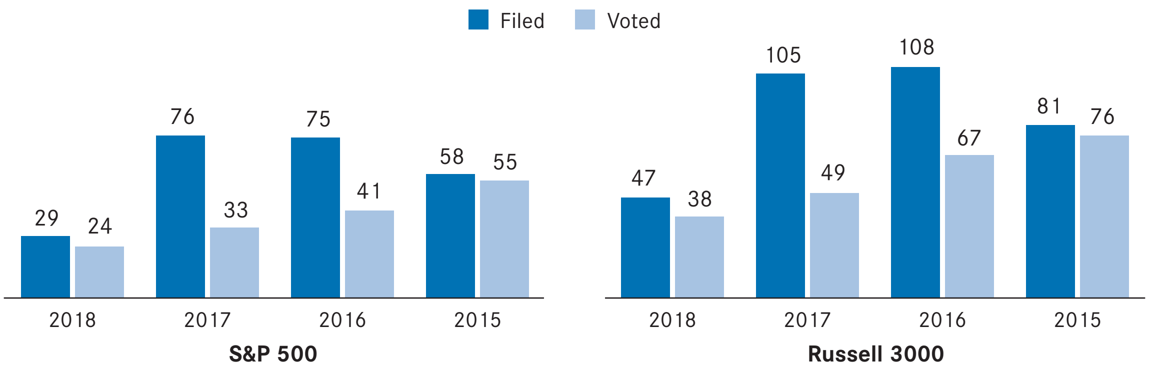
As shown in Chart 80, in 2018, shareholders submitted 47 proposals at Russell 3000 companies seeking the adoption of bylaws or organizational provisions on the inclusion in proxy materials of director candidate(s) nominated by shareholders. The number has risen significantly from the 17 recorded in 2014 and the 12 of 2013, according to an earlier edition of this study. However, it's down from the total of 105 and 108 proxy access proposals submitted in 2017 and 2016, respectively. Of the 47 proposals filed in 2018, 38 went to a vote.

By comparison, in the S&P 500, shareholders submitted 29 proxy access proposals, 24 of which went to a vote. This compares with 33 out of 76 in 2017 and 41 out of 75 in 2016.

Chart 80

**Proxy Access—Shareholder Proposal Volume, by Index (2015–2018)**

Number of shareholder proposals




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Proxy Access

Generally vote for management and shareholder proposals for proxy access with the following provisions:

- **Ownership threshold:** maximum requirement not more than three percent (3%) of the voting power;
- **Ownership duration:** maximum requirement not longer than three (3) years of continuous ownership for each member of the nominating group;
- **Aggregation:** minimal or no limits on the number of shareholders permitted to form a nominating group;
- **Cap:** cap on nominees of generally twenty-five percent (25%) of the board.

Review for reasonableness any other restrictions on the right of proxy access. Generally vote against proposals that are more restrictive than these guidelines.

*Source: 2018 U.S. Proxy Voting Guidelines. Benchmark Policy Recommendations*, ISS, January 4, 2018, p. 20 (www.issgovernance.com).

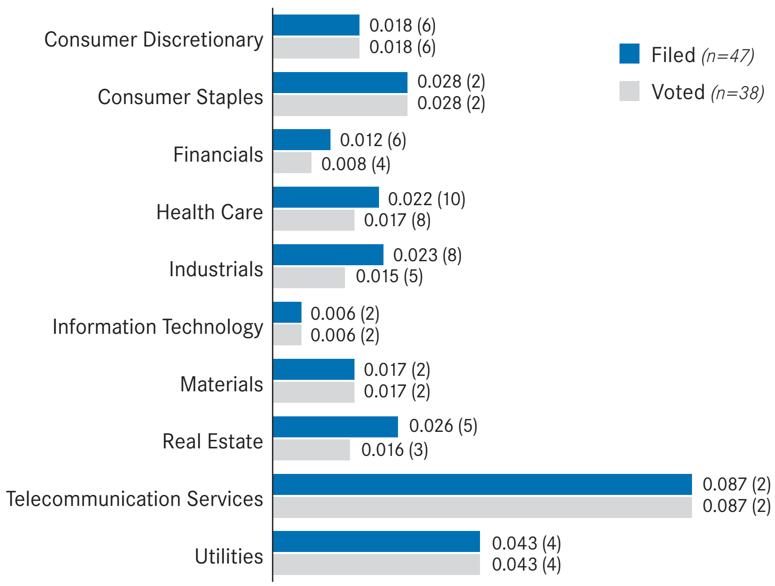
## Volume by industry

In 2018, the Russell 3000 companies that voted on shareholder proposals on proxy access at their AGM were in the consumer discretionary, consumer staples, financials, health care, industrials, information technology, materials, real estate, telecommunications services, and utilities industries (Chart 81). Specifically, 8.7 percent of telecommunications companies in the Russell 3000 received a proxy access request from their shareholders, the highest percentage found across industries; and all of them went to a vote. Eight of the 10 voted proposals on proxy access in the Russell 3000 were at health care companies.

Chart 81

**Proxy Access—Shareholder Proposal Volume, by Industry (2018)**

Average number of shareholder proposals per company (number of shareholder proposals)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

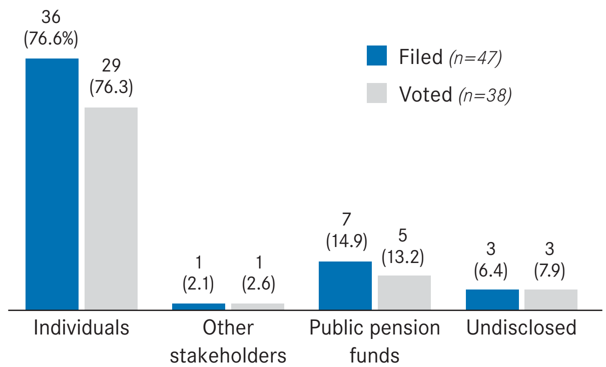
## Volume by sponsor

As shown in Chart 82, in the Russell 3000 sample, in 2018 proxy access proposals were submitted by individuals (36 proposals, or 76.6 percent of the total), public pension funds (seven proposals, or 14.9 percent), and other, noninvestment firms representing stakeholder groups (one proposal, or 2.1 percent). There were three proposals initiated by undisclosed investors, and they all went to a vote.

Chart 82

**Proxy Access—Shareholder Proposal Volume, by Sponsor (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent sponsors

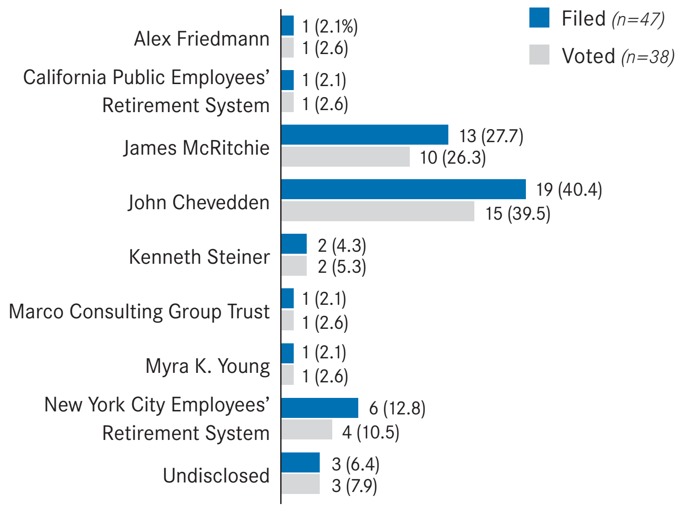
Chart 83 ranks the most frequent sponsors of shareholder proposals on proxy access. Also see Table 10 on p. 80 for a comprehensive list of proponents across key proposal types.

In the Russell 3000 sample, John Chevedden submitted 19 proxy access proposals (40.4 percent of the total), 15 of which went to a vote. James McRitchie filed 13 proposals (or 27.6 percent of the total), 10 of which went to a vote. The New York City Employees' Retirement System sponsored six (or 12.8 percent), four of which were voted.

Chart 83

**Proxy Access—Most Frequent Sponsors (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By support level

In terms of investor support, proxy access proposals reached a tipping point in 2015, where they received on average 55 percent of votes cast in their favor (Table 12, on p. 83). Average voting support had grown gradually from 39.1 percent in 2014 and 31.8 percent during the same period in 2013, as shown in an earlier edition of this report. However, this support level has declined since 2015: It was 44.6 percent in 2017 and 31.3 percent in 2018.

Three of the shareholder proposals on proxy access that went to a vote in the first semester of 2018 received a majority of votes cast and passed, while two others received support of more than 40 percent of votes cast and nearly passed (Table 36).

The highest support levels were reported by: Hospitality Properties Trust (NASDAQ: HPT), where a proposal by the New York City Employees' Retirement Systems passed with 66.1 percent of votes cast; at Old Republic International Corporation (NYSE: ORI), where a proposal by the California Public Employees' Retirement System (CalPERS) got the support of 77 percent of votes cast. Most notably, shareholders approved for the second year in a row a proxy access proposal filed by the New York City Employees' Retirement System at Netflix, Inc. (NASDAQ: NSFLX) with *for* votes equal to 57.7 percent of shares votes.

The lowest voting performance went to a proposal submitted by Myra K. Young at First Hawaiian, Inc. (NASDAQ: FHB), which received the support of 6.4 percent of votes cast. Similarly, a proposal at Universal Health System received far less than 10 percent support; while proposals at Progenics Pharmaceuticals (NASDAQ: PGNX), Walgreens Boots Alliance (NASDAQ: WBA), T-Mobile US (NASDAQ: ™US), PayPal Holdings (NASDAQ: PYPL), and Tesla Inc. (NASDAQ: TSLA), among others, stayed below the 30 percent support threshold.

Some proposals, unlike the prevalent form of proxy access proposal described above, were based on a model issued by the United States Proxy Exchange (USPX, a shareholder advocacy group that has since suspended its activities), granting proxy access rights to either: (a) any shareholders with at least one percent but less than five percent of outstanding shares held for at least two years; or (b) a group of 25 shareholders, each of whom with at least $2,000 worth of stock held continuously for one year and collectively holding between one and five percent of outstanding shares. Under this different type, shareholder-nominated candidates in the proxy materials would be capped at 48 percent of the total number of the number of directors then serving, or 24 percent for each of the two options under which holders may qualify for proxy access. Due to its low one percent threshold, the discrimination against five percent shareholders, and the potential for replacement of nearly half the board in a single election, this proposal type receives a negative recommendation by ISS and other proxy advisors and negligible supports at AGMs where it is put to a vote.

Table 36 **Proxy Access—Shareholder Proposals, by Support Level (2018)**

| Company | Sponsor | Meeting date | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **HIGHEST SUPPORT** | | | | | | | | | | |
| Hospitality Properties Trust | New York City Employees' Retirement Systems | 6/14/2018 | Pass | 84.5% | 14.9% | 0.6% | 66.1% | 11.7% | 0.5% | 15.9% |
| Old Republic International Corporation | California Public Employees' Retirement System | 5/25/2018 | Pass | 77.0 | 22.4 | 0.6 | 58.3 | 17.0 | 0.4 | 13.1 |
| Netflix, Inc. | New York City Employees' Retirement System | 6/6/2018 | Pass | 57.7 | 42.0 | 0.3 | 40.7 | 29.6 | 0.2 | 17.9 |
| Genomic Health, Inc. | James McRitchie | 6/6/2018 | Fail | 44.5 | 55.4 | 0.1 | 37.4 | 46.6 | 0.1 | 11.3 |
| Vector Group Ltd. | Kenneth Steiner | 4/25/2018 | Fail | 42.4 | 56.4 | 1.2 | 29.7 | 39.5 | 0.9 | 21.9 |
| Charter Communications, Inc | New York City Employees' Retirement System | 4/25/2018 | Fail | 38.7 | 61.1 | 0.2 | 20.2 | 31.9 | 0.1 | 1.5 |
| Allegiant Travel Company | John Chevedden | 6/28/2018 | Fail | 37.8 | 61.9 | 0.3 | 35.3 | 57.8 | 0.3 | 4.5 |
| Raytheon Company | John Chevedden | 5/31/2018 | Fail | 35.9 | 62.9 | 1.2 | 26.3 | 46.0 | 0.9 | 14.1 |
| Edison International | John Chevedden | 4/26/2018 | Fail | 34.0 | 65.2 | 0.8 | 25.8 | 49.5 | 0.6 | 9.6 |
| Celgene Corporation | James McRitchie | 6/13/2018 | Fail | 33.9 | 65.6 | 0.5 | 24.0 | 46.5 | 0.4 | 13.5 |
| **LOWEST SUPPORT** | | | | | | | | | | |
| Tesla Inc | James McRitchie | 6/5/2018 | Fail | 25.0 | 74.3 | 0.7 | 15.2 | 45.2 | 0.4 | 21.9 |
| PayPal Holdings Inc | John Chevedden | 5/23/2018 | Fail | 24.9 | 74.8 | 0.3 | 19.3 | 57.9 | 0.2 | 10.7 |
| T-Mobile US, Inc. | Marco Consulting Group Trust | 6/13/2018 | Fail | 22.6 | 76.5 | 0.9 | 20.5 | 69.5 | 0.8 | 2.8 |
| Walgreens Boots Alliance Inc | Kenneth Steiner | 1/17/2018 | Fail | 21.9 | 73.9 | 4.2 | 16.7 | 56.2 | 3.2 | 12.7 |
| Southern Company | John Chevedden | 5/23/2018 | Fail | 20.0 | 78.2 | 1.8 | 12.5 | 48.9 | 1.1 | 25.1 |
| Sempra Energy | John Chevedden | 5/10/2018 | Fail | 19.7 | 79.7 | 0.5 | 16.4 | 66.5 | 0.5 | 8.9 |
| DaVita Inc. | James McRitchie | 6/18/2018 | Fail | 19.0 | 80.8 | 0.2 | 14.9 | 63.7 | 0.2 | 7.4 |
| Progenics Pharmaceuticals, Inc. | James McRitchie | 6/13/2018 | Fail | 13.4 | 85.8 | 0.8 | 8.3 | 53.4 | 0.5 | 25.8 |
| Universal Health Services, Inc. | New York City Employees' Retirement System | 5/16/2018 | Fail | 8.4 | 91.4 | 0.2 | 7.4 | 81.0 | 0.2 | 0.5 |
| First Hawaiian, Inc. | Myra K. Young | 4/25/2018 | Fail | 6.4 | 90.6 | 2.9 | 6.2 | 87.9 | 2.9 | 1.9 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Sustainability Reporting

In the last decade, corporations in the United States have made a significant effort to expand the scope of their voluntary disclosure on environmental, social, and governance (ESG) practices. In addition to integrating this information into their traditional annual report to shareholders, a growing number of organizations publish issue-specific or comprehensive sustainability reports, whereas others interact with employees and local communities about these issues through dedicated web pages or social networking technologies.

Data on sustainability practices released by The Conference Board in collaboration with Bloomberg and the Global Reporting Initiative (GRI) show that the practice of publishing periodic sustainability reports is more prevalent among the largest public companies. Specifically, 27 percent of companies in the S&P 500 make use of GRI guidelines in their sustainability reporting, compared to 16 percent of those in the Russell 1000.[8]

Sustainability reporting proposals usually request that the board issue a report describing corporate policies, initiatives, and oversight mechanisms related to social, economic, and environmental sustainability (e.g., focusing on actions to address greenhouse gas emissions and other environmental and social considerations). The number of proposals of this type has increased steadily in recent years. However, investor support levels remain low and they rarely pass.

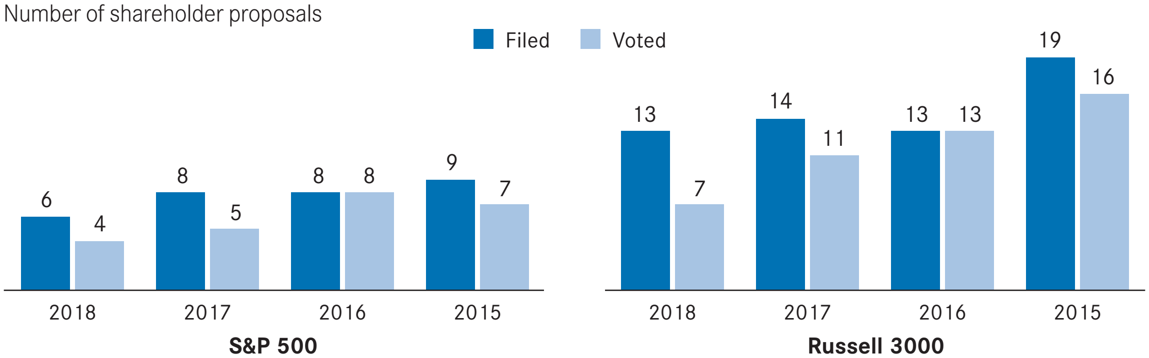
### Volume by index

In the Russell 3000 sample, shareholders submitted 13 proposals on sustainability reporting during the relevant 2018 period, down from the 24 proposals that marked a record in 2014 (Chart 84). Of those, seven proposals (or 53.8 percent) went to a vote, compared with 78.6 percent of those submitted during the same period in 2017. Many of these filings are made at larger companies. In fact, in the S&P 500 sample, shareholders filed six proposals on sustainability reporting in 2018, four of which went to a vote (66.7 percent).

Chart 84

**Sustainability Reporting–Shareholder Proposal Volume, by Index (2015–2018)**

Number of shareholder proposals




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

8 *Sustainability Practices Dashboard*, The Conference Board, December 2017.

### Sustainability Reporting

Generally, vote *for* proposals requesting the company to report on its policies, initiatives, and oversight mechanisms related to social, economic, and environmental sustainability, unless:

- The company already discloses similar information through existing reports or policies, such as an environment, health, and safety (EHS) report; a comprehensive code of corporate conduct; and/or a diversity report, or
- The company has formally committed to the implementation of a reporting program based on Global Reporting Initiative (GRI) guidelines or a similar standard within a specified time frame.

*Source: 2018 U.S. Proxy Voting Guidelines. Benchmark Policy Recommendations*, ISS, January 4, 2018, p. 60 (www.issgovernance.com).

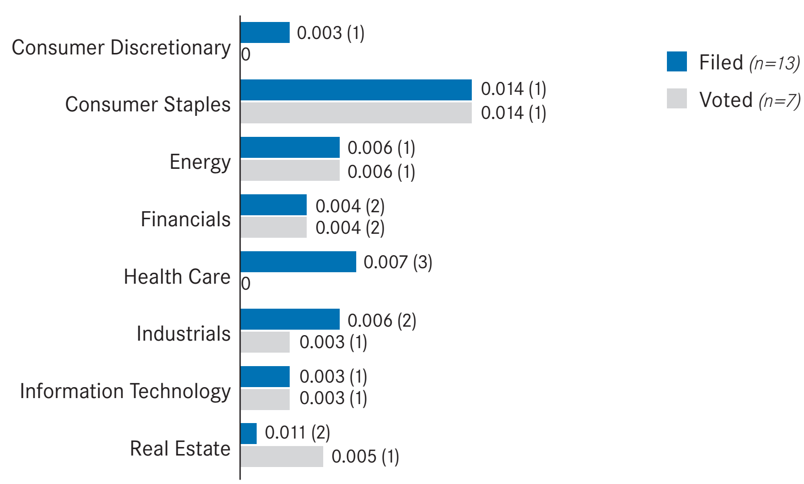
## Volume by industry

In the Russell 3000 sample, consumer staples and real estate companies were most exposed to shareholder proposals on sustainability reporting. Respectively, 1.4 percent and 1.1 percent of companies in those sectors received a proposal on this topic during the 2018 proxy season (Chart 85). Companies in three of the 11 GICS business sectors covered in this report did not receive a sustainability reporting proposal in the 2018 sample period. Of the three proposals submitted at companies in the health care sector, none went to a vote.

Chart 85

**Sustainability Reporting—Shareholder Proposal Volume, by Industry (2018)**

Average number of shareholder proposals per company (number of shareholder proposals)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

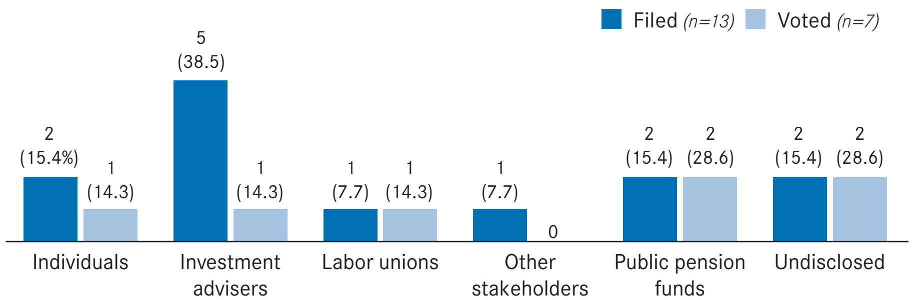
## Volume by sponsor

In the Russell 3000 sample, investment advisers submitted the highest numbers of 2018 proposals on sustainability reporting (five resolutions), comprising 38.5 percent of the total during the period. Only one of them, however, ended up on the voting ballot. Individuals filed two proposals but only one of them went to a vote (Chart 86).

Chart 86

**Sustainability Reporting—Shareholder Proposal Volume, by Sponsor (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

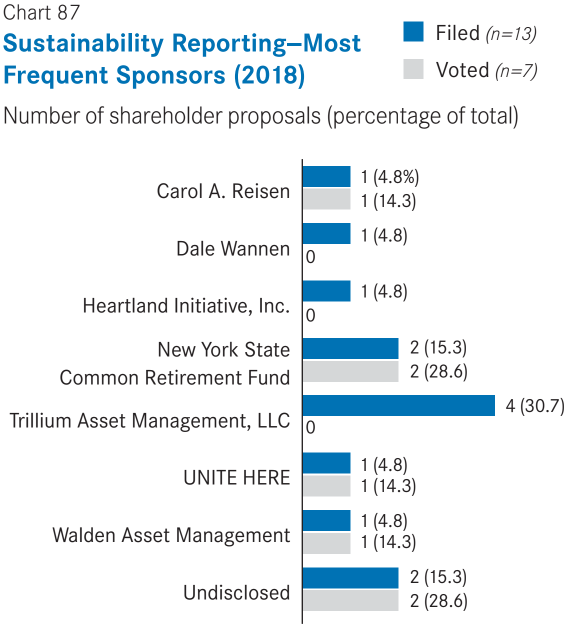
## Most frequent sponsors

Chart 87 ranks the most frequent sponsors of shareholder proposals on sustainability reporting. Also see Table 10 on p. 80 for a comprehensive list of proponents across key proposal types.

Chart 87

**Sustainability Reporting—Most Frequent Sponsors (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 20

Investment adviser Trillum Asset Management was the most frequent sponsor of this type of proposals in 2018. It submitted four proposals, but none of them was voted. Two proposals were filed by the New York City Common Retirement Fund, both of which went to a vote in the examined 2018 period.

## By support level

In the Russell 3000 sample, in the examined 2018 period, the average support level for the seven sustainability reporting proposals that went to a vote was 27.9 percent of votes cast, up from the 24.7 percent of votes cast recorded in 2015 (Chart 25, on p. 91) and, according to an earlier edition of this study, the 21 percent of votes cast of 2014. However, this year's voting performance was slightly down from the record 29 percent support level seen in 2017.

Only of the proposals received majority support (Table 37). It is the resolution sponsored by the New York State Common Retirement Fund at Kinder Morgan (NYSE: KMI), which passed with a 59.9 percentage of *for* votes at the company's May 2018 AGM. All other voted proposals did not reach the majority threshold, even though one sponsored by the same retirement fund at American Financial Group (NYSE: AFG) received more than a 47 percent support level. The weakest performance was recorded for a proposal sponsored by Walden Asset Management at Tootsie Roll Industries, Inc.; only 2.9 percent of votes cast were in its favor.

Table 37 **Sustainability Reporting—Shareholder Proposals, by Support Level (2018)**

| Company | Sponsor | Meeting date | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| Kinder Morgan Inc | New York State Common Retirement Fund | 5/9/2018 | Pass | 59.9% | 39.3% | 0.8% | 44.0% | 28.9% | 0.6% | 17.1% |
| American Financial Group, Inc. | New York State Common Retirement Fund | 5/22/2018 | Fail | 47.8 | 51.0 | 1.2 | 40.6 | 43.3 | 1.0 | 5.7 |
| XPO Logistics, Inc. | Undisclosed | 5/17/2018 | Fail | 34.0 | 64.9 | 1.2 | 29.4 | 56.1 | 1.0 | 8.3 |
| Host Hotels & Resorts, Inc. | UNITE HERE | 5/17/2018 | Fail | 30.9 | 68.6 | 0.5 | 27.5 | 60.9 | 0.4 | 0.0 |
| Berkshire Hathaway Inc. | Undisclosed | 5/5/2018 | Fail | 11.5 | 87.2 | 1.4 | 8.2 | 62.1 | 1.0 | 0.0 |
| Alphabet Inc. | Carol A. Reisen | 6/6/2018 | Fail | 8.7 | 91.0 | 0.3 | 7.5 | 78.8 | 0.3 | 4.8 |
| Tootsie Roll Industries, Inc. | Walden Asset Management | 5/7/2018 | Fail | 2.9 | 97.1 | 0.0 | 2.8 | 92.4 | 0.0 | 0.0 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Political Issues

Since the U.S. Supreme Court's 2010 ruling in *Citizens United v. Federal Election Commission*—holding that the First Amendment prohibits government from placing limits on independent spending for political purposes by corporations and unions—shareholder interest in this area of corporate activities has skyrocketed. In the 2018 proxy season, resolutions on political issues sponsored by investors declined in number from prior year (the peak was reached in 2014) but were nonetheless the second most voted proposal type (50 voted proposals) across all subject categories—second only to the topic of shareholders' right to call special meetings (58 voted proposals) but surpassing in terms of volume favorite shareholder topics such as the separation of CEO and board chairman positions (46 proposals) or proxy access (38 proposals) (Table 14 and Table 11). Since 2011, for this type of shareholder requests it has been a steady rise to the top of the social and environmental policy category, and today they are far more frequent than proposals on human rights or environmental issues.

Data on corporate practices released by The Conference Board in collaboration with Bloomberg and GRI shows that only 3 percent of Russell 1000 companies and 5 percent of S&P 500 companies do disclose their political contributions. (Among those that disclose donations, the median total amount was $112,000 for the Russell 1000 and $220,400 for the S&P 500 companies.)[9]

Analysts who predicted that the demand for more transparency would fade following the presidential campaign of 2012 could not foresee the energizing effects on activist investors of the December 2013 announcement by the SEC to scrap from its short-term regulatory agenda a requirement on corporate political contribution disclosure. In April 2014, not-for-profit organization Citizens for Responsibilities and Ethics in Washington (CREW) submitted to the Commission a petition for rulemaking on this topic reiterating the concerns of an earlier submission by the Committee on Disclosure of Corporate Political Spending.[10] Together, the two petitions garnered an unprecedented level of public support—more than one million signatures.

9 *Sustainability Practices Dashboard*, The Conference Board, December 2017, https://www.conference-board.org/publications/publicationdetail.cfm?publicationid=7352&centerid=13

10 SEC File No. 4-637-2 (April 15, 2014), available at www.sec.gov/rules/petitions.shtml. To support its argument in favor of standardized regulatory requirements, the April 2014 petition also cites a CREW-conducted study revealing the inaccuracy or confusion of corporate disclosures on political spending provided on a voluntary basis by some companies.

A "model shareholder resolution" of this type was promulgated by the Center for Political Accountability (CPA), a not-for-profit entity formed by former Democratic Congressional Staffer Bruce Freed for the purpose of promoting transparency and accountability in this area of business activity. The model called for companies to disclose:

- Their policy and procedures for making, with corporate funds or assets, contributions aimed at participating or intervening in political campaigns on behalf (or in opposition to) a candidate for public office, or to influence the general public during an election or referendum.
- The amount of any monetary or non-monetary contributions used in these manners, including the identity of the recipients and of the corporate officers responsible for the decision-making.[11]

Alternative and more stringent versions request the adoption of bylaws or other organizational documents prohibiting, limiting, or contemplating a shareholder advisory vote on the corporate policies on political spending and lobbying activities.

Shareholders have refined the formulation of these proposals to clarify the distinction between requests for disclosure of expenditures related to corporate lobbying (or activities aimed at influencing legislation or regulation) and those related to corporate political contributions (which, as described above, are aimed at participating in a political campaign on behalf or against a candidate or at influencing an election). Prior to the 2013 proxy season, companies were often able to omit proposals on lobbying disclosure by arguing that they were substantially duplicative of other proposals on political contributions already included in the voting ballots. However, the SEC staff issued a no-action letter to CVS Caremark in 2013 indicating that the company had to include both proposal types in its proxy, since corporate activities conducted to affect a legislative debate differ from those contemplated in the traditional CPA model of political spending proposals.[12] Also see "Statistics on SEC No-Action Letters," on p. 53.

Shareholder proposals on political issues filed by a wide range of sponsor types, including public pension funds, investment advisers, labor unions, individuals, religious groups, and other stakeholders. Despite the high volume of proposals, the average support levels remain low, and in the examined 2018 period like in many of the previous years, none received majority support and passed.

11 *Political Disclosure and Oversight Resolution 2013*, Center for Political Accountability (CPA), 2013 (www.politicalaccountability.net).

12 See for example, SEC Division of Corporation Finance no-action letter to CVS Caremark Corporation, March 15, 2013.

## Volume by index

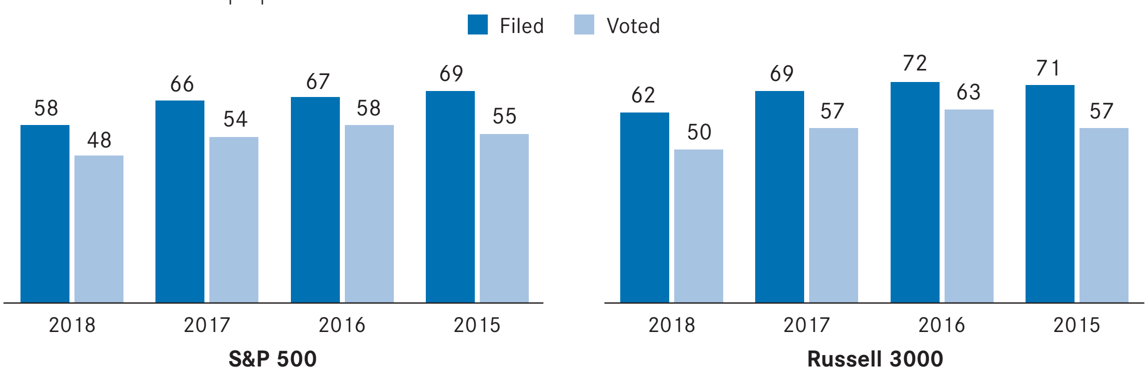
As shown in Chart 88, in the Russell 3000 sample examined for the purpose of this report, shareholders submitted 62 proposals on political issues in 2018, down from 69 proposals during the same period in 2017 and 71 proposals in 2015, but also down from the volume peak of 103 in 2014. By way of comparison, there were 43 proposals in 2010. Unlike other topics, most filed proposals of this type are in fact included in the voting ballot: The share of proposals that went to a vote was 80.6 percent this year, similar to the 83.5 percent seen in 2014.

Proposal volume has declined in the S&P 500 index as well: there were 58 filed proposals in the first semester of 2018, of which 48 went to a vote. In 2013, the number of filing was 97; the percentage of voted proposals in the index increased to 82.8 in 2018 from 77.3 in 2013.

Chart 88

**Political Issues–Shareholder Proposal Volume, by Index (2015–2018)**

Number of shareholder proposals




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Political Activities

### Lobbying

Vote case-by-case on proposals requesting information on a company's lobbying (including direct, indirect, and grassroots lobbying) activities, policies, or procedures, considering:

- The company's current disclosure of relevant lobbying policies, and management and board oversight;
- The company's disclosure regarding trade associations or other groups that it supports, or is a member of, that engage in lobbying activities; and
- Recent significant controversies, fines, or litigation regarding the company's lobbying-related activities.

### Political Contributions

Generally vote for proposals requesting greater disclosure of a company's political contributions and trade association spending policies and activities, considering:

- The company's current disclosure of policies and oversight mechanisms related to its direct political contributions and payments to trade associations or other groups that may be used for political purposes, including information on the types of organizations supported and the business rationale for supporting these organizations; and
- Recent significant controversies, fines, or litigation related to the company's political contributions or political activities.

Vote against proposals barring a company from making political contributions. Businesses are affected by legislation at the federal, state, and local level; barring political contributions can put the company at a competitive disadvantage.

Vote against proposals to publish in newspapers and other media a company's political contributions. Such publications could present significant cost to the company without providing commensurate value to shareholders.

### Political Ties

Generally vote against proposals asking a company to affirm political nonpartisanship in the workplace, so long as:

- There are no recent, significant controversies, fines, or litigation regarding the company's political contributions or trade association spending; and
- The company has procedures in place to ensure that employee contributions to company-sponsored political action committees (PACs) are strictly voluntary and prohibit coercion.

Vote against proposals asking for a list of company executives, directors, consultants, legal counsels, lobbyists, or investment bankers that have prior government service and whether such service had a bearing on the business of the company. Such a list would be burdensome to prepare without providing any meaningful information to shareholders.

*Source: 2018 U.S. Proxy Voting Guidelines. Benchmark Policy Recommendations*, ISS, January 4, 2018, p. 63 (www.issgovernance.com).

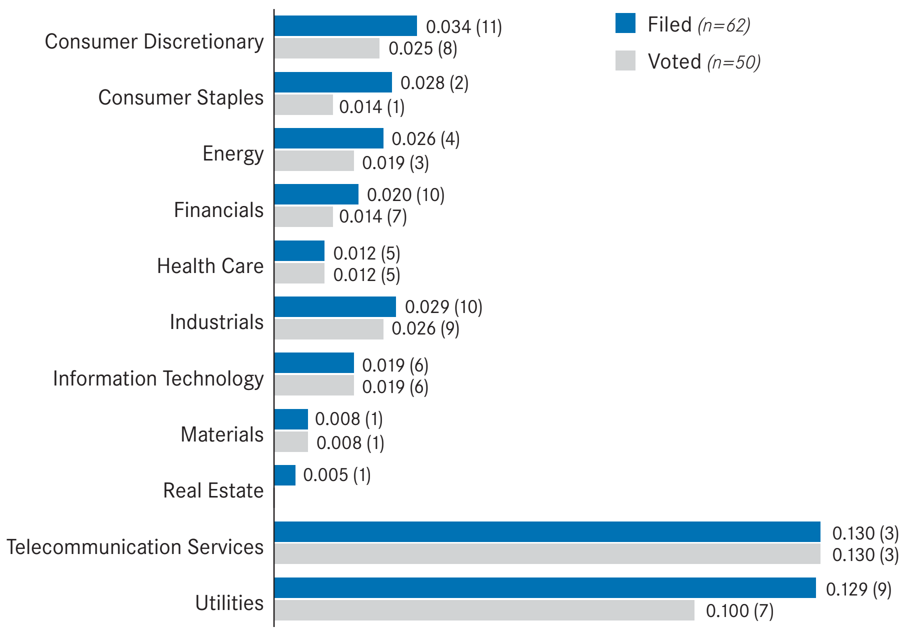
## Volume by industry

In the Russell 3000 sample, companies in the telecommunications services, utilities, consumer discretionary and staples, and energy sectors were the most exposed to shareholder proposals on political spending (Chart 89). Specifically, 13 percent of telecommunication services companies, 12.9 percent of utilities companies, 3.4 percent of consumer discretionary companies, and 2.8 percent of consumer staples companies faced a proposal on the topic. In the Russell 3000 index, all business sectors received at least one proposal on political issues, with most filed proposals included in the voting ballot; however, the only proposal filed at a real estate company did not go to a vote.

Chart 89

**Political Issues–Shareholder Proposal Volume, by Industry (2018)**

Average number of shareholder proposals per company (number of shareholder proposals)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

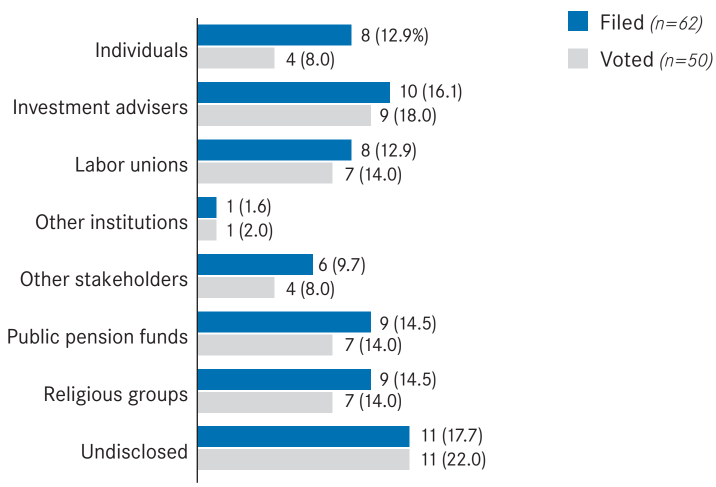
## Volume by sponsor

As shown in Chart 90, in the Russell 3000 sample, investment advisers, public pension funds, and religious groups submitted the highest numbers of proposals on corporate political spending (combined, more than 45 percent of the total). The analysis shows that proposals of this type submitted by investment institutions are far more likely to make it all the way to the AGM vote than proposals filed by individual gadfly investors. All but one of the 10 proposals sponsored by investment advisers and all but two of the nine proposals sponsored by pension funds went to a vote, respectively representing 16.1 percent and 14.5 percent of the total voted. However, only four of the eight proposals submitted by individual investors during the period were voted. Noninvestment stakeholder groups filed six proposals on political issues in the 2018 proxy season, four of which went to a vote (8 percent of the total voted).

Chart 90

**Political Issues–Shareholder Proposal Volume, by Sponsor (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent sponsors

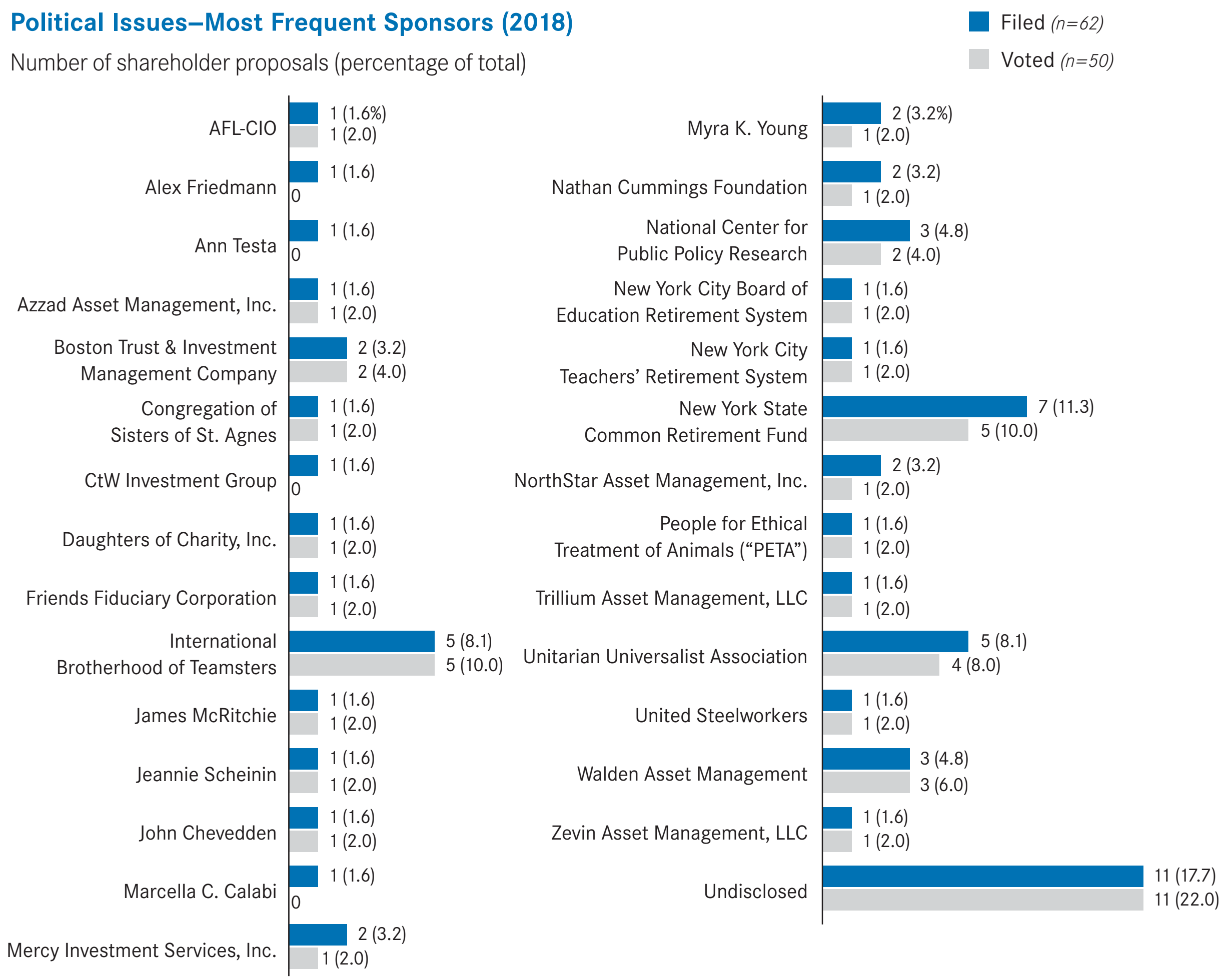
Chart 91 ranks the most frequent sponsors of shareholder proposals on corporate political spending. Also see Table 13 on p. 87 for a comprehensive list of proponents across key proposal types.

Even this year, the most frequent disclosed sponsor of these proposals was The New York State Common Retirement Fund. It has consistently sponsored a large number of this type of proposals over the years (for example, it filed 21 of the 103 proposals submitted in the Russell 3000 in the 2014 season, a record year for resolutions on political issues). All but two of its 2018 proposals went to a vote, composing about one tenth of the total voted proposals; its voted proposals in 2014 were about a quarter of the total, which is indicative of the popularity of this type of requests among investor types. Other active proponents in this area in 2018 were labor union-affiliated fund International Brotherhood of Teamsters and religious group Unitarian Universalist Association, each with four filed proposals.

Chart 91

**Political Issues–Most Frequent Sponsors (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By support level

In the Russell 3000 sample, in the examined 2018 period, 50 of the 139 social and environmental policy proposals voted on by shareholder related to political issues (Chart 24, on p. 86). Average support level was 28 percent of votes cast, compared with 24.6 for the same period in 2017 and 24.7 in 2015; it is only a slight increase from earlier year support levels, which, according to an earlier edition of this study, were 19.5 percent in 2014, 20.7 percent in 2013, and 20.3 percent in 2010 (Chart 25, on p. 91). Despite the unabated interest in this type of requests, their proponents, even when they are large pension funds, continued to fail to gain the majority support of fellow institutional shareholders. None of the 50 proposals voted at Russell 3000 AGMs held between January 1 and June 30, 2018 received majority support and passed; however, three received more than 40 percent of votes cast in favor.

Table 38 **Political Issues—Shareholder Proposals, by Support Level (2018)**

| Company | Sponsor | Meeting date | Proposal outcome (pass/fail) | As a percentage of votes cast | | | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | For | Against | Abstain | Nonvotes |
| **HIGHEST SUPPORT** | | | | | | | | | | |
| Allstate Corporation | International Brotherhood of Teamsters | 5/11/2018 | Fail | 45.4% | 52.2% | 2.4% | 34.3% | 39.4% | 1.8% | 9.6% |
| CMS Energy Corporation | Undisclosed | 5/4/2018 | Fail | 44.3 | 53.8 | 1.8 | 35.1 | 42.6 | 1.5 | 6.2 |
| Wyndham Destinations, Inc | Undisclosed | 5/17/2018 | Fail | 41.9 | 56.1 | 1.9 | 33.4 | 44.7 | 1.5 | 8.1 |
| Honeywell International Inc. | Azzad Asset Management | 4/23/2018 | Fail | 39.7 | 57.9 | 2.5 | 30.8 | 44.9 | 1.9 | 11.7 |
| Honeywell International Inc. | Trillium Asset Management, LLC | 5/11/2018 | Fail | 39.0 | 59.0 | 2.0 | 30.2 | 45.8 | 1.6 | 12.3 |
| Emerson Electric Co. | Undisclosed | 2/6/2018 | Fail | 38.9 | 59.6 | 1.5 | 28.2 | 43.2 | 1.1 | 16.1 |
| Ameriprise Financial, Inc. | Undisclosed | 4/25/2018 | Fail | 38.1 | 60.0 | 1.9 | 31.2 | 49.2 | 1.6 | 7.9 |
| American Water Works Company, Inc. | Boston Trust & Investment Management Company | 5/11/2018 | Fail | 38.0 | 56.3 | 5.7 | 29.5 | 43.7 | 4.4 | 12.3 |
| Alliant Energy Corp | New York City Board of Education Retirement System | 5/18/2018 | Fail | 37.5 | 58.6 | 3.8 | 27.2 | 42.5 | 2.8 | 13.4 |
| Walt Disney Company | Zevin Asset Management, LLC | 3/8/2018 | Fail | 37.1 | 62.1 | 0.8 | 25.5 | 42.6 | 0.6 | 17.0 |
| **LOWEST SUPPORT** | | | | | | | | | | |
| Eli Lilly and Company | People for Ethical Treatment of Animals ("PETA") | 5/7/2018 | Fail | 19.8 | 78.4 | 1.8 | 14.8 | 58.5 | 1.3 | 10.3 |
| Charter Communications, Inc | New York State Common Retirement Fund | 4/25/2018 | Fail | 19.4 | 79.4 | 1.1 | 10.1 | 41.5 | 0.6 | 1.5 |
| United Parcel Service, Inc. | Walden Asset Management | 5/10/2018 | Fail | 18.8 | 77.5 | 3.6 | 13.1 | 53.8 | 2.5 | 5.1 |
| Comcast Corporation | Friends Fiduciary Corporation | 6/11/2018 | Fail | 18.6 | 78.9 | 2.4 | 16.1 | 68.3 | 2.1 | 5.6 |
| Ford Motor Company | John Chevedden | 5/10/2018 | Fail | 17.1 | 81.2 | 1.7 | 12.4 | 58.6 | 1.2 | 20.5 |
| Ford Motor Company | Unitarian Universalist Association | 5/10/2018 | Fail | 16.5 | 81.8 | 1.7 | 11.9 | 59.0 | 1.2 | 20.5 |
| Tyson Foods, Inc. | Undisclosed | 2/8/2018 | Fail | 11.9 | 87.9 | 0.2 | 11.3 | 83.1 | 0.1 | 2.0 |
| Alphabet Inc. | Walden Asset Management | 6/6/2018 | Fail | 9.3 | 89.8 | 0.9 | 8.1 | 77.8 | 0.8 | 4.8 |
| Goldman Sachs Group, Inc. | Unitarian Universalist Association | 5/2/2018 | Fail | 8.8 | 88.4 | 2.9 | 6.8 | 68.3 | 2.2 | 11.6 |
| Aetna Inc. | Undisclosed | 5/18/2018 | Fail | 7.7 | 88.5 | 3.8 | 6.0 | 68.7 | 3.0 | 6.9 |
| Intel Corporation | NorthStar Asset Management, Inc. | 5/17/2018 | Fail | 6.7 | 90.2 | 3.1 | 4.6 | 62.3 | 2.1 | 18.3 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Election of Dissident's Director Nominee

Unlike the proxy access proposals discussed earlier—which request that the company include in its own proxy materials director candidates nominated by shareholders—these shareholder-sponsored proposals appear on the dissident's proxy card in a proxy contest mounted to gain board representation or control. Also see "Part IV: Proxy Contests and Other Shareholder Activism Campaigns" on p. 141 for a discussion of data on contested proxy solicitations from the recent voting seasons.

The likelihood of dissident success in a proxy contest is often inversely related to the capitalization of the target company, since it depends on the amount of company shares that the activist can accumulate or otherwise influence at the time of voting. For this reason, as shown in Chart 92, proposals on the election of dissident's director nominees are far more frequent among smaller companies.

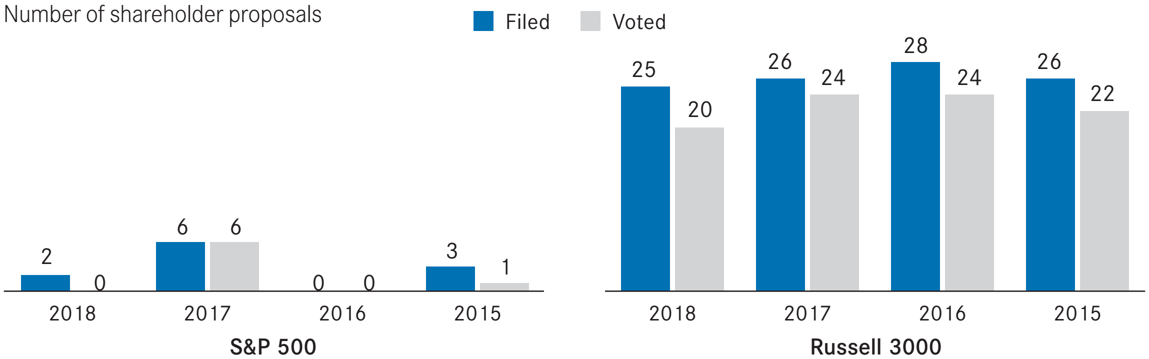
### Volume by index

As shown in Chart 92, in the Russell 3000 sample examined for the 2018 period of January 1-June 30, shareholders filed 25 proposals to elect a dissident's director nominee. Volume was down from the 28 proposals documented for the same period in 2016 and, according to earlier editions of this report, the 39 proposals documented for the same period in 2013, let alone the 52 proposals submitted in 2009—a record year for hostile activism. The explanation should be sought in certain developments of the last few years, from the introduction of say-on-pay votes (which many shareholders can now use more effectively than director opposition proposals to voice their discontent) to the passage of new rules enhancing governance disclosure and, in general, a business climate favoring more constructive dialogue with investors. Even though it did not match the data for earlier years, the number of contested elections, where management nominees to the board are challenged, was still fairly high in 2018, with roughly 80 percent of proposals of this type (or 20 of the 25 filed) going to a vote during the first six months of the proxy season. By way of comparison, in 2014, 31 of the 35 filed proposals (88.6 percent) on the election of a dissident's nominee were voted at Russell 3000 AGMs.

Such proposals are far less frequent among S&P 500 companies, where large capitalizations make it more arduous for an activist to garner enough support from fellow investors, and ultimately reduce the likelihood of success. There were only two proposals submitted during the 2018 period (and neither of them went to a vote), compared with six in 2017, zero in 2016, five during the same period in 2013, and three in 2012.

Chart 92

**Election of Dissident's Director Nominee—Shareholder Proposal Volume, by Index (2015–2018)**




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Proxy Contests—Voting on Director Nominees in Contested Elections

Vote *case-by-case* on the election of directors in contested elections, considering the following factors:

- Long-term financial performance of the target company relative to its industry.
- Management's track record.
- Background to the proxy contest.
- Qualifications of director nominees (both slates).
- Strategic plan of dissident slate and quality of critique against management.
- Likelihood that the proposed goals and objectives can be achieved (both slates).
- Stock ownership positions.

In the case of candidates nominated pursuant to proxy access, vote case-by-case considering any applicable factors listed above or additional factors which may be relevant, including those that are specific to the company, to the nominee(s) and/or to the nature of the election (such as whether or not there are more candidates than board seats).

**Vote-No Campaigns**

In cases where companies are targeted in connection with public "vote no" campaigns, evaluate director nominees under the existing governance policies for voting on director nominees in uncontested elections. Take into consideration the arguments submitted by shareholders and other publicly available information.

*Source: 2018 U.S. Proxy Voting Guidelines. Benchmark Policy Recommendations*, ISS, January 4, 2018, p. 16 (www.issgovernance.com).

## Volume by industry

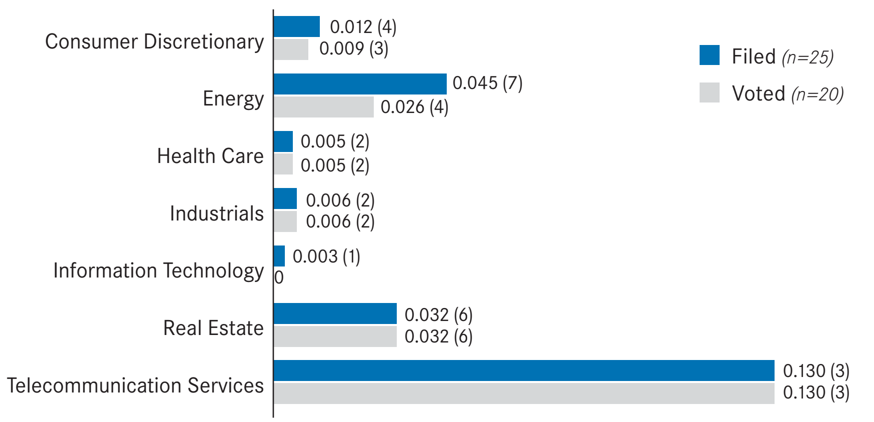
In the Russell 3000 sample, companies in the telecommunications services, energy, and real estate industries were the most exposed to shareholder proposals on the election of a dissident's director nominee in 2018. For example, 13 percent of telecommunications services companies, 4.5 percent of energy companies, and 3.9 percent of real estate companies received a proposal on this topic during the 2018 proxy season (Chart 93). Four business sectors represented in the Russell 3000 index, including consumer staples, which is often favored by activists, had no uncontested elections during the examined 2018 period.

Only four of the seven proposals on the election of a dissident's director nominee received by companies in the energy sector went to a vote in 2018.

Chart 93

**Election of Dissident's Director Nominee—Shareholder Proposal Volume, by Industry (2018)**

Average number of shareholder proposals per company (number of shareholder proposals)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

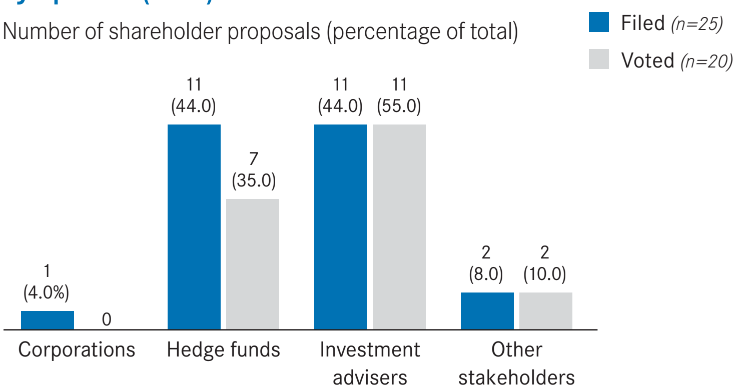
## Volume by sponsor

Even this year, requests for board representations were primarily submitted by activist hedge funds and investment adviser (which, in turn, often provide their services to hedge funds by managing their assets). As shown in Chart 94, in the 2018 Russell 3000 sample, these categories of institutional investors filed the highest numbers of proposals on the election of a dissident's director nominee (11 proposals each, or 88 percent collectively). All hedge fund-sponsored proposals and seven of the 11 initiated by investment advisers went to a vote at the AGMs.

Chart 94

**Election of Dissident's Director Nominee—Shareholder Proposal Volume, by Sponsor (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## Most frequent sponsors

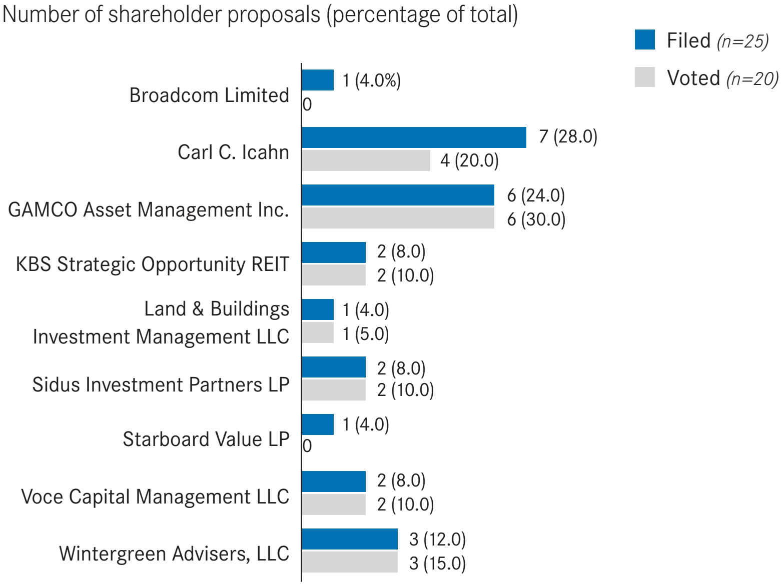
Chart 95 ranks the most frequent sponsors of shareholder proposals on the election of a dissident's director nominee. Also see Table 15 on p. 95 for a comprehensive list of proponents across key proposal types.

Carl C. Icahn led the list with seven filed and four voted board representation proposals, followed by investment adviser GAMCO Asset Management, with six filed proposals (all voted). All but three of the proposals submitted by the top six most frequent sponsors went to a vote, accounting for 88 percent of the total voted.

Chart 95

**Election of Dissident's Director Nominee–Most Frequent Sponsors (2018)**

Number of shareholder proposals (percentage of total)




*Source*: The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

## By support level

In the examined 2018 Russell 3000 sample, shareholders voted on 31 proposals on the election of a dissident's director nominee. Results for contested elections are shown as a percentage of votes outstanding. As Chart 27 illustrates, the 2018 average support rate for this proposal topic has increased to 43.2 percent of shares outstanding. This result was up considerably from the findings in previous years (by way of comparison: 36.7 percent in 2017, 31.4 percent in 2014, and 36.3 percent in 2013), and much higher than the average support reported in 2012 (18.2 percent) and in 2009, which had been a record year in terms of proxy contests (26.4 percent of shares outstanding voted in favor). Nine of those 20 nominees were elected (at SandRidge Energy (NYSE: SD), Acacia Research Corporation (NASDAQ: ACTG), Natus Medical Incorporated (NASDAQ: BABY), and Taubman Centers (NYSE: TCO). Interestingly, none of GAMCO Asset Management's nominees received majority support and were elected.

As shown in Table 39, among resolutions on this topic, the highest support level (83.1 percent of *for* votes as a percentage of shares outstanding) was received by a proposal filed at SandRidge Energy by Carl C. Icahn. The lowest support level (18.7 percent) was on a proposal filed at The E.W. Scripps Company.

Table 39 **Election of Dissident's Director Nominee—Shareholder Proposals, by Support Level (2018)**

| Company | Sponsor | Meeting date | Proposal outcome (pass/fail) | As a percentage of shares outstanding | | | |
|---|---|---|---|---|---|---|---|
| | | | | For | Against | Abstain | Nonvotes |
| **HIGHEST SUPPORT** | | | | | | | |
| SandRidge Energy, Inc. | Carl C. Icahn | 6/19/2018 | Pass | 83.1% | 0.0% | n/a | 5.5% |
| SandRidge Energy, Inc. | Carl C. Icahn | 6/19/2018 | Pass | 82.5 | 0.0 | n/a | 5.5 |
| Acacia Research Corporation | Sidus Investment Partners LP | 6/14/2018 | Pass | 62.8 | 0.2 | n/a | 2.9 |
| Natus Medical Incorporated | Voce Capital Management LLC | 6/22/2018 | Pass | 61.7 | 0.0 | n/a | 0.0 |
| Natus Medical Incorporated | Voce Capital Management LLC | 6/22/2018 | Pass | 61.7 | 0.0 | n/a | 0.0 |
| SandRidge Energy, Inc. | Carl C. Icahn | 6/19/2018 | Pass | 61.2 | 0.0 | n/a | 5.5 |
| Acacia Research Corporation | Sidus Investment Partners LP | 6/14/2018 | Pass | 58.9 | 4.1 | n/a | 2.9 |
| SandRidge Energy, Inc. | Carl C. Icahn | 6/19/2018 | Pass | 51.0 | 0.0 | n/a | 5.5 |
| Taubman Centers, Inc. | Land & Buildings Investment Management LLC | 5/31/2018 | Pass | 48.1 | 0.0 | n/a | 0.2 |
| **LOWEST SUPPORT** | | | | | | | |
| The E. W. Scripps Company | GAMCO Asset Management Inc. | 5/10/2018 | Fail | 31.5 | 0.0 | n/a | 0.0 |
| Consolidated-Tomoka Land Co. | Wintergreen Advisers, LLC | 4/25/2018 | Fail | 29.0 | 0.0 | n/a | 0.0 |
| Consolidated-Tomoka Land Co. | Wintergreen Advisers, LLC | 4/25/2018 | Fail | 29.0 | 0.0 | n/a | 0.0 |
| Consolidated-Tomoka Land Co. | Wintergreen Advisers, LLC | 4/25/2018 | Fail | 29.0 | 0.0 | n/a | 0.0 |
| Whitestone REIT | KBS Strategic Opportunity REIT | 5/17/2018 | Fail | 28.5 | 0.6 | n/a | 0.0 |
| Whitestone REIT | KBS Strategic Opportunity REIT | 5/17/2018 | Fail | 28.4 | 0.6 | n/a | 0.0 |
| Cincinnati Bell Inc. | GAMCO Asset Management Inc. | 5/1/2018 | Fail | 26.4 | 0.0 | n/a | 5.8 |
| Cincinnati Bell Inc. | GAMCO Asset Management Inc. | 5/1/2018 | Fail | 26.4 | 0.0 | n/a | 5.8 |
| Cincinnati Bell Inc. | GAMCO Asset Management Inc. | 5/1/2018 | Fail | 26.4 | 0.0 | n/a | 5.8 |
| The E. W. Scripps Company | GAMCO Asset Management Inc. | 5/10/2018 | Fail | 19.2 | 9.9 | n/a | 0.0 |
| The E. W. Scripps Company | GAMCO Asset Management Inc. | 5/10/2018 | Fail | 18.7 | 10.4 | n/a | 0.0 |

*Source:* The Conference Board/Rutgers CCLG/FactSet/IRGS Analytics, 2018.

Exhibit 5 **Global Industry Classification Standard (GICS) Codes**

| Industry | GICS code | Number of companies |
|---|---|---|
| **Consumer Discretionary** | | |
| General Contractors-single-family Houses | 1521 | 9 |
| Operative Builders | 1531 | 9 |
| Plumbing Heating And Air-conditioning | 1711 | 1 |
| Frozen Specialties Not Elsewhere Classified | 2038 | 1 |
| Carpets And Rugs | 2273 | 1 |
| Men's And Boys' Suits Coats And Overcoats | 2311 | 1 |
| Men's & Boys' Furnishings, Work Clothing, And Allied Garments | 2320 | 1 |
| Men's And Boys' Work Clothing | 2326 | 2 |
| Men's And Boys' Clothing Not Elsewhere Classified | 2329 | 1 |
| Women's Misses' And Juniors' Dresses | 2335 | 1 |
| Women's Misses' And Juniors' Outerwear Not Elsewhere Classified | 2339 | 1 |
| Women's Misses' Children's And Infants' Underwear And | 2341 | 1 |
| Apparel And Accessories Not Elsewhere Classified | 2389 | 1 |
| Automotive Trimmings Apparel Findings And Related Products | 2396 | 2 |
| Mobile Homes | 2451 | 1 |
| Wood Household Furniture Except Upholstered | 2511 | 2 |
| Mattresses Foundations And Convertible Beds | 2515 | 3 |
| Newspapers: Publishing Or Publishing And Printing | 2711 | 4 |
| Tires And Inner Tubes | 3011 | 2 |
| Rubber And Plastics Footwear | 3021 | 1 |
| Custom Compounding Of Purchased Plastics Resins | 3087 | 1 |
| Plastics Products Not Elsewhere Classified | 3089 | 1 |
| Men's Footwear Except Athletic | 3143 | 1 |
| Footwear Except Rubber Not Elsewhere Classified | 3149 | 2 |
| Cutlery | 3421 | 1 |
| Automotive Stampings | 3465 | 1 |
| Small Arms | 3484 | 1 |
| Internal Combustion Engines Not Elsewhere Classified | 3519 | 1 |
| Household Cooking Equipment | 3631 | 1 |
| Household Laundry Equipment | 3633 | 1 |
| Household Appliances Not Elsewhere Classified | 3639 | 1 |
| Household Audio And Video Equipment | 3651 | 1 |
| Radio And Television Broadcasting And Communications Equipment | 3663 | 1 |
| Electronic Components Not Elsewhere Classified | 3679 | 1 |
| Motor Vehicles And Passenger Car Bodies | 3711 | 3 |
| Motor Vehicle Parts And Accessories | 3714 | 13 |
| Motor Homes | 3716 | 1 |
| Boat Building And Repairing | 3732 | 1 |
| Motorcycles Bicycles And Parts | 3751 | 1 |
| Transportation Equipment Not Elsewhere Classified | 3799 | 1 |
| Search Detection Navigation Guidance Aeronautical And Nautical | 3812 | 1 |
| Photographic Equipment And Supplies | 3861 | 2 |
| Watches Clocks Clockwork Operated Devices And Parts | 3873 | 2 |
| Dolls And Stuffed Toys | 3942 | 1 |
| Games Toys And Children's Vehicles Except Dolls And Bicycles | 3944 | 2 |
| Sporting And Athletic Goods Not Elsewhere Classified | 3949 | 8 |
| Manufacturing Industries Not Elsewhere Classified | 3999 | 1 |
| Deep Sea Transportation Of Passengers Except By Ferry | 4481 | 3 |
| Travel Agencies | 4724 | 3 |
| Arrangement Of Passenger Transportation Not Elsewhere Classified | 4729 | 1 |
| Telephone Communications Except Radiotelephone | 4813 | 1 |
| Radio Broadcasting Stations | 4832 | 4 |
| Television Broadcasting Stations | 4833 | 9 |
| Cable And Other Pay Television Services | 4841 | 10 |
| Motor Vehicle Supplies And New Parts | 5013 | 2 |
| Motor Vehicle Parts Used | 5015 | 1 |
| Home Furnishings | 5023 | 1 |
| Roofing Siding And Insulation Materials | 5033 | 1 |
| Sporting And Recreational Goods And Supplies | 5091 | 1 |
| Stationery And Office Supplies | 5112 | 1 |
| Footwear | 5139 | 1 |
| Groceries General Line | 5141 | 1 |
| Lumber And Other Building Materials Dealers | 5211 | 3 |
| Retail Nurseries Lawn And Garden Supply Stores | 5261 | 1 |
| Department Stores | 5311 | 5 |
| Variety Stores | 5331 | 5 |
| Miscellaneous General Merchandise Stores | 5399 | 1 |
| Miscellaneous Food Stores | 5499 | 1 |
| Automotive Dealers And Gasoline Service Stations | 5500 | 1 |
| Motor Vehicle Dealers (new And Used) | 5511 | 6 |
| Motor Vehicle Dealers (used Only) | 5521 | 1 |
| Auto And Home Supply Stores | 5531 | 2 |
| Gasoline Service Stations | 5541 | 1 |
| Boat Dealers | 5551 | 1 |

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Exhibit 5 **Global Industry Classification Standard (GICS) Codes** (continued)

| Industry | GICS code | Number of companies |
|---|---|---|
| Recreational Vehicle Dealers | 5561 | 1 |
| Men's And Boys' Clothing And Accessory Stores | 5611 | 2 |
| Women's Clothing Stores | 5621 | 4 |
| Women's Accessory And Specialty Stores | 5632 | 1 |
| Children's And Infants' Wear Stores | 5641 | 2 |
| Family Clothing Stores | 5651 | 12 |
| Shoe Stores | 5661 | 4 |
| Miscellaneous Apparel And Accessory Stores | 5699 | 2 |
| Home Furniture, Furnishings, And Equipment Stores | 5700 | 1 |
| Furniture Stores | 5712 | 3 |
| Miscellaneous Home Furnishings Stores | 5719 | 3 |
| Radio Television And Consumer Electronics Stores | 5731 | 2 |
| Computer And Computer Software Stores | 5734 | 1 |
| Eating Places | 5812 | 34 |
| Sporting Goods Stores And Bicycle Shops | 5941 | 3 |
| Jewelry Stores | 5944 | 2 |
| Hobby Toy And Game Shops | 5945 | 1 |
| Gift Novelty And Souvenir Shops | 5947 | 1 |
| Catalog And Mail-order Houses | 5961 | 5 |
| Optical Goods Stores | 5995 | 1 |
| Miscellaneous Retail Stores Not Elsewhere Classified | 5999 | 3 |
| Savings Institutions Federally Chartered | 6035 | 1 |
| Fire Marine And Casualty Insurance | 6331 | 1 |
| Lessors Of Real Property Not Elsewhere Classified | 6519 | 1 |
| Real Estate Agents And Managers | 6531 | 1 |
| Land Subdividers And Developers Except Cemeteries | 6552 | 1 |
| Real Estate Investment Trusts | 6798 | 1 |
| Investors Not Elsewhere Classified | 6799 | 1 |
| Hotels And Motels | 7011 | 15 |
| Funeral Service And Crematories | 7261 | 2 |
| Miscellaneous Personal Services Not Elsewhere Classified | 7299 | 2 |
| Advertising Agencies | 7311 | 2 |
| Radio Television And Publishers' Advertising Representatives | 7313 | 1 |
| Disinfecting And Pest Control Services | 7342 | 1 |
| Equipment Rental And Leasing Not Elsewhere Classified | 7359 | 3 |
| Prepackaged Software | 7372 | 2 |
| Computer Processing And Data Preparation And Processing Services | 7374 | 1 |
| Photofinishing Laboratories | 7384 | 1 |
| Business Services Not Elsewhere Classified | 7389 | 3 |
| Motion Picture And Video Tape Production | 7812 | 3 |
| Motion Picture Theaters Except Drive-in | 7832 | 3 |

| Industry | GICS code | Number of companies |
|---|---|---|
| Theatrical Producers (except Motion Picture) And Miscellaneous | 7922 | 1 |
| Racing Including Track Operation | 7948 | 3 |
| Physical Fitness Facilities | 7991 | 2 |
| Coin-operated Amusement Devices | 7993 | 5 |
| Amusement Parks | 7996 | 2 |
| Amusement And Recreation Services Not Elsewhere Classified | 7999 | 2 |
| Educational Services | 8200 | 1 |
| Colleges Universities And Professional Schools | 8221 | 1 |
| Schools And Educational Services Not Elsewhere Classified | 8299 | 6 |
| Child Day Care Services | 8351 | 1 |
| Testing Laboratories | 8734 | 1 |
| Management Consulting Services | 8742 | 1 |
| Consumer Staples | | |
| Vegetables And Melons | 161 | 1 |
| Citrus Fruits | 174 | 1 |
| Fruits And Tree Nuts Not Elsewhere Classified | 179 | 1 |
| Meat Packing Plants | 2011 | 2 |
| Poultry Slaughtering And Processing | 2015 | 3 |
| Fluid Milk | 2026 | 1 |
| Pickled Fruits And Vegetables Vegetable Sauces And Seasonings And | 2035 | 1 |
| Frozen Fruits Fruit Juices And Vegetables | 2037 | 1 |
| Frozen Specialties Not Elsewhere Classified | 2038 | 1 |
| Cereal Breakfast Foods | 2043 | 2 |
| Wet Corn Milling | 2046 | 1 |
| Bread And Other Bakery Products Except Cookies And Crackers | 2051 | 2 |
| Frozen Bakery Products Except Bread | 2053 | 1 |
| Candy And Other Confectionery Products | 2064 | 1 |
| Chocolate And Cocoa Products | 2066 | 1 |
| Vegetable Oil Mills Except Corn Cottonseed And Soybean | 2076 | 1 |
| Animal And Marine Fats And Oils | 2077 | 1 |
| Malt Beverages | 2082 | 3 |
| Wines Brandy And Brandy Spirits | 2084 | 1 |
| Distilled And Blended Liquors | 2085 | 1 |
| Bottled And Canned Soft Drinks And Carbonated Waters | 2086 | 6 |
| Food Preparations Not Elsewhere Classified | 2099 | 2 |
| Cigarettes | 2111 | 3 |
| Tobacco Stemming And Redrying | 2141 | 1 |
| Sanitary Paper Products | 2676 | 1 |
| Medicinal Chemicals And Botanical Products | 2833 | 2 |
| Soap And Other Detergents Except Specialty Cleaners | 2841 | 1 |

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Exhibit 5 **Global Industry Classification Standard (GICS) Codes** (continued)

| Industry | GICS code | Number of companies |
|---|---|---|
| Perfumes Cosmetics And Other Toilet Preparations | 2844 | 3 |
| Electric Housewares And Fans | 3634 | 1 |
| Storage Batteries | 3691 | 1 |
| Farm Product Warehousing And Storage | 4221 | 1 |
| Drugs Drug Proprietaries And Druggists' Sundries | 5122 | 2 |
| Groceries General Line | 5141 | 2 |
| Packaged Frozen Foods | 5142 | 2 |
| Fresh Fruits And Vegetables | 5148 | 1 |
| Grain And Field Beans | 5153 | 1 |
| Wholesale-Miscellaneous Nondurable Goods | 5190 | 1 |
| Variety Stores | 5331 | 3 |
| Grocery Stores | 5411 | 6 |
| Drug Stores And Proprietary Stores | 5912 | 2 |
| Direct Selling Establishments | 5963 | 1 |
| Miscellaneous Personal Services Not Elsewhere Classified | 7299 | 1 |
| Noncommercial Research Organizations | 8733 | 1 |
| **Energy** | | |
| Bituminous Coal And Lignite Surface Mining | 1221 | 2 |
| Bituminous Coal Underground Mining | 1222 | 2 |
| Crude Petroleum And Natural Gas | 1311 | 58 |
| Natural Gas Liquids | 1321 | 2 |
| Drilling Oil And Gas Wells | 1381 | 12 |
| Oil And Gas Field Exploration Services | 1382 | 8 |
| Oil And Gas Field Services Not Elsewhere Classified | 1389 | 16 |
| Mining And Quarrying Of Nonmetallic Minerals, Except Fuels | 1400 | 1 |
| Industrial Inorganic Chemicals Not Elsewhere Classified | 2819 | 1 |
| Industrial Organic Chemicals Not Elsewhere Classified | 2869 | 4 |
| Petroleum Refining | 2911 | 9 |
| Abrasive Products | 3291 | 1 |
| Heating Equipment Except Electric And Warm Air Furnaces | 3433 | 1 |
| Oil And Gas Field Machinery And Equipment | 3533 | 6 |
| Air And Gas Compressors | 3563 | 2 |
| Motor Vehicle Parts And Accessories | 3714 | 1 |
| Deep Sea Foreign Transportation Of Freight | 4412 | 7 |
| Water Transportation Of Freight Not Elsewhere Classified | 4449 | 1 |
| Marine Cargo Handling | 4491 | 3 |
| Air Transportation Nonscheduled | 4522 | 1 |
| Airports Flying Fields And Airport Terminal Services | 4581 | 1 |
| Crude Petroleum Pipelines | 4612 | 1 |

| Industry | GICS code | Number of companies |
|---|---|---|
| Communications Services Not Elsewhere Classified | 4899 | 1 |
| Electric Services | 4911 | 1 |
| Natural Gas Transmission | 4922 | 4 |
| Natural Gas Transmission And Distribution | 4923 | 1 |
| Natural Gas Distribution | 4924 | 1 |
| Petroleum And Petroleum Products Wholesalers Except Bulk Stations | 5172 | 2 |
| National Commercial Banks | 6021 | 1 |
| Offices Of Holding Companies Not Elsewhere Classified | 6719 | 1 |
| Outdoor Advertising Services | 7312 | 1 |
| Prepackaged Software | 7372 | 1 |
| Computer Processing And Data Preparation And Processing Services | 7374 | 1 |
| **Financials** | | |
| Sausages And Other Prepared Meat Products | 2013 | 1 |
| Miscellaneous Apparel And Accessory Stores | 5699 | 1 |
| Used Merchandise Stores | 5932 | 1 |
| National Commercial Banks | 6021 | 52 |
| State Commercial Banks | 6022 | 88 |
| Commercial Banks Not Elsewhere Classified | 6029 | 10 |
| Savings Institutions Federally Chartered | 6035 | 19 |
| Savings Institutions Not Federally Chartered | 6036 | 4 |
| Federal And Federally-sponsored Credit Agencies | 6111 | 1 |
| Personal Credit Institutions | 6141 | 6 |
| Short-term Business Credit Institutions Except Agricultural | 6153 | 4 |
| Miscellaneous Business Credit Institutions | 6159 | 2 |
| Mortgage Bankers And Loan Correspondents | 6162 | 4 |
| Loan Brokers | 6163 | 1 |
| Asset-Backed/Mortgage-Backed Securities | 6189 | 1 |
| Finance Services | 6199 | 1 |
| Security Brokers Dealers And Flotation Companies | 6211 | 20 |
| Security And Commodity Exchanges | 6231 | 4 |
| Investment Advice | 6282 | 27 |
| Life Insurance | 6311 | 8 |
| Accident And Health Insurance | 6321 | 1 |
| Fire Marine And Casualty Insurance | 6331 | 31 |
| Surety Insurance | 6351 | 9 |
| Title Insurance | 6361 | 4 |
| Insurance Carriers Not Elsewhere Classified | 6399 | 30 |
| Insurance Agents Brokers And Service | 6411 | 8 |
| Offices Of Bank Holding Companies | 6712 | 110 |
| Offices Of Holding Companies Not Elsewhere Classified | 6719 | 3 |

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Exhibit 5 **Global Industry Classification Standard (GICS) Codes** (continued)

| Industry | GICS code | Number of companies |
|---|---|---|
| Venture Capital/Private Equity | 6771 | 2 |
| Real Estate Investment Trusts | 6798 | 24 |
| Investors Not Elsewhere Classified | 6799 | 4 |
| Advertising Not Elsewhere Classified | 7319 | 1 |
| Adjustment And Collection Services | 7322 | 1 |
| Credit Reporting Services | 7323 | 2 |
| Equipment Rental And Leasing Not Elsewhere Classified | 7359 | 1 |
| Services-Miscellaneous Business Services | 7380 | 1 |
| Business Services Not Elsewhere Classified | 7389 | 2 |
| Health Care | | |
| Beef Cattle Feedlots | 211 | 1 |
| Plumbing Heating And Air-conditioning | 1711 | 1 |
| Medicinal Chemicals And Botanical Products | 2833 | 1 |
| Pharmaceutical Preparations | 2834 | 166 |
| In Vitro And In Vivo Diagnostic Substances | 2835 | 8 |
| Biological Products Except Diagnostic Substances | 2836 | 53 |
| Communications Equipment Not Elsewhere Classified | 3669 | 1 |
| Semiconductors And Related Devices | 3674 | 1 |
| Electronic Components Not Elsewhere Classified | 3679 | 1 |
| Laboratory Analytical Instruments | 3826 | 11 |
| Optical Instruments And Lenses | 3827 | 1 |
| Surgical And Medical Instruments And Apparatus | 3841 | 48 |
| Orthopedic Prosthetic And Surgical Appliances And Supplies | 3842 | 9 |
| Dental Equipment And Supplies | 3843 | 2 |
| X-ray Apparatus And Tubes And Related Irradiation Apparatus | 3844 | 1 |
| Electromedical And Electrotherapeutic Apparatus | 3845 | 9 |
| Ophthalmic Goods | 3851 | 3 |
| Medical Dental And Hospital Equipment And Supplies | 5047 | 2 |
| Drugs Drug Proprietaries And Druggists' Sundries | 5122 | 2 |
| Drug Stores And Proprietary Stores | 5912 | 2 |
| Hospital And Medical Service Plans | 6324 | 10 |
| Employment Agencies | 7361 | 2 |
| Computer Programming Services | 7371 | 3 |
| Prepackaged Software | 7372 | 4 |
| Computer Integrated Systems Design | 7373 | 3 |
| Computer Processing And Data Preparation And Processing Services | 7374 | 3 |
| Business Services Not Elsewhere Classified | 7389 | 3 |
| Offices And Clinics Of Doctors Of Medicine | 8011 | 1 |
| Offices And Clinics Of Health Practitioners Not Elsewhere Classified | 8049 | 1 |
| Skilled Nursing Care Facilities | 8051 | 2 |

| Industry | GICS code | Number of companies |
|---|---|---|
| General Medical And Surgical Hospitals | 8062 | 9 |
| Medical Laboratories | 8071 | 12 |
| Home Health Care Services | 8082 | 5 |
| Kidney Dialysis Centers | 8092 | 2 |
| Specialty Outpatient Facilities Not Elsewhere Classified | 8093 | 2 |
| Health And Allied Services Not Elsewhere Classified | 8099 | 3 |
| Individual And Family Social Services | 8322 | 2 |
| Commercial Physical And Biological Research | 8731 | 13 |
| Testing Laboratories | 8734 | 1 |
| Management Services | 8741 | 2 |
| Management Consulting Services | 8742 | 1 |
| Industrials | | |
| Crude Petroleum And Natural Gas | 1311 | 1 |
| General Contractors-nonresidential Buildings Other Than Industrial | 1542 | 1 |
| Highway And Street Construction Except Elevated Highways | 1611 | 3 |
| Water Sewer Pipeline And Communications And Power Line | 1623 | 5 |
| Heavy Construction Not Elsewhere Classified | 1629 | 2 |
| Plumbing Heating And Air-conditioning | 1711 | 2 |
| Electrical Work | 1731 | 4 |
| Floor Laying And Other Floor Work Not Elsewhere Classified | 1752 | 1 |
| Broadwoven Fabric Mills Manmade Fiber And Silk | 2221 | 1 |
| Carpets And Rugs | 2273 | 1 |
| Special Product Sawmills Not Elsewhere Classified | 2429 | 1 |
| Millwood, Veneer, Plywood & Structural Wood Members | 2430 | 1 |
| Millwork | 2431 | 1 |
| Wood Kitchen Cabinets | 2434 | 1 |
| Structural Wood Members Not Elsewhere Classified | 2439 | 1 |
| Prefabricated Wood Buildings And Components | 2452 | 2 |
| Office Furniture Except Wood | 2522 | 1 |
| Public Building And Related Furniture | 2531 | 2 |
| Furniture And Fixtures Not Elsewhere Classified | 2599 | 1 |
| Stationery Tablets And Related Products | 2678 | 1 |
| COMMERCIAL PRINTING | 2750 | 1 |
| Commercial Printing Gravure | 2754 | 1 |
| Commercial Printing Not Elsewhere Classified | 2759 | 1 |
| Blankbooks Looseleaf Binders And Devices | 2782 | 1 |
| Gaskets Packing And Sealing Devices | 3053 | 1 |
| Molded Extruded And Lathe-cut Mechanical Rubber Goods | 3061 | 1 |

continued on next page

Exhibit 5 **Global Industry Classification Standard (GICS) Codes** (continued)

| Industry | GICS code | Number of companies |
|---|---|---|
| Plastics Products Not Elsewhere Classified | 3089 | 1 |
| Pressed And Blown Glass And Glassware Not Elsewhere Classified | 3229 | 1 |
| Glass Products Made Of Purchased Glass | 3231 | 1 |
| Gypsum Products | 3275 | 2 |
| Abrasive Products | 3291 | 1 |
| Steel Pipe And Tubes | 3317 | 2 |
| Rolling Drawing And Extruding Of Copper | 3351 | 2 |
| Aluminum Rolling And Drawing Not Elsewhere Classified | 3355 | 1 |
| Nonferrous Die-castings Except Aluminum | 3364 | 1 |
| Primary Metal Products Not Elsewhere Classified | 3399 | 1 |
| Metal Shipping Barrels Drums Kegs And Pails | 3412 | 1 |
| Hand And Edge Tools Except Machine Tools And Handsaws | 3423 | 1 |
| Hardware Not Elsewhere Classified | 3429 | 2 |
| Plumbing Fixture Fittings And Trim | 3432 | 1 |
| Heating Equipment Except Electric And Warm Air Furnaces | 3433 | 3 |
| Fabricated Structural Metal | 3441 | 4 |
| Metal Doors Sash Frames Molding And Trim | 3442 | 3 |
| Fabricated Plate Work (boiler Shops) | 3443 | 2 |
| Prefabricated Metal Buildings And Components | 3448 | 2 |
| Metal Stampings Not Elsewhere Classified | 3469 | 1 |
| Ordnance And Accessories Not Elsewhere Classified | 3489 | 1 |
| Industrial Valves | 3491 | 3 |
| Fluid Power Valves And Hose Fittings | 3492 | 2 |
| Valves And Pipe Fittings Not Elsewhere Classified | 3494 | 1 |
| Miscellaneous Fabricated Wire Products | 3496 | 1 |
| Fabricated Metal Products Not Elsewhere Classified | 3499 | 2 |
| Engines & Turbines | 3510 | 1 |
| Steam Gas And Hydraulic Turbines And Turbine Generator Set Units | 3511 | 1 |
| Internal Combustion Engines Not Elsewhere Classified | 3519 | 1 |
| Farm Machinery And Equipment | 3523 | 4 |
| Lawn And Garden Tractors And Home Lawn And Garden Equipment | 3524 | 1 |
| Construction Machinery And Equipment | 3531 | 5 |
| Oil And Gas Field Machinery And Equipment | 3533 | 2 |
| Industrial Trucks Tractors Trailers And Stackers | 3537 | 2 |
| Power-driven Handtools | 3546 | 1 |
| Electric And Gas Welding And Soldering Equipment | 3548 | 1 |
| Food Products Machinery | 3556 | 3 |
| Special Industry Machinery Not Elsewhere Classified | 3559 | 5 |

| Industry | GICS code | Number of companies |
|---|---|---|
| PUMPS & PUMPING EQUIPMENT | 3561 | 1 |
| Pumps And Pumping Equipment | 3561 | 4 |
| Ball And Roller Bearings | 3562 | 2 |
| Air And Gas Compressors | 3563 | 1 |
| Industrial And Commercial Fans And Blowers And Air Purification | 3564 | 2 |
| Packaging Machinery | 3565 | 1 |
| Mechanical Power Transmission Equipment Not Elsewhere Classified | 3568 | 1 |
| General Industrial Machinery And Equipment Not Elsewhere | 3569 | 1 |
| Office Machines Not Elsewhere Classified | 3579 | 1 |
| Air-conditioning And Warm Air Heating Equipment And Commercial | 3585 | 2 |
| Fluid Power Cylinders And Actuators | 3593 | 1 |
| Fluid Power Pumps And Motors | 3594 | 2 |
| Industrial And Commercial Machinery And Equipment Not Elsewhere | 3599 | 2 |
| Motors And Generators | 3621 | 3 |
| Carbon And Graphite Products | 3624 | 1 |
| Relays And Industrial Controls | 3625 | 2 |
| Electrical Industrial Apparatus Not Elsewhere Classified | 3629 | 1 |
| Household Cooking Equipment | 3631 | 1 |
| Current-carrying Wiring Devices | 3643 | 1 |
| Commercial Industrial And Institutional Electric Lighting Fixtures | 3646 | 1 |
| Radio And Television Broadcasting And Communications Equipment | 3663 | 2 |
| Semiconductors And Related Devices | 3674 | 1 |
| Electronic Components Not Elsewhere Classified | 3679 | 1 |
| Miscellaneous, Electrical Machinery, Equipment & Supplies | 3690 | 1 |
| Electrical Machinery Equipment And Supplies Not Elsewhere | 3699 | 1 |
| Motor Vehicles And Passenger Car Bodies | 3711 | 5 |
| Truck And Bus Bodies | 3713 | 2 |
| Motor Vehicle Parts And Accessories | 3714 | 4 |
| Truck Trailers | 3715 | 1 |
| Aircraft | 3721 | 5 |
| Aircraft Engines And Engine Parts | 3724 | 2 |
| Aircraft Parts And Auxiliary Equipment Not Elsewhere Classified | 3728 | 7 |
| Ship Building And Repairing | 3731 | 1 |
| Railroad Equipment | 3743 | 5 |
| Guided Missiles And Space Vehicles | 3761 | 1 |
| Guided Missile And Space Vehicle Propulsion Units And Propulsion | 3764 | 1 |
| Search Detection Navigation Guidance Aeronautical And Nautical | 3812 | 4 |
| Automatic Controls For Regulating Residential And Commercial | 3822 | 1 |

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Exhibit 5 **Global Industry Classification Standard (GICS) Codes** (continued)

| Industry | GICS code | Number of companies |
|---|---|---|
| Industrial Instruments For Measurement Display And Control Of | 3823 | 4 |
| Instruments For Measuring And Testing Of Electricity And Electrical | 3825 | 1 |
| Measuring And Controlling Devices Not Elsewhere Classified | 3829 | 2 |
| Orthopedic Prosthetic And Surgical Appliances And Supplies | 3842 | 1 |
| Manufacturing Industries Not Elsewhere Classified | 3999 | 4 |
| Railroads Line-haul Operating | 4011 | 5 |
| Local Trucking Without Storage | 4212 | 1 |
| Trucking Except Local | 4213 | 14 |
| Local Trucking With Storage | 4214 | 1 |
| Courier Services Except By Air | 4215 | 1 |
| Deep Sea Foreign Transportation Of Freight | 4412 | 3 |
| Water Transportation Of Freight Not Elsewhere Classified | 4449 | 1 |
| Marine Cargo Handling | 4491 | 1 |
| Towing And Tugboat Services | 4492 | 1 |
| Air Transportation Scheduled | 4512 | 12 |
| Air Courier Services | 4513 | 1 |
| Transportation Services | 4700 | 1 |
| Arrangement Of Transportation Of Freight And Cargo | 4731 | 6 |
| Rental Of Railroad Cars | 4741 | 1 |
| Electric Services | 4911 | 2 |
| Electric And Other Services Combined | 4931 | 1 |
| Refuse Systems | 4953 | 8 |
| Wholesale-Lumber & Other Construction Materials | 5030 | 1 |
| Lumber Plywood Millwork And Wood Panels | 5031 | 1 |
| Roofing Siding And Insulation Materials | 5033 | 1 |
| Construction Materials Not Elsewhere Classified | 5039 | 2 |
| Professional Equipment And Supplies Not Elsewhere Classified | 5049 | 1 |
| Metals Service Centers And Offices | 5051 | 1 |
| Electrical Apparatus And Equipment Wiring Supplies And | 5063 | 1 |
| Hardware | 5072 | 2 |
| Warm Air Heating And Air-conditioning Equipment And Supplies | 5075 | 1 |
| Industrial Machinery And Equipment | 5084 | 2 |
| Industrial Supplies | 5085 | 1 |
| Printing And Writing Paper | 5111 | 1 |
| Stationery And Office Supplies | 5112 | 1 |
| Drugs Drug Proprietaries And Druggists' Sundries | 5122 | 1 |
| Wholesale-Chemicals & Allied Products | 5160 | 1 |
| Chemicals And Allied Products Not Elsewhere Classified | 5169 | 1 |

| Industry | GICS code | Number of companies |
|---|---|---|
| Lumber And Other Building Materials Dealers | 5211 | 1 |
| Automotive Dealers And Gasoline Service Stations | 5500 | 1 |
| Motor Vehicle Dealers (used Only) | 5521 | 1 |
| Investment Advice | 6282 | 1 |
| Offices Of Holding Companies Not Elsewhere Classified | 6719 | 1 |
| Venture Capital/Private Equity | 6771 | 1 |
| Patent Owners And Lessors | 6794 | 1 |
| Investors Not Elsewhere Classified | 6799 | 1 |
| Linen Supply | 7213 | 1 |
| Advertising Not Elsewhere Classified | 7319 | 1 |
| Credit Reporting Services | 7323 | 2 |
| Disinfecting And Pest Control Services | 7342 | 1 |
| Building Cleaning And Maintenance Services Not Elsewhere | 7349 | 2 |
| Services-Miscellaneous Equipment Rental & Leasing | 7350 | 1 |
| Heavy Construction Equipment Rental And Leasing | 7353 | 1 |
| Equipment Rental And Leasing Not Elsewhere Classified | 7359 | 9 |
| Employment Agencies | 7361 | 4 |
| Help Supply Services | 7363 | 5 |
| Computer Programming Services | 7371 | 3 |
| Computer Integrated Systems Design | 7373 | 1 |
| Computer Processing And Data Preparation And Processing Services | 7374 | 2 |
| Security Systems Services | 7382 | 1 |
| Business Services Not Elsewhere Classified | 7389 | 2 |
| Truck Rental And Leasing Without Drivers | 7513 | 1 |
| Passenger Car Rental | 7514 | 2 |
| Automobile Parking | 7521 | 1 |
| Repair Shops And Related Services Not Elsewhere Classified | 7699 | 2 |
| Legal Services | 8111 | 1 |
| Schools And Educational Services Not Elsewhere Classified | 8299 | 1 |
| Engineering Services | 8711 | 7 |
| Accounting Auditing And Bookkeeping Services | 8721 | 1 |
| Management Consulting Services | 8742 | 5 |
| Business Consulting Services Not Elsewhere Classified | 8748 | 1 |
| **Information Technology** | | |
| Miscellaneous Publishing | 2741 | 1 |
| Commercial Printing Not Elsewhere Classified | 2759 | 1 |
| Plastics Materials Synthetic Resins And Nonvulcanizable Elastomers | 2821 | 1 |
| Pressed And Blown Glass And Glassware Not Elsewhere Classified | 3229 | 1 |

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Exhibit 5 **Global Industry Classification Standard (GICS) Codes** (continued)

| Industry | GICS code | Number of companies |
|---|---|---|
| Drawing And Insulating Of Nonferrous Wire | 3357 | 1 |
| Ammunition Except For Small Arms | 3483 | 1 |
| Special Industry Machinery Not Elsewhere Classified | 3559 | 3 |
| Electronic Computers | 3571 | 6 |
| Computer Storage Devices | 3572 | 1 |
| Computer Peripheral Equipment Not Elsewhere Classified | 3577 | 3 |
| Calculating And Accounting Machines Except Electronic Computers | 3578 | 5 |
| Household Audio And Video Equipment | 3651 | 1 |
| Telephone And Telegraph Apparatus | 3661 | 4 |
| Radio And Television Broadcasting And Communications Equipment | 3663 | 10 |
| Communications Equipment Not Elsewhere Classified | 3669 | 6 |
| Printed Circuit Boards | 3672 | 5 |
| Semiconductors And Related Devices | 3674 | 46 |
| Electronic Coils Transformers And Other Inductors | 3677 | 1 |
| Electronic Connectors | 3678 | 1 |
| Electronic Components Not Elsewhere Classified | 3679 | 2 |
| Electrical Machinery Equipment And Supplies Not Elsewhere | 3699 | 1 |
| Search Detection Navigation Guidance Aeronautical And Nautical | 3812 | 2 |
| Industrial Instruments For Measurement Display And Control Of | 3823 | 4 |
| Totalizing Fluid Meters And Counting Devices | 3824 | 1 |
| Instruments For Measuring And Testing Of Electricity And Electrical | 3825 | 4 |
| Measuring And Controlling Devices Not Elsewhere Classified | 3829 | 3 |
| Photographic Equipment And Supplies | 3861 | 1 |
| Travel Agencies | 4724 | 1 |
| Telephone Communications Except Radiotelephone | 4813 | 1 |
| Telegraph And Other Message Communications | 4822 | 1 |
| Cable And Other Pay Television Services | 4841 | 1 |
| Communications Services Not Elsewhere Classified | 4899 | 2 |
| Computers And Computer Peripheral Equipment And Software | 5045 | 3 |
| Electrical Apparatus And Equipment Wiring Supplies And | 5063 | 1 |
| Electronic Parts And Equipment Not Elsewhere Classified | 5065 | 2 |
| Industrial Supplies | 5085 | 1 |
| Catalog And Mail-order Houses | 5961 | 5 |
| Functions Related To Depository Banking Not Elsewhere Classified | 6099 | 2 |

| Industry | GICS code | Number of companies |
|---|---|---|
| Personal Credit Institutions | 6141 | 2 |
| Miscellaneous Personal Services Not Elsewhere Classified | 7299 | 1 |
| Advertising Not Elsewhere Classified | 7319 | 2 |
| Computer Programming Services | 7371 | 9 |
| Prepackaged Software | 7372 | 89 |
| Computer Integrated Systems Design | 7373 | 19 |
| Computer Processing And Data Preparation And Processing Services | 7374 | 20 |
| Information Retrieval Services | 7375 | 13 |
| Computer Related Services Not Elsewhere Classified | 7379 | 4 |
| Business Services Not Elsewhere Classified | 7389 | 16 |
| Motion Picture And Video Tape Production | 7812 | 1 |
| Services Allied To Motion Picture Production | 7819 | 1 |
| Accounting Auditing And Bookkeeping Services | 8721 | 1 |
| Management Consulting Services | 8742 | 2 |
| Business Consulting Services Not Elsewhere Classified | 8748 | 1 |
| **Materials** | | |
| Iron Ores | 1011 | 1 |
| Copper Ores | 1021 | 1 |
| Gold Ores | 1041 | 1 |
| Silver Ores | 1044 | 1 |
| Bitominous Coal & Lignite Mining | 1220 | 1 |
| Coal Mining Services | 1241 | 1 |
| Mining And Quarrying Of Nonmetallic Minerals, Except Fuels | 1400 | 1 |
| Crushed And Broken Limestone | 1422 | 1 |
| Crushed And Broken Stone Not Elsewhere Classified | 1429 | 1 |
| Chemical And Fertilizer Mineral Mining Not Elsewhere Classified | 1479 | 1 |
| Sawmills And Planing Mills General | 2421 | 1 |
| Wood Kitchen Cabinets | 2434 | 1 |
| Wood Preserving | 2491 | 1 |
| Paper Mills | 2621 | 6 |
| Paperboard Mills | 2631 | 1 |
| Corrugated And Solid Fiber Boxes | 2653 | 1 |
| Fiber Cans Tubes Drums And Similar Products | 2655 | 1 |
| Packaging Paper And Plastics Film Coated And Laminated | 2671 | 3 |
| Coated And Laminated Paper Not Elsewhere Classified | 2672 | 1 |
| Die-cut Paper And Paperboard And Cardboard | 2675 | 1 |
| Manifold Business Forms | 2761 | 1 |
| Alkalies And Chlorine | 2812 | 2 |
| Industrial Gases | 2813 | 1 |

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Exhibit 5 **Global Industry Classification Standard (GICS) Codes** (continued)

| Industry | GICS code | Number of companies |
|---|---|---|
| Inorganic Pigments | 2816 | 3 |
| Industrial Inorganic Chemicals Not Elsewhere Classified | 2819 | 5 |
| Plastics Materials Synthetic Resins And Nonvulcanizable Elastomers | 2821 | 10 |
| Cellulosic Manmade Fibers | 2823 | 1 |
| Perfumes Cosmetics And Other Toilet Preparations | 2844 | 1 |
| Paints Varnishes Lacquers Enamels And Allied Products | 2851 | 4 |
| Cyclic Organic Crudes And Intermediates And Organic Dyes And | 2865 | 2 |
| Industrial Organic Chemicals Not Elsewhere Classified | 2869 | 4 |
| Nitrogenous Fertilizers | 2873 | 3 |
| Phosphatic Fertilizers | 2874 | 2 |
| Pesticides And Agricultural Chemicals Not Elsewhere Classified | 2879 | 3 |
| Adhesives And Sealants | 2891 | 2 |
| Carbon Black | 2895 | 1 |
| Chemicals And Chemical Preparations Not Elsewhere Classified | 2899 | 6 |
| Petroleum Refining | 2911 | 1 |
| Lubricating Oils And Greases | 2992 | 2 |
| Plastics Foam Products | 3086 | 1 |
| Plastics Products Not Elsewhere Classified | 3089 | 2 |
| Glass Containers | 3221 | 2 |
| Concrete Products Except Block And Brick | 3272 | 1 |
| Ready-mixed Concrete | 3273 | 1 |
| Lime | 3274 | 1 |
| Steel Works Blast Furnaces (including Coke Ovens) And Rolling | 3312 | 7 |
| Cold-rolled Steel Sheet Strip And Bars | 3316 | 2 |
| Steel Pipe And Tubes | 3317 | 2 |
| Primary Smelting And Refining Of Copper | 3331 | 1 |
| Primary Production Of Aluminum | 3334 | 3 |
| Primary Smelting And Refining Of Nonferrous Metals Except Copper | 3339 | 2 |
| Secondary Smelting And Refining Of Nonferrous Metals | 3341 | 1 |
| Aluminum Extruded Products | 3354 | 1 |
| Metal Cans | 3411 | 3 |
| Metal Shipping Barrels Drums Kegs And Pails | 3412 | 1 |
| Lumber Plywood Millwork And Wood Panels | 5031 | 1 |
| Metals Service Centers And Offices | 5051 | 2 |
| Construction And Mining (except Petroleum) Machinery And | 5082 | 1 |
| Scrap And Waste Materials | 5093 | 1 |
| Chemicals And Allied Products Not Elsewhere Classified | 5169 | 1 |
| Shoe Stores | 5661 | 1 |
| Commercial Physical And Biological Research | 8731 | 1 |
| **Real Estate** | | |
| General Warehousing And Storage | 4225 | 1 |
| Flowers Nursery Stock And Florists' Supplies | 5193 | 1 |
| Loan Brokers | 6163 | 1 |
| Real Estate | 6500 | 1 |
| Lessors Of Real Property Not Elsewhere Classified | 6519 | 2 |
| Real Estate Agents And Managers | 6531 | 21 |
| Land Subdividers And Developers Except Cemeteries | 6552 | 4 |
| Venture Capital/Private Equity | 6771 | 3 |
| Real Estate Investment Trusts | 6798 | 151 |
| Hotels And Motels | 7011 | 1 |
| Services-Miscellaneous Business Services | 7380 | 1 |
| Facilities Support Management Services | 8744 | 1 |
| Telecommunication Services | | |
| Radiotelephone Communications | 4812 | 3 |
| Telephone Communications Except Radiotelephone | 4813 | 12 |
| Telegraph And Other Message Communications | 4822 | 1 |
| Communications Services Not Elsewhere Classified | 4899 | 4 |
| Electric Services | 4911 | 1 |
| Computer Processing And Data Preparation And Processing Services | 7374 | 1 |
| Information Retrieval Services | 7375 | 1 |
| **Utilities** | | |
| Electric Services | 4911 | 30 |
| Natural Gas Transmission And Distribution | 4923 | 2 |
| Natural Gas Distribution | 4924 | 10 |
| Electric And Other Services Combined | 4931 | 11 |
| Gas And Other Services Combined | 4932 | 2 |
| Combination Utilities Not Elsewhere Classified | 4939 | 1 |
| Water Supply | 4941 | 12 |
| Irrigation Systems | 4971 | 1 |
| Liquefied Petroleum Gas (bottled Gas) Dealers | 5984 | 1 |

*Source:* The Conference Board, 2018.

APPENDIX

# Recommendations to Public Companies

This Appendix contains a list of practical recommendations issued in 2010 by The Conference Board Expert Committee on Shareholder Activism. The recommendations are primarily intended for corporate directors, as it is the board, as part of its monitoring responsibilities, that fulfills a crucial role in setting corporate strategy and ensuring that the organization's finances and structure are suited to meet the business potentials.

## Understanding Shareholders

### I. Know who your shareholders are

I. A **Monitor trading activities** Directors should ensure that the company relies on a sound process to monitor securities holdings, including shares, fixed-income, and convertible products, as well as (to the extent possible) derivative instruments. At a minimum, the company should regularly review public filings by investors and available lists of beneficial owners. However, the thoroughness of the monitoring process should be elevated based on market indicators of abnormal shareholder activities, including unusually high trading volumes and share price volatility, as well as the sudden changes in the percentage of short interests. In these cases, the company can consider availing itself of securities surveillance services, even though it is recommended that—before engaging such providers—companies research the accuracy of their services and obtain sufficient assurance that they are conducted lawfully and ethically.

I. B **Obtain insights from large investors** Companies should maintain proactive relations with the investment community. Dialogue with large institutional shareholders can be helpful to ensure the company learns early about potential shareholder concerns and critical changes in its ownership base. Securities holding intelligence gathered from public filings and surveillance service reports could therefore be supplemented and corroborated with nonpublic information the company can access through ongoing discussions with investors, including information on group voting arrangements and other understandings among shareholders acting in concert. At the same time, the company should remain aware that any supplemental information acquired through these informal channels might be anecdotal or solely based on rumors.

I. C **Commission perception studies** Furthermore, regular outreach to the investment community can help management recognize a perceived valuation gap between the stock price and the company's intrinsic value, which is often the impetus for attracting shareholder activists. If such a valuation gap exists, the board may consider commissioning a perception study as a way to gain better insight into the issues causing the discrepancy. Findings from the study can be used as the basis for crafting a communication plan intended to close the valuation gap and reduce exposure to activism.

I. D **Expect regular reporting from management** The board (whether as a whole or acting through a committee or designated director) should be provided with regular reports on important shareholder intelligence, such as abnormal shareholder activity or a material change in the ownership of the company. As appropriate, directors should meet with senior executives to discuss the implications of these changes and trends.

## II. Distinguish shareholder types and investment strategies

II. A **Compile investor profiles** The board should ensure that management maintains profiles of any private equity groups, hedge funds, and other private pools of capital with material investments in the company's securities. This normally involves management seeking an understanding of the background and the specific investment strategies pursued by such entities, including: (i) prior investment decisions and current portfolio composition; (ii) sources of capital and redemption practices; and (iii) fund managers' modes of cooperation, time horizon, history of activism, compensation structure and performance targets. This type of information can be gathered from a variety of sources, including regulatory filings, public statements by fund managers or other representatives, specialized news services, press logs, and advisers experienced in shareholder activism.

II. B **Learn about fund structures and investment tactics** Management should become knowledgeable about the tactics and expedients activists may seek to use to advance investor arguments for change in portfolio companies (e.g., shareholder resolutions, proxy fights, shareholder suits, stock lending/empty voting techniques, "wolf packs," etc.). Case law and regulatory developments that might influence activist funds' future behaviors should also be considered. As necessary, directors should expect management to be familiar with the structure of activist funds and their performance drivers and recognize hybrid investment vehicles pursuing alternative investment strategies.

II. C **Learn about mainstream and tagalong investors** Companies should be aware of how mutual funds and other (more passive) mainstream shareholders vote on certain issues, so to anticipate the possible reliance by activists on such additional voting support. Similarly, senior management should identify "tagalong" investors likely to merely replicate activist funds' investment decisions, as they may also have an impact on the outcome of a shareholder meeting.

### III. Talk to shareholders

III. A **Explore new forms of investor engagement** Within the parameters of applicable laws and regulations, and in consultation with their legal advisers, companies should actively pursue new forms of engagement with the investment community. Practices that should be considered include meeting with representatives of large investors, participating in investor conferences, and instituting board sessions to review material communications received from shareholders. A dialogue with retirement funds and other long-term institutional investors may be especially important, as their decision to ally with activist hedge funds may be critical to the development of an activism campaign. Directors and managers should make certain that their dialogue with such institutions includes those responsible for governance oversight of portfolio companies and for voting proxies.

III. B **Maintain excellent relationships with other industry professionals** Companies should monitor their governance and credit ratings and establish a durable reputation for excellence in corporate governance and creditworthiness. For this purpose, companies should consider engaging in constructive dialogue with proxy advisers, rating agencies, and other shareholding groups—within the parameters of applicable laws and regulations governing corporate disclosures to and communications with the public.

III. C **Enhance corporate governance disclosure** In public disclosure documents and other investor relations strategies, companies should consider explicitly addressing sensitive governance issues that may resonate with activist investors. In particular, companies may wish to clarify executive remuneration practices, board and executive stock ownership guidelines, risk management procedures, environmental initiatives, and their leadership succession planning process.

## Assessing gaps and vulnerabilities

### IV. Evaluate exposure to activism

IV. A **Identify critical issues** Companies should proactively develop (either in-house or with the assistance of outside experts) an inventory of strategic, operational, financial, or governance matters that may single out the company as a target for activist investors. The inventory should include any anticipated extraordinary corporate events that could trigger activists' initiatives (e.g., the announcement of a large acquisition, material revisions to the executive compensation policy, or the issuance of a large number of new shares).

IV. B **Assign senior management responsibilities** To facilitate this process, the board of directors should expect senior financial executives to bring to its attention those financial conditions (e.g., a substantial cash balance or a favorable debt-to-equity ratio) that could make the company attractive to corporate activists (e.g., because it could be appealing as a possible target for a takeover initiative). Similarly, the company should consider designating a chief risk officer with the responsibility to assess and regularly report to the board on the company's ability to achieve its strategic goals, in light of current economic and market conditions and based on the organization's tolerance for risk. Finally, the company should consider appointing a corporate governance officer who would report directly to the nominating/governance committee or the full board on emerging standards and the organization's alignment with what may be considered by the activist community to be best practices.

IV. C **Validate major financial decisions** As a preventive measure, companies should renew their focus on financial performance and be prepared to articulate their capital availability and liquidity positions vis-à-vis strategic goals. Especially where excess cash is available, management should be in a position to articulate its strategy for retaining that cash, reinvesting it, or returning it to shareholders through special dividend payout or share repurchases.

IV. D **Reassess strategic goals** Similarly, board members should periodically reassess their business' strategic goals in light of evolving macroeconomic trends affecting the industry and the geographic markets where the company operates. As part of its ongoing efforts to monitor the business portfolio, the board should receive reports from management on any underperforming assets that may not be fully valued in the existing corporate structure or that may otherwise impair the stock price. When prudent, directors should consider divesting such assets to free liquidity and focus on the long-term potentials of the business. Board members should also receive reports from management on any opportunities for strategic acquisitions that the company may want and be in a position to seize.

IV. E **Remain abreast of emerging governance standards** Boards should understand the rationale behind emerging governance standards as well as practices arising from recent proxy seasons. Similarly, directors should be familiar with voting policies supported by proxy voting advisers and major shareholder-interest groups and discuss with senior managers the company's position with respect to such issues. As part of their active oversight responsibilities and subject to their business judgment, directors should encourage voluntary changes and corrections that may serve to avoid the unnecessary distractions resulting from becoming a target. Furthermore, ongoing director education programs relating to evolving practices and effective shareholder engagement techniques should be built into the board agenda.

IV. F **Explain departures from best practices** Companies should compare their governance practices with those of their peer group and others to make themselves aware of, and assess, any meaningful differences. If the board chooses to depart materially from standards that are widely accepted among its peers, such a decision should be appropriately communicated to the investment community. In particular, directors should review any policy that may foster the perception of board or management entrenchment and stand in the way of garnering institutional support or receiving third-party proxy adviser vote recommendations.

## V Remain open-minded about change

V. A **Understand the rationale of activist requests** The company should not assume that requests for change made by activist shareholders always reflect a hostile orientation or a merely speculative, short-term agenda. Instead, directors should remain open-minded and review significant requests in light of the company's current strategy, industry benchmarks, reports from financial and governance analysts, and the activist profile and track record. Directors should be prepared to critically analyze and discuss management's position on significant requests. Ultimately, the decision of whether to take action in response to a request should be based on the long-term interest of all shareholders.

V. B **Consider meeting with the activist representatives** To have a full understanding of investors' intentions and in an attempt to reach a middle ground, the company should consider meeting with representatives of activist shareholders. The decision as to whether both management and directors attend any such meeting should be based on all the relevant circumstances. Face-to-face meetings may be appropriate even if the company leans toward rejecting the request. In the case of requests submitted in the form of shareholder proposals, the company should be aware that voting results on proposals are diligently monitored by many fellow activists and that, as a matter of policy, MSCI and other proxy voting advisory groups recommend a withhold vote when a company fails to be sufficiently responsive to a majority-approved proposal. The company should consult with legal counsel on regulatory restraints regarding shareholder communications, including compliance with Regulation FD and insider trading rules. In certain situations, it may be appropriate to request the activist investor to enter a confidentiality agreement.

## Responding to Requests for Change

### VI. Develop a response strategy

VI. A **Adopt an actionable response strategy** Board members and senior executives should agree to an actionable response strategy if the company receives a significant request from an activist shareholder. In particular, a carefully crafted response strategy should be available for any situation in which the request could escalate to a proxy solicitation or a lawsuit, or when the company believes that the activist might be acting in concert with fellow investors or might receive their ultimate support. In formulating the strategy, the company should retain advice, as appropriate, from specialists familiar with matters of shareholder activism. Ultimately, plans to resist or concede should be considered in light of shareholder vote projections prepared by the company's proxy solicitor. In many cases, merely ignoring the activist is unlikely to be successful and can jeopardize the company's long-term strategy.

VI. B **Establish a dedicated team** Boards should become confident that management is fully equipped to effectively implement the response strategy to which the company has agreed. For this purpose, boards may encourage the formation of a special execution team composed of internal and external specialists, including, as circumstances warrant: finance officers, compliance and governance officers, investor relations and communication experts, general counsel and outside legal counsel, investment bankers, and proxy solicitors. The team should be entrusted with a protocol of actions to be initiated immediately after the response strategy has been finalized.

VI. C **Maintain effective internal communications** Especially when an activist aims at obtaining board representation, the company often operates in crisis-management mode, and communication between board members and senior executives is crucial. Directors should expect to be kept informed of developments. Under no circumstances should management execute a response strategy inconsistent with one endorsed by the board.

VI. D **Develop a coherent communication message** To clearly communicate its decision regarding the activist request, the company should seek to develop a sound and coherent message that will resonate not only with the activist shareholder, but also in the market in general. The message should highlight whether the company will be implementing the requested changes and why this decision is best suited to pursue shareholder value creation. If the company agreed to a settlement discussion with activists for the purpose of correcting the strategic direction or amending financial- or governance-related vulnerabilities, the message should clearly state the rationale for the negotiated solution. To ensure that the response or its forms of dissemination do not violate any applicable laws or regulations, the implementation team should retain appropriate legal advice. Also, to provide consistency in the dissemination of the response, the implementation team should assign ultimate communication responsibilities to a leader who can act as the spokesperson for the company.

VI. E **Consider other stakeholders** Since an activism campaign may constitute a serious reputation risk for a business, the company should consider seeking the support of its key stakeholders (including employees, customers, suppliers, and the local communities where the business operates). This can be achieved by ensuring that the motivation for the response underscores not only the company's value proposition as an investment, but also, as appropriate, the extent to which it protects the legitimate interests of other constituents. Any public statement should be carefully evaluated so that it does not impair the company's standing in the business community and among competitors, as well as its ability to attract and retain talent.

VI. F **Maintain good media relations** Considering that some activist investors may use public criticism as a tactic to pursue their objectives, the company's communication experts should identify, within the parameters of applicable laws and regulations, the most effective sources for disseminating important information (including local and national media, web postings, blogs, and social media) and maintain good relations with these key media groups and publicity intermediaries.

VI. G **Be careful in expressing public criticism** Corporate leaders should be careful not to personalize shareholder concerns or dismiss them out of hand. If, after review and analysis, the company concludes that the activist requests contain deficiencies or inaccuracies or are motivated by speculative intentions, these arguments should be expressed methodically and readily supported by factual information. By becoming publicly hostile, the company may bring unwanted attention to the campaign and facilitate the activist's effort to gain support from other investors.

## VII. Update defense measures

VII. A **Review organizational documents** As part of the response strategy, for those situations in which management and directors conclude that activists' requests are not in the shareholders' best interest, companies should have in place defense plans against proxy contests or hostile acquisitions. Board members should support management in the advance preparation of such plans to ensure preparedness and flexibility in addressing hostile initiatives. In particular, the company should review and assess the effectiveness of measures against unsolicited takeover proposals contained in its charter, bylaws, and other organizational documents, including shareholder rights agreements, advance-notice bylaws, and other provisions on shareholders' right to call special meetings or act by written consent. Given the complexity and implications of these matters, board members should consider retaining appropriate legal advice before revising organizational documents and structural measures of defense.

VII. B **Avoid the perception of entrenchment tools** To avoid the possible adverse consequences with MSCI and other proxy voting advisory firms, defense plans should be evaluated against market practice within the company's peer group to assess the extent to which they may be viewed as entrenchment tools. Today, many shareholder groups consider supermajority vote requirements, classified board structures, and broadly applicable "poison pills" as a departure from corporate governance best practices. In each case, however, it is the board's duty to determine what defenses may be appropriate for the company.

VII. C **Be mindful of current extraordinary circumstances** In light of the current extraordinary circumstances faced by many organizations, the company should consider updating advance notice bylaws and shareholder rights plans to address instances of undisclosed derivative/hedging positions (such as cash-settled swaps) or empty voting (i.e., the systematic stock borrowing by an activist investor for the sole purpose of amassing voting rights and influencing the outcome of a shareholder meeting) or to provide temporary protection from the vulnerability resulting from depressed stock valuations. In addition, if the company becomes aware of any such instances, it should discuss the appropriate steps to take to inform other stakeholders.

VII. D **Notify enforcement agencies** In those situations in which there is sufficient evidence that the activist shareholder is operating under an undisclosed understanding with a group of investors or has otherwise violated applicable securities laws, companies should consider notifying the regulatory agencies and be prepared to supplement a public enforcement action by litigating the matter. The board should retain appropriate legal counsel to weigh the costs and benefits of either decision.

*Source:* Matteo Tonello and Damien J. Park, *The Shareholder Activism Report: Best Practices and Engagement Tools for Public Companies*, The Conference Board, March 2010, p. 12.

## About the Author

**Matteo Tonello** is managing director of corporate leadership at The Conference Board. In his role, Tonello advises members of The Conference Board on issues of corporate governance, risk management, corporate sustainability and citizenship. He regularly participates as a speaker and moderator in educational programs on best practices and conducts analyses and research in collaboration with leading corporations, institutional investors, and professional firms.

Tonello was named by the National Association of Corporate Directors to the Directorship 100, a list of the most influential experts in corporate governance in the United States. He is a member of the Network for Sustainable Financial Markets and serves on Deutsche Telekom's Advisory Panel on Corporate Culture and on the Governance Committee of the Institute of Chartered Accountants of England and Wales (ICAEW). Previously, he has served on the Advisory Council of the Sustainability Accounting Standards Board (SASB). He also was the co-chair of The Conference Board Expert Committee on Shareholder Activism and a member of the technical advisory board to The Conference Board Task Force on Executive Compensation.

Tonello is the author of several publications, including *Corporate Governance Handbook: Legal Standards and Board Practices* and annual benchmarking reports on director compensation and board practices, CEO and executive compensation practices, CEO succession practices, proxy voting, and corporate sustainability practices. Prior to joining The Conference Board, he practiced corporate law at Davis Polk. He is a graduate of Harvard Law School and the University of Bologna, and holds a Ph.D. from the Sant'Anna School of Advanced Studies at the University of Pisa.

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