

Morgan Lewis

# 2022 PROXY SEASON: A RECAP OF 2021 AND TRENDS TO WATCH

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# Presenters



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# Overview

- I. Executive Compensation Hot Topics
- II. Virtual Shareholder Meeting 2022 Recap
- III. Annual Proxy and 10-K: Disclosure Trends
- IV. Shareholder Proposals
- V. Proxy Advisors and Institutional Investors
- VI. Selected SEC Developments





# Executive Compensation Hot Topics



# Overview of Hot Topics

- Equity Plan Approval
- Say-on-Pay
- Glass Lewis and ISS Compensation Policy Highlights
- COVID-19–Related Compensation Disclosures

# Equity Plans: What Happened in 2021?

- According to ISS, the prevalence of equity plan proposals rose by 9.5% in 2021, in part due to SPAC activity. The number of proposals continues to increase since a sharp drop in proposals in 2018 on account of the repeal of the performance-based compensation exception under Section 162(m).
- The vast majority of companies that put up equity plans for shareholder approval have seen success in 2021. According to ISS, average support for equity plan proposals was 89.5% of votes cast in the 2021 proxy season, while ISS only recommended support for 71% of the proposals it analyzed. The equity plan proposal failure rate decreased to 0.8%, down from 1.3% in 2020.
- In the proposed plans, the prevalence of evergreen provisions (automatic share replenishment) increased by 30%. Provisions allowing for repricing of underwater options increased slightly, while the prevalence of provisions related to cash buyouts remained flat.

# Equity Plans: Refresher on the ISS Equity Scorecard

- For the 2021 proxy season, ISS increased the threshold passing score from 55 to 57 points for its S&P 500 model and from 53 to 55 points for its Russell 3000 model.
- ISS considers the following three “pillars” in assessing omnibus equity plans:
  - 45 Points: Plan cost (i.e., dilution and overhang)
  - 38 Points: Grant practices (i.e., burn rate relative to peer companies, CEO vesting terms)
  - 17 Points: Plan features (e.g., minimum vesting periods, extent to which vesting can be accelerated on a discretionary basis, liberal share recycling, change-in-control provisions, dividends paid on unvested awards)



# Equity Plans: Refresher on the ISS Equity Scorecard

- For the 2022 proxy season
  - There are no changes to the pillars, weightings or passing scores
  - Introduced the concept of a “Value Adjusted Burn Rate”
    - Is intended to use more accurate measures for the value of equity-based awards
    - Will be displayed for informational purposes only for 2022 meetings
      - Expected to replace the current burn rate factor for beginning with meetings on or after February 1, 2023
- Strategies when faced with a negative ISS recommendation:
  - Shareholder engagement, focusing on largest institutional holders
  - Well-drafted supplemental proxy material can be very effective to rebut ISS’s position (particularly if Glass Lewis has expressed support for the plan)

# Equity Plans: What's Next?

- Plan cost is the most heavily weighted pillar. With increasing equity values, ISS and Glass Lewis will likely give a positive recommendation if the share price has increased for months leading up to the proxy filing, and the value of the shares requested under the equity plan results in a low plan cost and dilution below the designated cap.
- If stock prices have been depressed in an industry or for individual companies, companies may need to include more restrictive plan features to gain more points for that pillar to offset a high plan cost.
- Equity clawback policies can help companies earn points in the grant practices pillar without reducing equity grants.
- For plan provisions such as an evergreen feature, option repricing, or buyout without shareholder approval, a liberal change-in-control definition will be an automatic “overriding” factor, resulting in an ISS recommendation against the equity plan.

# Say on Pay

- As in 2020 and 2019, the vast majority of companies' Say on Pay (SoP) proposals passed, but the median support level declined to 95.1%, an all-time low since mandatory votes began in 2011.
- Despite continued overall passage rates, ISS has noted that the percentage of failed SoP proposals has increased to a new high of 2.6% in 2021, up from 2.1% in 2020
- 2021 has seen the percentage of SoP proposals with support rates below 80% remain essentially flat
  - 80% is significant, as this is the level at which shareholders and proxy advisors will scrutinize compensation committee members for their oversight of the compensation program and responsiveness to investor concern
- Reasons for failure include:
  - Modification of performance targets; targets that are not sufficiently rigorous
  - Lack of quantifiable performance metrics
  - Payment of cash severance on retirement in lieu of forfeited equity
  - Mega-grants covering current and future years without adequate rationale



# Compensation-Related Shareholder Proposals

- Compensation-related shareholder proposals in 2021 addressed:
  - Integration of ESG metrics into compensation programs
    - Metrics include sustainability, data privacy, human resources, customer service, employee health and safety, and workforce diversity, among others
  - Share retention policies
  - Clawbacks
  - Accounting practices
  - Severance and change in control payments
  - Equity award vesting

# ISS Compensation Policies

- Starting in 2020, ISS began recommending against board members who are responsible for nonemployee director pay if there is a pattern of excessive pay over two or more years without a compelling rationale.
  - In the 2021 proxy season, ISS flagged 107 companies in the Russell 3000 Index, up from 85 companies in the prior year.
  - Pay outliers will generally be those directors whose pay exceeds the top 2% of all comparable directors (based on index and industry median)
  - If director pay is determined to be an outlier, ISS will perform a qualitative test to analyze factors that may mitigate concerns and disclosure. Almost 75% of the flagged companies were deemed to have provided a reasonable explanation.
- Benchmarking and fulsome director compensation disclosure is important
- The following circumstances, if adequately explained, will typically mitigate ISS concern:
  - One-time onboarding grants for new directors
  - Payments related to corporate transactions or special circumstances (such as special committee service)

# ISS Compensation Policies

- ISS expects fulsome disclosure of payments made to terminating executives, stating that severance pay is not appropriate for executives who voluntarily resign or retire
  - Clear and direct disclosure about the nature of an executive's termination
    - Disclosure as to how the board of directors determined to pay severance to the executive, including whether there were any discretionary enhancements
  - Identify the type of termination (termination of employment without cause/resignation for good reason) and the applicable agreement provision under which severance payments were made



# Glass Lewis Compensation Policies

- Responsiveness to Low Support for Say-on-Pay
  - Low support equates to an opposition of 20% or more (as opposed to ISS threshold of more than 30%)
  - Appropriate responses to such low shareholder support include:
    - Engaging with large shareholders to identify concerns
    - Where reasonable, implementing changes that directly address those concerns within the company's compensation program

# Glass Lewis Compensation Policies

- Contractual Payments
  - In evaluating SOP proposals, generally disfavor contractual agreements that provide:
    - Inappropriate severance entitlements
    - Excessive or inadequately explained sign-on arrangements
    - Multiyear guaranteed awards
  - Also disfavor the extension of such entitlements through renewed or revised employment agreements

# Glass Lewis Compensation Policies

- Other Compensation Matters
  - Glass Lewis will review any significant changes or modifications, including post-fiscal year end changes and one-time awards, particularly where the changes touch upon issues that are material to Glass Lewis recommendations
  - Excessively broad definitions of “change in control” in employment agreements are potentially problematic, as they may lead to situations in which executives receive additional compensation where no meaningful change in status or duties has occurred

# COVID-19–Related Compensation Disclosures

- **ISS position**

- This is the third proxy season and second year of executive pay proxy disclosure during the pandemic.
- Investors believe that 2021 boards should have returned to pre-pandemic annual incentive plan structures such that they expect for plans to use objective and transparent metrics using predetermined goals. ISS will view mid-year changes to metrics and targets, and discretionary programs negatively.
- If adjustments are warranted, ISS encourages companies to provide clearly articulated, contemporaneous disclosure of the rationale for adjusting bonuses and performance metrics, including specific pandemic-related challenges and how the challenges resulted in the original program becoming obsolete or unattainable.
- Consistent with their pre-pandemic policy, the rationale for any one-time awards should be adequately disclosed. Simply citing retention concerns will not be adequate. Vesting should be performance-based and long-term. Repeated use of one-time awards will be viewed as particularly problematic.

# COVID-19–Related Compensation Disclosures

- **Glass Lewis position:**

- Focused on pay-for-performance and do not expect any macro-economic factors to have a drastic impact on their model. Will continue to exercise a holistic approach and view pay-for-performance in context of a qualitative assessment of the company and its compensation program.
- Unless the company can show strong performance on a relative and absolute basis, any short-term increases and above target payouts will be highly scrutinized. Companies must disclose the rationale.
- Will consider certain factors in evaluating one-off awards, such as the size of the award relative to peer levels and the company's historic pay levels, whether awards are subject to additional performance and vesting criteria, the company's history of one-off grants and reasons why their regular programs could not be redesigned to adequately compensate executives.

# 2022 Proxy Season Preview

- Evergreen provisions in equity plans
- Incentive plan adjustments and one-time awards
- Performance metrics based on non-financial ESG factors
- Severance payments for executives retiring or resigning
- Enhanced board diversity disclosure
  - In 2021, ISS research reports highlighted boards of companies in the Russell 3000 and S&P 1500 that lack racial and ethnic diversity (or lack of such disclosure)
  - Starting in 2022, for company boards with no apparent racial or ethnic diversity, ISS will recommend a vote against the chair of the nominating committee
  - Starting in 2022, for company boards that do not have gender diverse directors, Glass Lewis will recommend a vote against the chair of the nominating committee
  - Nasdaq board diversity rule

# Nasdaq Board Diversity Rule

- Beginning in 2022, Nasdaq will require listed companies to have:
  - One director who self-identifies as female (regardless of the director's designated sex at birth)
  - One director who self-identifies as an underrepresented racial or ethnic minority or LGBTQ+
- Companies must provide a board diversity matrix disclosing self-identified board diversity by the later of Aug. 8, 2022 or the date of its annual proxy for 2022
- Listed companies must comply with the new Nasdaq diversity rule by the later of the below dates or the date of the company's annual proxy statement in the same year:
  - Aug. 7, 2023 (1 director) and Aug. 6, 2025 (2 directors) – Nasdaq Global Select and Nasdaq Global Market
  - Aug. 7, 2023 (1 director) and Aug. 6, 2026 (2 directors) – Nasdaq Capital Market
- If a company fails to meet these goals, it must provide an explanation regarding its non-compliance by the later of 180 days from the deficiency date or the company's next annual shareholders meeting.



# Virtual Shareholder Meeting 2022 Recap

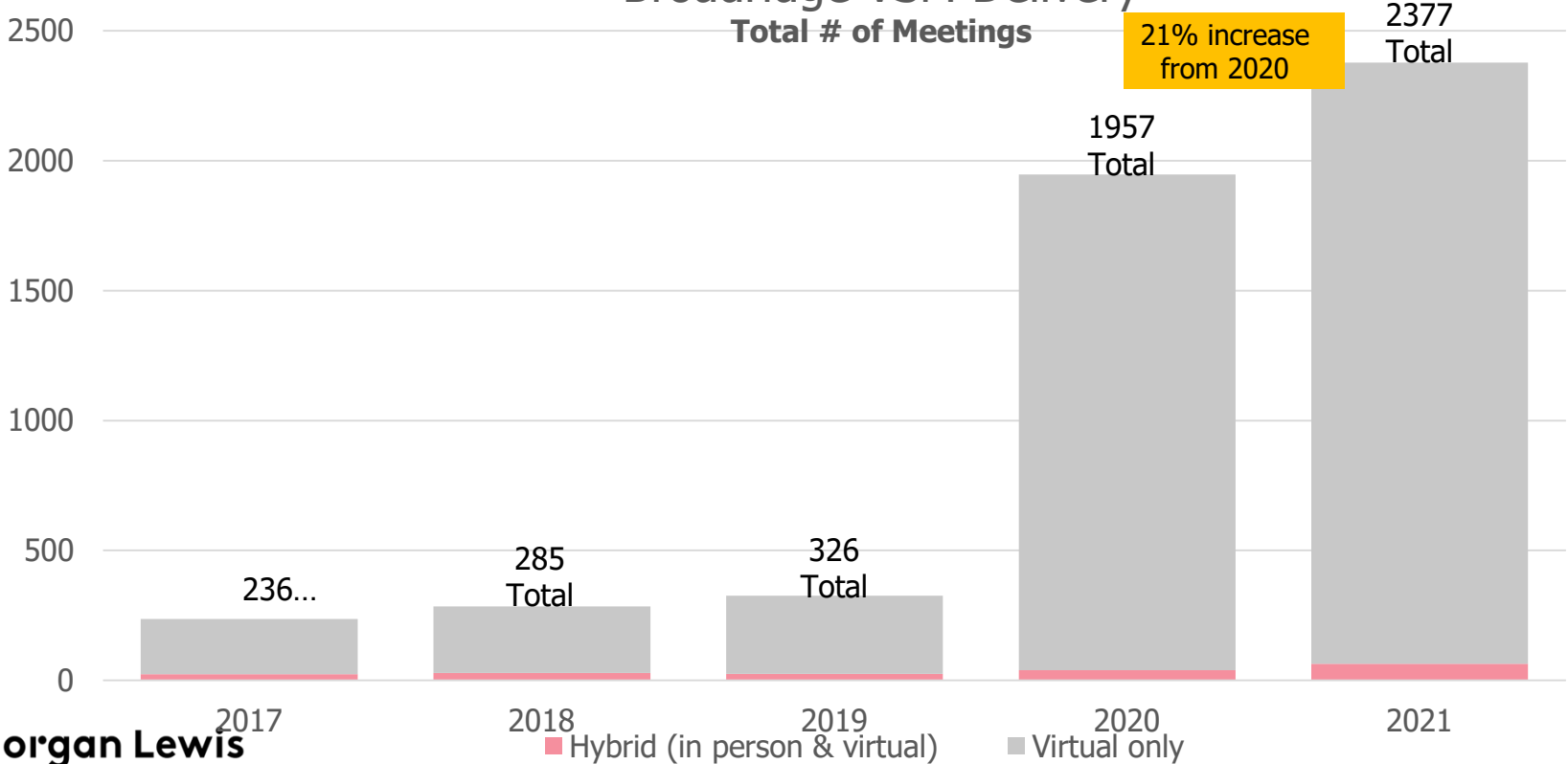


# 2021 Virtual Shareholder Meetings Key Statistics

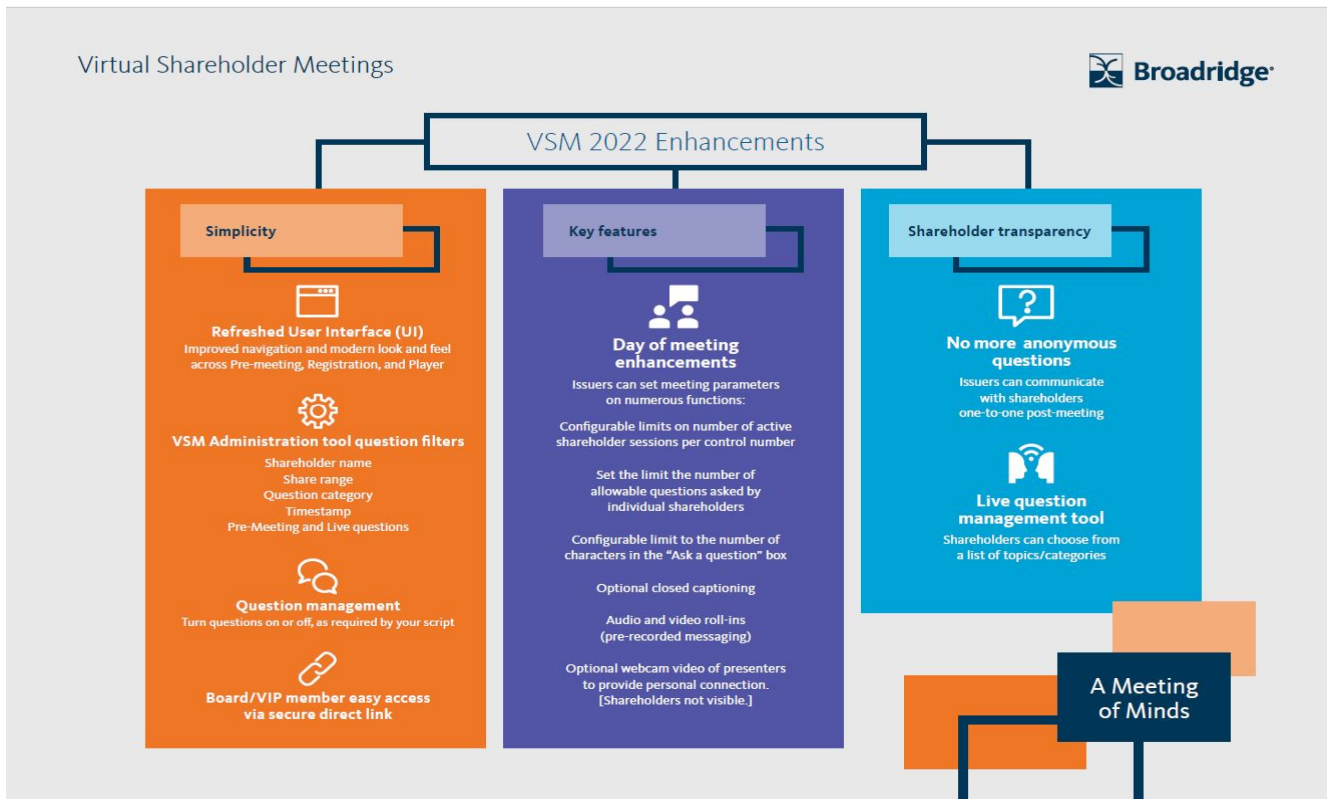
## January 1 – December 31, 2021

### Broadridge VSM Delivery

Total # of Meetings

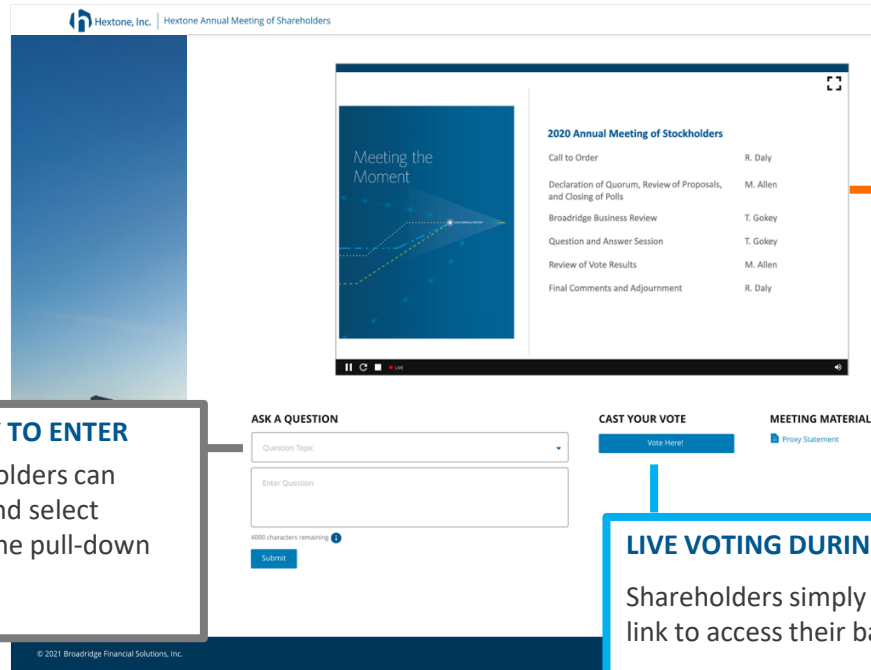


# Virtual Shareholder Meetings 2022: Enhancements at a Glance



# Streamlined, Modern Interface

Attendees can easily navigate and manage their experience.



## MEETING CONTENT IS FRONT AND CENTER

- Presentation may be static, streaming video or a combination of both
- Familiar controls for volume, replay, etc.
- Full screen available for optimal viewing

## MEETING MATERIALS

- Easy access to meeting-related materials
- Standard or custom Meeting Rules of Conduct
- Other company loaded materials such as 10k, Annual Reports and meeting minutes

## QUESTIONS ARE EASY TO ENTER

Authenticated shareholders can enter questions live and select optional topics from the pull-down menu.

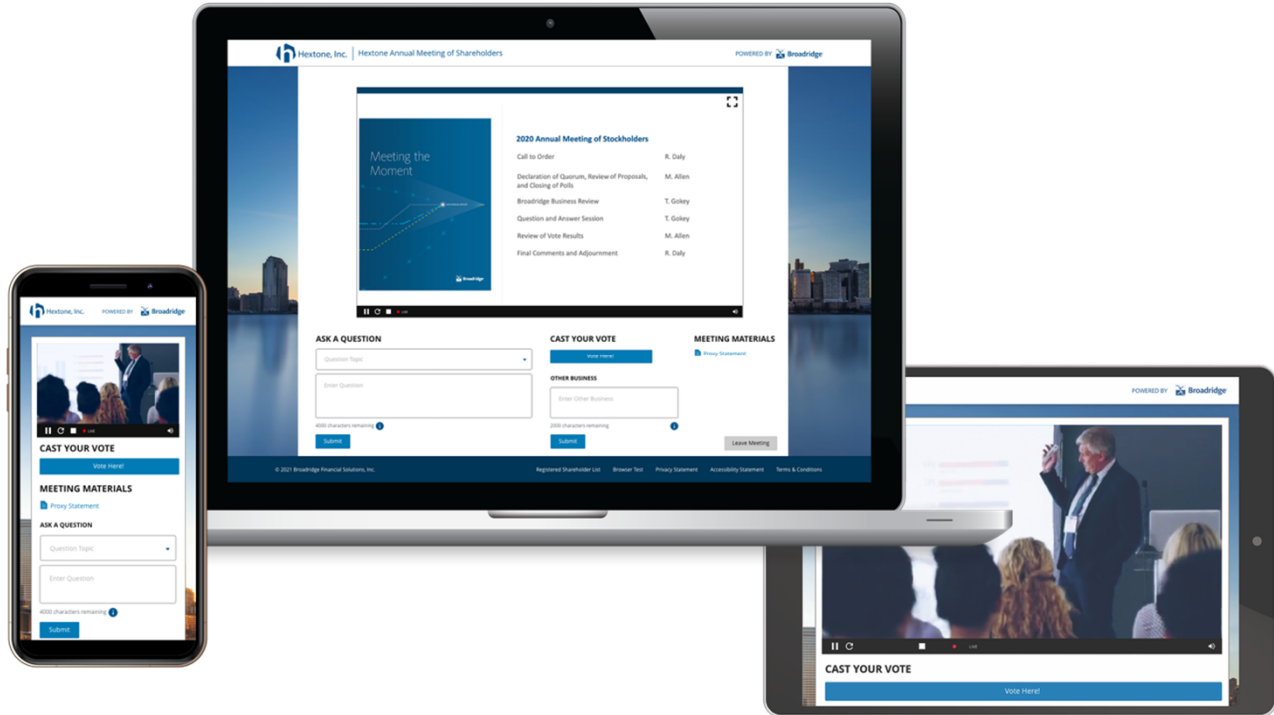
## LIVE VOTING DURING THE EVENT

Shareholders simply click a featured link to access their ballot.

# Deliver a Seamless Experience via Any Device

- Shareholders can easily access your meeting from anywhere, on their phone, tablet or computer.

- View video and listen to audio commentary
- Cast votes
- Ask questions
- Access meeting materials



# VSM Options: Video Roll-in (Pre Record) / Video / Webcam

## Pre Record

The screenshot shows the 'Annual Meeting of Shareholders' interface. At the top, it says 'Powered by Broadridge'. The main content area features a large play button icon over a video player. To the right of the play button is a circular graphic with a person at a computer. Below the play button, there is a 'GlobalMeet Webcast Presenter Training' logo. At the bottom left, there is an 'ASK A QUESTION' section with a 'Question Topic' dropdown and an 'Enter Question' text box. At the bottom right, there is a 'CAST YOUR VOTE' section with a 'Vote Here!' button.

## Video

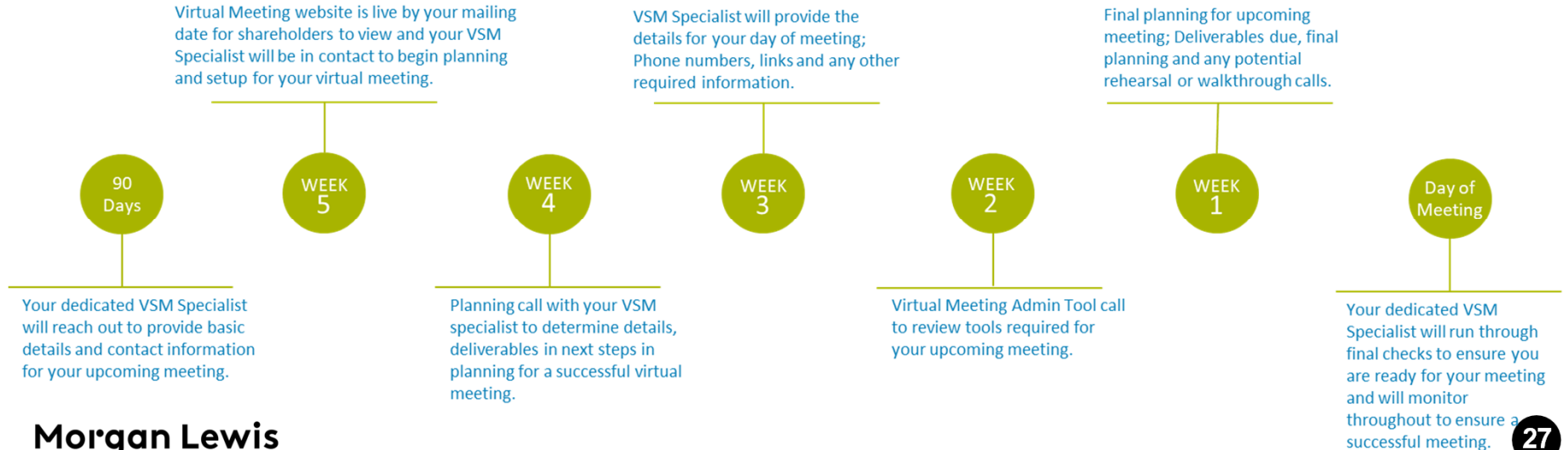
The screenshot shows the 'Annual Meeting of Shareholders' interface. At the top, it says 'Powered by Broadridge'. The main content area features a large play button icon over a video player. Below the play button, there is a 'POWER UP DATA AND INTELLIGENCE' logo. At the bottom left, there is an 'ASK A QUESTION' section with a 'Question Topic' dropdown and an 'Enter Question' text box. At the bottom right, there is a 'CAST YOUR VOTE' section with a 'Vote Here!' button and a 'MEETING MATERIALS' section with links for '10-K Wrap' and 'Proxy Statement'.

The screenshot shows the 'Annual Meeting of Shareholders' interface. At the top, it says 'Powered by Broadridge'. The main content area features a video player showing a live video feed of a man speaking. Below the video player, there is a 'CAST YOUR VOTE' section with a 'Vote Here!' button. At the bottom left, there is an 'ASK A QUESTION' section with a 'Question Topic' dropdown and an 'Enter Question' text box. At the bottom right, there is a 'MEETING MATERIALS' section with links for '10-K Wrap' and 'Proxy Statement'.

## Webcam

# Virtual Meeting Service Overview

- Dedicated VSM Specialist partnering with you throughout the process.
- Main point of contact throughout your virtual meeting planning process
- Best practices, sample documentation and checklists provided
- Detailed planning and timeline of deliverables
- Day of meeting support to ensure a successful meeting



# Greater Transparency and Control

Administrator dashboard streamlines meeting management.

## MONITOR KEY MEETING CONTROLS

- Define when shareholder login begins
- Voting
- Start/Stop Q&A
- Registered shareholder list access

## EFFICIENTLY MANAGE QUESTIONS

- View pre-meeting and live questions
- Sort by topic or shareholder
- Prioritize
- Resolution during the meeting

MONITOR VOTES AS THEY ARE CAST DURING THE MEETING

SEE THE NUMBER OF SHAREHOLDERS AND GUESTS ATTENDING THE MEETING

Virtual Shareholder Meeting Admin Active Meetings Past Meetings Live

EPLST1 Sep 16, 2021

Meeting Time (EDT)

Activity	Start Time	End Time	Status
Meeting	11:59 PM	11:59 PM	On
Voting	11:59 PM	11:59 PM	On
Q&A	11:59 PM	11:59 PM	On
Registered Shareholders List	11:59 PM	11:59 PM	On

Votes 2 Shares 100275

Attendance Shareholders - Public - Last Login -

Questions & Answers

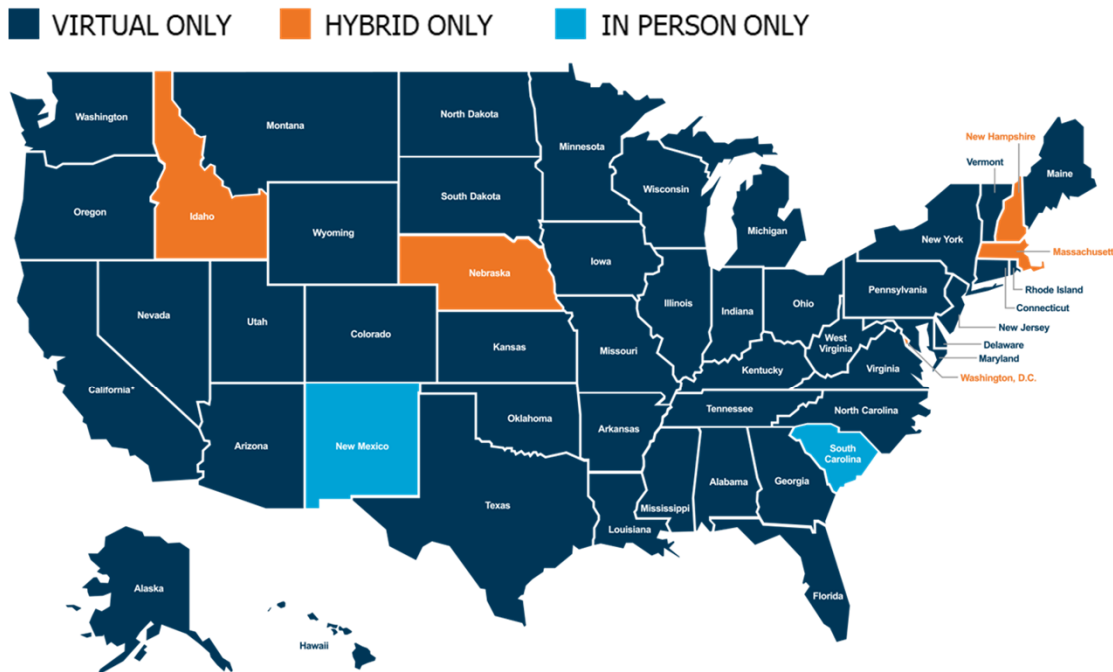
Active 66 Deleted 0 Answered 0

Sort: Name

1 The necessary decarbonization of our society must cut into so that used in the production of electricity at least. What long ter is the electrification of your own transportation system possible panels? Many thanks

2 Thank you for NOT signing the Business Roundtable wrong-headed redefinition of corporate purpose!

# States that Allow and Prohibit Virtual Shareholder Meetings



## VIRTUAL ONLY

Alabama	Kentucky	Oklahoma
Alaska	Louisiana	Oregon
Arizona	Maine	Pennsylvania
Arkansas	Maryland	Rhode Island
California*	Michigan	South Dakota
Colorado	Minnesota	Tennessee
Connecticut	Mississippi	Texas
Delaware	Missouri	Utah
Florida	Montana	Vermont
Georgia	Nevada	Virginia
Hawaii	New Jersey	Washington
Illinois	New York	West Virginia
Indiana	North Carolina	Wisconsin
Iowa	North Dakota	Wyoming
Kansas	Ohio	

## HYBRID ONLY

District of Columbia  
Idaho  
Massachusetts  
Nebraska  
New Hampshire


## IN PERSON ONLY

New Mexico  
South Carolina

SOURCE: Broadridge Financial Solutions, Inc.

\*Allow for Virtual Only meetings but have specific restrictions/criteria that must be met in order to permit VO meeting.





# Annual Proxy and 10-K: Disclosure Trends

# Trends in Disclosures

- **Many companies are addressing trending issues with additional proxy statement and 10-K disclosures relating to:**
  - ESG matters
  - Covid-19
  - Human capital management (HCM)
  - Management diversity
- **Broadridge has undertaken surveys to track trends in these disclosures**
  - Most recently with Broadridge's *Early Filers* survey, which collects disclosures by non-calendar year-end companies (e.g. 9/30 FYE)

# Disclosures in 10-Ks and Annual Proxy Statements: Early Filers

## Annual Proxy Statements: September FYEs

Company	Industry	Proxy Statement	Summary	CD&A	ESG	Covid	14a-8	VSM	
<a href="#">APD</a>	Air Products	Chemicals	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	~	~	<a href="#">Y</a>
<a href="#">ABC</a>	AmerisourceBergen	Health	TBF						-
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>		<a href="#">Y</a>
<a href="#">ARMK</a>	Aramark	Business Services	<a href="#">▶</a>	~	<a href="#">▶</a>	<a href="#">@16</a>	~	~	<a href="#">Y</a>
<a href="#">BDX</a>	Becton Dickinson	Health	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@5</a>	<a href="#">@5</a>	<a href="#">▶</a>	N
<a href="#">DLB</a>	Dolby	Technology	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	~	~	~	<a href="#">Y</a>
<a href="#">FICO</a>	Fair Isaac	Business Services	TBF						
<a href="#">HOLX</a>	Hologic	Medical Devices	TBF						
<a href="#">JACK</a>	Jack in the Box	Restaurants	TBF						
<a href="#">JCI</a>	Johnson Controls	Technology	TBF						
<a href="#">POST</a>	Post Holdings	Food	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	~	~		<a href="#">Y</a>
<a href="#">QCOM</a>	Qualcomm	Technology	TBF						
<a href="#">RJF</a>	Raymond James	Financials	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	~	~	~	<a href="#">Y</a>
<a href="#">ROK</a>	Rockwell	Industrials	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	~	~	<a href="#">Y</a>
<a href="#">SBUX</a>	Starbucks	Restaurants	TBF						
<a href="#">TSN</a>	Tyson Foods	Food	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	~	<a href="#">▶</a>	N
<a href="#">V</a>	Visa	Financials	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	~	~	<a href="#">Y</a>
<a href="#">DIS</a>	Walt Disney	Media	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@2</a>	<a href="#">▶</a>	<a href="#">Y</a>

# Disclosures in 10-Ks and Annual Proxy Statements: Early Filers

## 10-Ks: September FYEs











Company	Industry	10-K	Business	HCM	Risk Factors	MD&A	ESG Website	Sustainability Report
<a href="#">APD</a>	Air Products	Chemicals	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@8</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">ABC</a>	AmerisourceBergen	Health	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@6</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@6</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">ARMK</a>	Aramark	Business Services	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@6</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">BDX</a>	Becton Dickinson	Health	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@8</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">DLB</a>	Dolby	Technology	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@10</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">FICO</a>	Fair Isaac	Business Services	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@12</a>	<a href="#">▶</a>	<a href="#">▶</a>	~
<a href="#">HOLX</a>	Hologic	Medical Devices	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@17</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">JACK</a>	Jack in the Box	Restaurants	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@6</a>	<a href="#">▶</a>	<a href="#">▶</a>	~
<a href="#">JCI</a>	Johnson Controls	Technology	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@8</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">POST</a>	Post Holdings	Food	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@12</a>	<a href="#">▶</a>	<a href="#">▶</a>	~
<a href="#">QCOM</a>	Qualcomm	Technology	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@16</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">RJF</a>	Raymond James	Financials	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@8</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">ROK</a>	Rockwell	Industrials	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@4</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">SBUX</a>	Starbucks	Restaurants	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@2</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">TSN</a>	Tyson Foods	Food	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@5</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">V</a>	Visa	Financials	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@12</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>
<a href="#">DIS</a>	Walt Disney	Media	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">@1</a>	<a href="#">▶</a>	<a href="#">▶</a>	<a href="#">▶</a>

# Early Filer Examples


## Proxy Summary

This summary highlights certain information in this proxy statement. As it is only a summary, please review the complete proxy statement and fiscal 2021 annual report before you vote.

### Proxy Voting Roadmap


PROPOSAL	FOR MORE INFORMATION	PROXY RECOMMENDATION
<p><b>Proposal 1: Election of Director Candidates</b></p> <p>The Board of Directors and the Governance and Nominating Committee believe that the eleven nominated director candidates encompass a range of skills, skills and expertise sufficient to provide sound and forward guidance with respect to all of the Company's operations and interests and the interests of the Company's shareholders. The directors reflect the diversity of the Company's shareholders, employees, customers, vendors, and communities.</p>     <p><b>SUSAN E. ARNOLD</b>      <b>MARY J. BARRA</b>      <b>BARBRA KATZ</b>      <b>AMY L. CHANG</b></p>     <p><b>ROBERTA CHAPEK</b>      <b>FRANCIS J. DESLOOLA</b>      <b>MICHAEL S. FROMAN</b>      <b>MARIA ELENA LAGOMASINO</b></p>    <p><b>CALVIN McDONALD</b>      <b>MARK J. PARKER</b>      <b>DERICK R. RICE</b></p>	Page 72	For each nominee
<p><b>Proposal 2: Ratification of Independent Accountants</b></p> <p>The Board of Directors believes the continued selection of PricewaterhouseCoopers LLP is in the best interests of the Company and its shareholders. The Board of Directors is awarding the selection of PricewaterhouseCoopers LLP to our shareholders for confirmation as a matter of good corporate practice.</p>	Page 73	For
<p><b>Proposal 3: Advisory Resolution on Executive Compensation</b></p> <p>See Executive Compensation starting at page 91 for additional information.</p>	Page 74	For

OTHER RECOMMENDATIONS



90% For  
10% Against  
0% Abstain

Target mix for fiscal 2021 compensation



84% For  
16% Against  
0% Abstain

Target mix for fiscal 2021 compensation, including target compensation for all named executive officers who are 50% For and 50% Against for target fiscal 2021 compensation mix. 91% for/for/against target and 92% for/for/against 2021 target actual results. 20% abstain.

## Walt Disney Proxy Summary

## Compensation Discussion and Analysis

Apple delivered outstanding results for our shareholders in 2021. We reported an all-time record of \$365.8 billion in net sales and \$108.9 billion in operating income, representing 33% and 64% year-over-year increases, respectively. Our product net sales grew 50% year-over-year, with an all-time product net sales record of \$207.4 billion. Our services business grew 27% year-over-year with an all-time services net sales record of \$66.4 billion. We also continued to advance each of our values and key community initiatives, including expanding our Racial Equity and Justice Initiative and education initiatives and taking new strides toward reaching our 2030 carbon neutral goal across our entire business, manufacturing supply chain, and product life cycle.

In 2021, we also marked the tenth anniversary of Tim Cook's leadership as CEO. It has been a remarkable decade for Apple, and in 2021 Mr. Cook was granted an equity award for the first time since he was promoted to the CEO role in 2011. As discussed in more detail below, the 2021 RSU award granted to Mr. Cook is better aligned with the performance based and time-based RSUs awarded to our other named executive officers and provides substantial equity incentives aligned with the interests of our shareholders.

The Compensation Committee believes that the 2021 compensation of our named executive officers is commensurate with Apple's size, performance and profitability, the significant scope of their roles and responsibilities, and their strong values-driven leadership. Our executive compensation program is straightforward, consistent, and effective. While remaining true to our guiding principles and sound compensation policies and practices, our program also has the flexibility to incorporate feedback and evolving compensation practices that are important to us and our shareholders, such as the addition of a modifier based on Apple values and key community initiatives in our short-term cash incentive program.

This Compensation Discussion and Analysis explains the guiding principles, policies and practices upon which our executive compensation program is based and the compensation paid to our named executive officers for 2021.

### Guiding Principles

#### Team-Based Approach

We apply a team-based approach to the compensation of our named executive officers with internal pay equity as a primary consideration.

#### Performance Expectations

We establish clear, quantitative financial goals and values-driven performance expectations focused on Apple's overall success and impact.

#### Emphasis on Long-Term Equity Incentives

### Our 2021 Named Executive Officers

**Tim Cook**  
Chief Executive Officer

**Luca Maestri**  
Senior Vice President,  
Chief Financial Officer

**Kate Adams**  
Senior Vice President,  
General Counsel  
and Secretary

**Deirdre O'Brien**  
Senior Vice President,  
Retail + People

**Jeff Williams**  
Chief Operating Officer

### Key Focus Areas of ESG Strategy and Recent Progress

Our ESG strategy focuses on priority issues in five areas, each informed by our materiality assessment and stakeholder engagement.

#### Empowering People, Communities and Economies

- Digital Equity
- Financial Access
- Small and Micro Businesses
- Employee Well-being
- Local Communities



• Made progress toward our goal to digitally enable 10 million small and micro businesses globally worldwide.

• Expanded our global Digital Opportunity Hubs program that addresses the digital divide and empowers 10 million women globally.

• Invested in 100,000 small and micro businesses globally through our Small Business Development Fund.

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#### Investing in our Workforce

- Education and Training
- Learning and Development
- Employee Engagement
- Benefits and Well-being
- Employee Safety



• Continued to expand our Apprenticeship program in 2021 and designed new programs to support our commitment to our workforce and employees.

• Invested in 100,000 small and micro businesses globally through our Small Business Development Fund.

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#### Securing Commerce and Protecting Customers

- Payment Security
- Consumer Privacy
- Responsible Data Use
- Trademark Integrity



• Continued to expand our privacy training program for all employees and contractors.

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#### Protecting the Planet

- Waste Operations
- Resource Conservation



• Invested in 100,000 small and micro businesses globally through our Small Business Development Fund.

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#### Operating Responsibly

- Corporate Governance
- Ethics and Compliance
- Engaging with Communities
- Human Rights
- Responsible Sourcing
- Tax Compliance and Transparency



• Invested in 100,000 small and micro businesses globally through our Small Business Development Fund.

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# Shareholder Proposals

**Morgan Lewis**

Global Public Company Academy

# Shareholder Proposals: SEC Rule 14a-8

Enables shareholders of public companies to submit proposals to be included in the annual proxy statement and to be voted on at the annual meeting:

- Sliding-scale requirement of a minimum amount of ownership (\$2,000 to \$25,000) over a one-, two-, or three-year period of time

Company can seek to exclude a proposal on procedural and substantive grounds specified in Rule 14a-8

- SEC arbitrates with a no-action letter process

Proposals tend to fall into the following categories:

- Corporate governance
- Business practices -- 14a-8(i)(7)
- Environmental
- Social
- Executive compensation

# Shareholder Proposals – Recent developments

## [Staff Legal Bulletin 14L](#) (Nov, 3 2021)

- Rescinds staff legal bulletins 14I, 14J, 14K
- Refocuses “ordinary business” exception for proposals raising significant social policy issues on the policy issue, rather than impact on the company
- Micromanagement exception curtailed
- Proposals requesting targets/timelines allowed if they afford discretion to management regarding implementation
- Economic relevance exception inapplicable for proposals that raise issues of broad social or ethical concern related to the company’s business



# Shareholder Proposals – Tracking Voting Results

Company	Industry	Proxy Statement	Meeting Date	Proponent	Category	Proposal	Approved	For	Against	
<a href="#">DIS</a>	Walt Disney	Media	<a href="#">@79</a>	2022.03.09	National Legal	Social	Human rights	~	~	~
<a href="#">DIS</a>	Walt Disney	Media	<a href="#">@75</a>	2022.03.09	Mercy Invest	Social	Lobbying	~	~	~
<a href="#">DIS</a>	Walt Disney	Media	<a href="#">@81</a>	2022.03.09	A. Butterfield	Business practices	Pay equity	~	~	~
<a href="#">DIS</a>	Walt Disney	Media	<a href="#">@77</a>	2022.03.09	K. Steiner	Governance	Special meeting threshold	~	~	~
<a href="#">DIS</a>	Walt Disney	Media	<a href="#">@83</a>	2022.03.09	National Center	Business practices	Workplace non-discrimination	~	~	~
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	2022.03.04	n/d	Social	Chinese censorship of apps	~	~	~
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	2022.03.04	n/d	Social	Civil rights audit	~	~	~
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	2022.03.04	n/d	Governance	Convert to a CA social purpose corporation	~	~	~
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	2022.03.04	n/d	Business practices	Employment agreement concealment clauses	~	~	~
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	2022.03.04	n/d	Social	Forced labor in supply chain	~	~	~
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	2022.03.04	n/d	Business practices	Pay equity	~	~	~
<a href="#">DE</a>	Deere	Industrials	<a href="#">▶</a>	2022.02.23	n/d	Governance	Special meeting threshold	~	~	~
<a href="#">IMKTA</a>	Ingles Markets	Food Drug Stores	<a href="#">▶</a>	2022.02.15	n/d	Business practices	Cage-free eggs	~	~	~
<a href="#">IMKTA</a>	Ingles Markets	Food Drug Stores	<a href="#">▶</a>	2022.02.15	n/d	Governance	Eliminate dual class voting	~	~	~
<a href="#">TSN</a>	Tyson Foods	Food	<a href="#">▶</a>	2022.02.10	n/d	Environment	Sustainable packaging	~	~	~
<a href="#">WBA</a>	Walgreens Boots	Food Drug Stores	<a href="#">@103</a>	2022.01.27	n/d	Governance	Convert to a DE public benefit corporation	~	~	~
<a href="#">WBA</a>	Walgreens Boots	Food Drug Stores	<a href="#">@107</a>	2022.01.27	n/d	Social	Public health costs of tobacco	~	~	~
<a href="#">WBA</a>	Walgreens Boots	Food Drug Stores	<a href="#">@105</a>	2022.01.27	n/d	Governance	Special meeting threshold	~	~	~
<a href="#">HRL</a>	Hormel Foods	Food	<a href="#">▶</a>	2022.01.25	HEST Australia	Social	Public health cost of antimicrobial resistance	~	~	~
<a href="#">BDX</a>	Becton Dickinson	Health	<a href="#">▶</a>	2022.01.25	K. Steiner	Governance	Special meeting threshold	~	~	~
<a href="#">COST</a>	Costco	Retailing	<a href="#">▶</a>	2022.01.20	National Center	Social	Charitable giving	~	~	~
<a href="#">COST</a>	Costco	Retailing	<a href="#">▶</a>	2022.01.20	Green Century	Environment	Greenhouse gas emissions	~	~	~
<a href="#">COST</a>	Costco	Retailing	<a href="#">▶</a>	2022.01.20	American Baptist Home	Social	Racial justice / Food equity	~	~	~
<a href="#">FDS</a>	FactSet Research	Business services	<a href="#">▶</a>	2021.12.21	J. McRitchie	Governance	Proxy access	<a href="#">No</a>	33.1%	66.9%
<a href="#">AZO</a>	AutoZone	Auto	<a href="#">▶</a>	2021.12.15	As You Sow	Environment	Climate transition plan	<a href="#">Yes</a>	70.4%	29.6%
<a href="#">CSCO</a>	Cisco	Technology	<a href="#">▶</a>	2021.12.13	K. Steiner	Governance	Proxy access	<a href="#">No</a>	40.5%	59.5%
<a href="#">LBN</a>	Stride	Education	<a href="#">▶</a>	2021.12.10	SEIU	Social	Lobbying	<a href="#">Withdrawn</a>	~	~
<a href="#">CMCTP</a>	CIM Commercial Trust	REIT	<a href="#">▶</a>	2021.12.09	CalPERS	Governance	Majority vote	<a href="#">Withdrawn</a>	~	~
<a href="#">CPB</a>	Campbell Soup	Food	<a href="#">▶</a>	2021.12.01	K. Steiner	Governance	Simple majority vote	<a href="#">No</a>	41.1%	58.9%
<a href="#">CPB</a>	Campbell Soup	Food	<a href="#">▶</a>	2021.12.01	Humane Society	Governance	Virtual shareholder meetings	<a href="#">No</a>	23.1%	76.9%
<a href="#">MSFT</a>	Microsoft	Technology	<a href="#">@79</a>	2021.11.30	NorthStar	Business practices	Criminal background checks	<a href="#">No</a>	13.8%	86.2%
<a href="#">MSFT</a>	Microsoft	Technology	<a href="#">@77</a>	2021.11.30	Harrington Invest	Social	Facial recognition technology	<a href="#">No</a>	4.1%	95.9%
<a href="#">MSFT</a>	Microsoft	Technology	<a href="#">@81</a>	2021.11.30	St. Joseph Sisters	Social	Lobbying alignment	<a href="#">No</a>	38.0%	62.0%
<a href="#">MSFT</a>	Microsoft	Technology	<a href="#">@73</a>	2021.11.30	Arjuna co-filer	Business practices	Pay equity	<a href="#">No</a>	40.0%	60.0%
<a href="#">MSFT</a>	Microsoft	Technology	<a href="#">@75</a>	2021.11.30	Arjuna Capital	Social	Sexual harassment policies	<a href="#">Yes</a>	78.0%	22.0%
<a href="#">SY</a>	Sysco	Business services	<a href="#">▶</a>	2021.11.19	As You Sow	Environment	Reduce greenhouse gas emissions	<a href="#">Yes</a>	92.1%	7.9%
<a href="#">CBRL</a>	Cracker Barrel	Restaurants	<a href="#">▶</a>	2021.11.18	Humane Society	Governance	Virtual shareholder meetings	<a href="#">Yes</a>	58.0%	42.0%
<a href="#">NWS</a>	News Corp	Media	<a href="#">▶</a>	2021.11.17	K. Steiner	Governance	Simple majority vote	<a href="#">No</a>	30.2%	69.8%
<a href="#">CLX</a>	Clorox	Household	<a href="#">▶</a>	2021.11.17	J. McRitchie	Governance	Worker board representative	<a href="#">No</a>	6.6%	93.4%
<a href="#">TPL</a>	Texas Pacific Land	Real estate	<a href="#">@33</a>	2021.11.16	G. Gliksberg	Governance	Declassify board	<a href="#">Yes</a>	56.5%	43.5%
<a href="#">FOXA</a>	Fox	Media	<a href="#">▶</a>	2021.11.10	n/d	Governance	Convert to a DE public benefit corporation	<a href="#">No</a>	1.1%	98.9%

# Shareholder Proposals – Select Proposals

Company	Industry	Proxy Statement	Meeting Date	Proponent	Category	Proposal	Approved	For	Against	
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	2022.03.04	n/d	Social	Chinese censorship of apps	~	~	~
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	2022.03.04	n/d	Social	Civil rights audit	~	~	~
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	2022.03.04	n/d	Governance	Convert to a CA social purpose corporation	~	~	~
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	2022.03.04	n/d	Business practices	Employment agreement concealment clauses	~	~	~
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	2022.03.04	n/d	Social	Forced labor in supply chain	~	~	~
<a href="#">AAPL</a>	Apple	Technology	<a href="#">▶</a>	2022.03.04	n/d	Business practices	Pay equity	~	~	~
<a href="#">TSN</a>	Tyson Foods	Food	<a href="#">▶</a>	2022.02.10	n/d	Environment	Sustainable packaging	~	~	~
<a href="#">WBA</a>	Walgreens Boots	Food Drug Stores	<a href="#">@107</a>	2022.01.27	n/d	Social	Public health costs of tobacco	~	~	~
<a href="#">COST</a>	Costco	Retailing	<a href="#">▶</a>	2022.01.20	Green Century	Environment	Greenhouse gas emissions	~	~	~
<a href="#">COST</a>	Costco	Retailing	<a href="#">▶</a>	2022.01.20	American Baptist Home	Social	Racial justice / Food equity	~	~	~
<a href="#">AZO</a>	AutoZone	Auto	<a href="#">▶</a>	2021.12.15	As You Sow	Environment	Climate transition plan	<a href="#">Yes</a>	70.4%	29.6%
<a href="#">SYI</a>	Sysco	Business services	<a href="#">▶</a>	2021.11.19	As You Sow	Environment	Reduce greenhouse gas emissions	<a href="#">Yes</a>	92.1%	7.9%
<a href="#">NIKE</a>	Nike	Apparel	<a href="#">▶</a>	2021.10.06	As You Sow	Social	Diversity inclusion efforts	<a href="#">No</a>	35.6%	64.4%
<a href="#">NIKE</a>	Nike	Apparel	<a href="#">▶</a>	2021.10.06	Domini Impact	Social	Human rights	<a href="#">No</a>	27.7%	72.3%
<a href="#">WOR</a>	Worthington	Industrials	<a href="#">▶</a>	2021.09.29	As You Sow	Environment	Climate policy	<a href="#">No</a>	40.9%	59.1%
<a href="#">FDX</a>	FedEx	Transportation	<a href="#">@97</a>	2021.09.27	NorthStar	Social	Corporate culture / Racism	<a href="#">No</a>	18.6%	81.4%



# Proxy Advisors and Institutional Investors

**Morgan Lewis**

Global Public Company Academy

# Proxy Advisors and Institutional Investors

- Approximately 70% of publicly traded equity shares are owned by institutional investors, rather than retail investors.
  - Mutual funds, index funds, pensions, hedge funds, etc.
  - Most prominent investment funds are Vanguard, BlackRock and State Street – may cast as much as 40% of all votes at S&P 500 companies.
    - When combined, Vanguard, BlackRock and State Street are the largest owners in 88% of S&P 500 companies.
- Institutional investors also have significantly higher voting rates than retail investors and often rely on proxy advisory firms for voting recommendations or guidelines.
- Biggest two proxy advisory firms are Institutional Shareholder Services and Glass Lewis & Co.
  - Academic studies show that proxy advisory firms have substantial influence over ultimate vote outcomes, and recent real-world examples have demonstrated that these firms and institutional investors can compel significant change within companies.

# Environmental and Social Matters

- Leading investors, including BlackRock and Vanguard, have indicated an increased willingness to support E&S resolutions in 2021 and hold boards accountable for a lack of attention to material E&S risks.
  - In the most recent proxy season, BlackRock supported 64% of environmental shareholder proposals and 35% of social shareholder proposals, compared to 6.3% and 6.8% support, respectively, in the prior year.
- A clear supermajority of institutional investors have indicated that ESG data is used in their analyses.
  - However, almost as many believe that companies puff up their ESG disclosure.

# Environmental and Social Matters (cont.)

- BlackRock will continue expecting companies to report in accordance with the TCFD framework, and provide near, medium and long term Scope 1 and 2 emissions reduction goals.
  - If a company's disclosure uses SASB, BlackRock wants disclosure of tailored SASB metrics.
  - BlackRock seeks fleshed out Net Zero plans considering different approaches to climate change mitigation and equity.
- Vanguard may oppose re-election of directors if there is a failure of risk oversight by the board, including climate risks.
  - Seeks disclosure allowing investors to price material risks, and of strategies to mitigate and comply with Paris Agreement standards.

# Environmental and Social Matters (cont.)

- State Street expects companies to provide TCFD-based disclosure, and has prepared a list of questions that it may ask companies.
  - This year, may vote against independent board leaders if insufficient disclosure about board oversight of climate issues, greenhouse gas emissions and goals, and TCFD framework information.
  - Specific expectations for carbon-intensive industries.
  - May support climate-related shareholder proposals.

# Environmental and Social Matters (cont.)

- ISS will recommend against responsible incumbent directors, committees, or full boards if the company has not been taking minimum steps to understand and address climate change-related risks in relation to the company and the larger economy as a whole.
  - May recommend against directors at greenhouse gas emitters if the company is deemed to not be taking appropriate steps.
  - Will support shareholder approval of management climate transition plans if sufficiently rigorous and complete.
- Glass Lewis will recommend against governance committee chairs at companies inadequately disclosing board oversight of E&S issues.
- SEC rules regarding climate risk disclosure are expected soon.
  - SEC released a sample comment letter to companies about climate disclosure in September.
  - Goal is to improve disclosure consistency and comparability.
  - Concerns about greenwashing and climate disclosure related litigation.



# Board Diversity

- Vanguard may vote against chairs of nominating committees if there is a lack of progress on board diversity – expectation of disclosure of intended composition strategy, planned milestones and current board composition.
- State Street may vote against nominating committee chairs if there is insufficient board diversity disclosure, or no directors from underrepresented groups (including women).
  - In 2023 at Russell 3000 companies if board is not 30% women or have a specific plan to achieve that goal.
  - May vote against entire nominating committee if three years of board diversity failures.
- Goldman Sachs Asset Management will generally vote against nominating committee members of S&P 500 and FTSE 100 companies without at least one director from an underrepresented ethnic minority group, and two women.
- BlackRock has an aspirational policy for boards to be 30% diverse, with at least two directors who identify as female and one from an underrepresented group.

# Board Diversity (cont.)

- Starting this year Glass Lewis will begin opposing nominating committee chairs on boards of Russell 3000 companies that have less than two gender diverse directors.
  - Oppose entire nominating committee if no gender diversity.
  - In 2023, the standard will become 30% gender diversity.
  - Glass Lewis may oppose nominating committee chairs of companies that inadequately disclose board diversity.
- ISS has committed to addressing board diversity by:
  - Opposing nominating committee chairs on boards of S&P 1500 and Russell 3000 companies lacking racial/ethnic diversity, beginning in 2022.
  - Opposing nominating committee chairs at all companies that do not have at least one female director, beginning in 2023.

# Board Diversity (cont.)

- Board diversity disclosure:
  - BlackRock asks companies to disclose how diversity characteristics of the board are aligned with company's strategy/business model; whether a diverse slate is considered for all open board seats.
  - Vanguard believes board diversity disclosure should cover, at least, race, ethnicity, gender, at the board level, and tenure, skill, and experience at the individual level.
  - State Street wants disclosure covering at least how nominating committee ensures diverse candidates, and disclosure of diversity by gender, race/ethnicity, on the board or individual level. Disclosure of other types of diversity encouraged.
  - Glass Lewis will be tracking percentage of diversity on boards, whether board's definition explicitly includes race/ethnicity or gender, whether diverse candidates are required to be considered for openings on the board, and board skill disclosure.

# Board Diversity (cont.)

- ISS has asked companies for disclosure of the race/ethnicity of each director and NEO, both on an aggregate and self-identified basis.
  - Indicated that this outreach is an effort to ensure the accuracy of data in research and proxy reports.
- NYC Comptroller Scott Stringer has asked companies to adopt a “Rooney Rule” diversity search policy requiring that qualified female and racially/ethnically diverse candidates be included in the pool of nominees from which directors and CEOs are selected.
- Investor campaigns pushing for disclosure of racial/ethnic and gender composition of Boards in prescribed matrices.

# Diversity, Equity and Inclusion

- State Street will vote against S&P 500 company compensation committee chairs that don't disclose their workforce demographics in at least EEO-1 or equivalent detail.
  - Wants information on how board oversees DE&I and specific goals and timeframes for meeting them.
- State Street will vote against proposals for racial equity/civil rights audits if companies have disclosed process for oversight, specific risks overseen, and the plan to address those risks.
  - Will abstain if companies have committed to identification and oversight of such risks.
- Vanguard is taking a case-by-case approach to racial equity audits.
  - Generally supported management proposals, but not when perceived as inapposite.

# Diversity, Equity and Inclusion (cont.)

- ISS will make case-by-case recommendations on proposals requesting companies to conduct racial equity or civil rights audits after considering a company's processes or framework for addressing racial inequity and discrimination, value congruence, community engagement and market norms.
- Glass Lewis will also make case by case recommendations on gender/racial pay equity related proposals, considering a company's industry, current efforts and disclosure, and market practices.
  - Glass Lewis also supports proposals for disclosure of EEO-1 reports, and generally supports proposals for more information on workforce diversity and promotion of diversity in workforce.
- NYC Comptroller has called for companies to publicly disclose their annual EEO-1 report data in order to match their statements regarding commitments to diversity and inclusion.
  - Institutional investors have introduced voting policies to vote against compensation committee chairs at companies that do not disclose EEO-1 reports.

# Overboarding

- Overboarding remains an area of increases interest for investors, driven by concerns about director capability and time commitments.
  - This has coincided with an increased focus on board diversity and refreshment.
- ISS and Glass Lewis consider service on more than five public company boards excessive.
  - ISS limits CEOs to three boards.
  - Glass Lewis limits NEOs to two boards.

# Overboarding (cont.)

- Institutional investors may vote against directors if they serve on:
  - More than four public company boards (BlackRock, Capital Group, Fidelity, Invesco, JP Morgan, Legal & General, Northern Trust, State Street, Wellington and Vanguard).
  - More than three public company boards (Alliance Bernstein, others).
    - For NEOs, more than two public company boards (Vanguard and State Street). Vote would be against the outside board positions.
- Some investors have extended stricter limitations for executives to board chairs and lead independent directors:
  - State Street : Vote against a board chair that is on more than three public company boards.
  - Capital Group: Vote against a board chair that is on more than two public company boards.



# Dual Class Capitalization

- Glass Lewis will be voting this year against governance committee chairs at companies with different voting rights for different classes of equity without reasonable sunset provisions.
- ISS has announced that beginning in 2023, it will generally recommend votes against directors at all companies that have a structure with unequal voting rights, regardless of when they went public.
- BlackRock thinks companies with extant multiple class share structures should receive shareholder approval on a periodic basis.
- Vanguard thinks companies that IPO with multiple class share structures should have sunset provisions, but will vote case by case on proposals to eliminate such structures.

# Exclusive Forum Provisions

- Unilateral board adoption of exclusive forum provisions was the sixth most common reason that Glass Lewis recommended against directors in 2021.
  - Glass Lewis now recommends a vote against the governance committee chair if a company adopts a state court or federal exclusive forum provision, but has exceptions for tailored clauses with sunset provisions.
- ISS will generally recommend in favor of provisions that designate Delaware courts as the exclusive forum for corporate law matters, for Delaware companies.
  - For non-Delaware companies, the ISS will maintain its case-by-case approach and generally vote against provisions preferring a specific local court in the state of incorporation or other states.

# Exclusive Forum Provisions (cont.)

- Vanguard generally opposed independent board chairs/nominating committee members if the board's actions meaningfully limit shareholders rights.
  - For 2022, this includes exclusive forum provisions without shareholder approval.
- BlackRock will generally support proposals that seek exclusive forum for certain shareholder litigation.
  - It will vote against an independent chair or director and members of the governance committee if a board unilaterally adopts exclusive forum provisions that it deems to be unfavorable to shareholder interests.

# Institutional Shareholder Enfranchisement

- Blackrock has announced that it will allow its institutional clients to make their own voting decisions.
  - Clients may vote on their own proxies, tell BlackRock how they'd like BlackRock to vote, follow others voting guidelines, or have BlackRock vote for them.
  - It will begin by granting this power to institutional clients invested in index strategies but is looking to expand the choice to even more investors.
  - Debate as to how this policy will affect vote tracking and how much of an impact it will have.
- Institutional investors are embracing shareholder proposals.
  - Consider what your large shareholders' stated policies are, and be prepared to engage on their hot-button issues.

# SEC Developments

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# Universal Proxy Cards

- New Rule 14a-19 and amendments to existing rules effective for meetings starting September 1, 2022.
- Provides for use of universal proxy cards in contested elections.
  - Each of company's and dissident's proxy card will include all director nominees.
  - Likely to lead to an increase in threatened proxy contests.
    - Does not require share ownership thresholds/holding period requirements.
    - Does require dissident to file own definitive proxy statement and follow other procedures.
    - Will cut costs of proxy contests for dissidents significantly.
- Companies will need to disclose deadline for timely notice of director nominations in their proxy statements.
  - Consider adopting or refreshing advance notice bylaws.
- Proxies will need enhanced disclosure about voting options and mechanics.

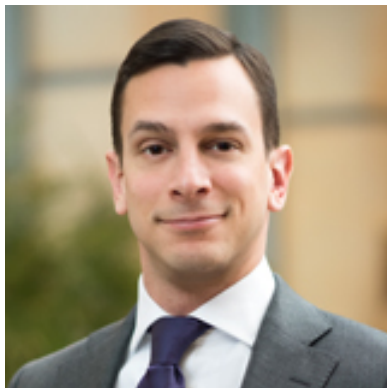
# New Disclosure Requirements on the Horizon

- On December 15, 2021, the SEC proposed new rules targeting potential gaps in insider trading law.
- New proposed conditions for Rule 10b5-1 plans, including:
  - Cooling off periods;
  - Certifications by insiders that they are not aware of MNPI/adopting plan in good faith;
  - Good faith operation of plan; and
  - Only one plan at a time, and only one single trade plan a year.
- New disclosure requirements:
  - Plans adopted/terminated in a quarter.
  - Checkbox on Forms 4 and 5 to indicate Rule 10b5-1 plan trades.
  - Timing and amount of option grants around release of MNPI.
  - Insider trading policies.
- If adopted, new rules would lead to disclosure of such option grants and corporate insider trading policies in proxy statements.

# Questions?



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Leland Samuel Benton leverages his five years working at the US Securities and Exchange Commission's Division of Corporation Finance to counsel companies on the federal securities laws and corporate governance. He aids foreign and domestic clients in a wide range of industries with public and private capital markets transactions, periodic reporting, annual and special meetings, securities regulatory matters, restructurings, mergers and acquisitions, and divestitures, as well as compliance with Nasdaq and NYSE rules. Leland is also a member of the firm's shareholder activism defense practice.

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Neil was an M&A attorney at Skadden Arps and an investment banker at Salomon Smith Barney and Bear Stearns. He also worked as an attorney for the US Treasury. He founded and built an information services firm for corporate lawyers, Lawyer Links, LLC, and has also served as legal counsel / corporate finance and M&A advisor to several start-up companies including Summit Financial Disclosure, LLC, which was acquired by Broadridge in 2017. Neil is a graduate of Harvard Law School.

# William Kennedy



Bill Kennedy is a Vice President of Product Management at Broadridge and has 20 years of experience in the Stock Transfer and Annual Meeting related services. Currently, Bill is responsible for a suite of products, including Virtual Shareholder Meetings, Shareholder Meeting Registration, Interactive Proxy microsites, and Transfer Agency.

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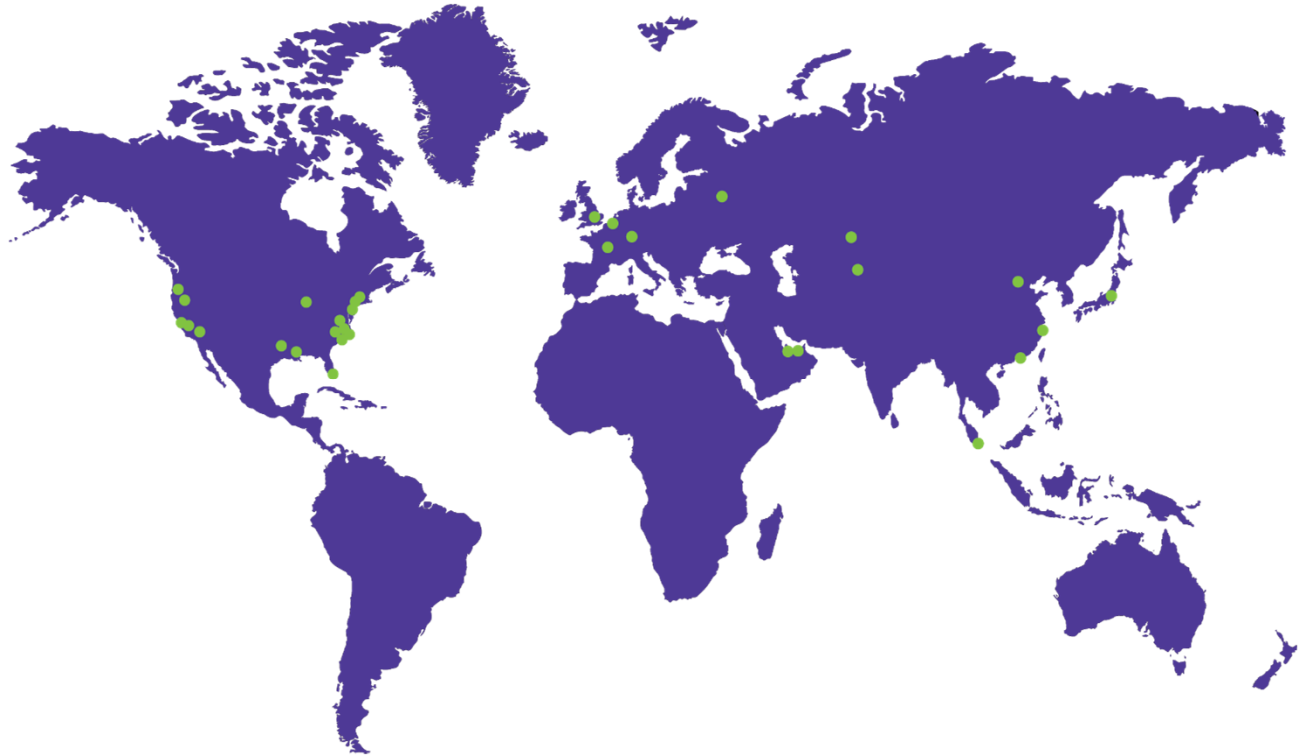
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