Morgan Lewis

GLOBAL PUBLIC COMPANY ACADEMY

# 2018 Proxy Disclosure Highlights

## Current Issues, Including ISS and Glass Updates

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# Overview

**I. Review of 2018 Proxy Disclosure Highlights**

A. 2018 Annual Meeting Hot Topics

B. ESG Developments

C. 2018 Director-Related Developments

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# REVIEW OF 2018 PROXY DISCLOSURE HIGHLIGHTS

# 2018 ANNUAL MEETING
# HOT TOPICS

# Overview of 2018 Annual Meeting Hot Topics

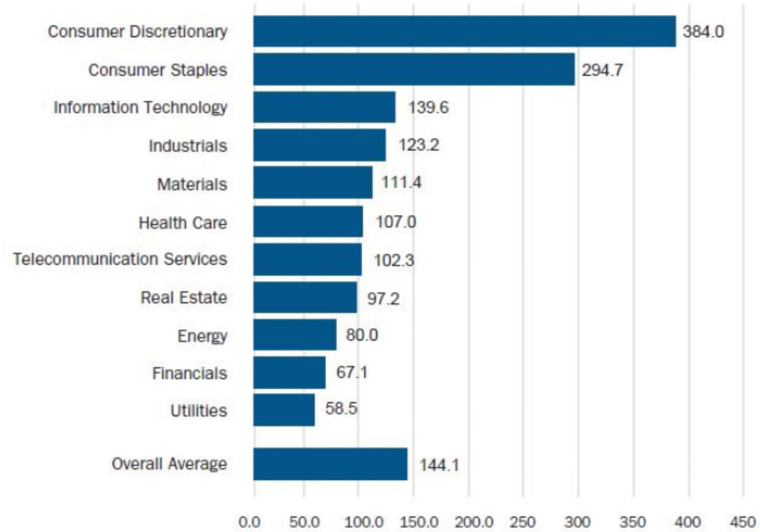
- Shareholder Engagement
- Pay Ratio
- Board Diversity
- Virtual-Only Annual Meetings
- Executive Compensation
  - Perquisites
  - Pay for Performance
  - Section 162(m) Developments
- Board Evaluations

## Shareholder Engagement – Institutional Investors

- In 2017, **Vanguard's** CEO published an open letter to all public companies outlining the four pillars it considers when it evaluates corporate governance practices (which pillars remain in effect today):
  - **Board composition**: A high-functioning, well-composed, independent, diverse, and experienced board with effective ongoing evaluation practices
  - **Governance structures**: Provisions and structures that empower stockholders and protect their rights (e.g., proxy access and right to call special meetings)
  - **Executive compensation**: Linking pay and performance
  - **Oversight of risk and strategy**: Effective, integrated, and ongoing oversight of relevant industry- and company-specific risks
- In 2018, **BlackRock's** CEO also published a letter that specifically addressed:
  - Stockholder engagement
  - The importance of long-term strategy (and a warning against "short-termism")
  - The importance of the board and directors' active engagement with stakeholders
  - The need for companies to proactively engage
  - Boardroom diversity and environmental, social, and governance (ESG) issues as significant priorities

# Pay Ratio Disclosure in 2018

- Average CEO pay ratio (based on over 2,000 companies) was **144:1**
- Median pay ratio at Russell 3000 companies was **70:1**
- Industry matters – consumer-based sectors were at the highest average




*Source: Pearl Meyer & Partners (2018)*

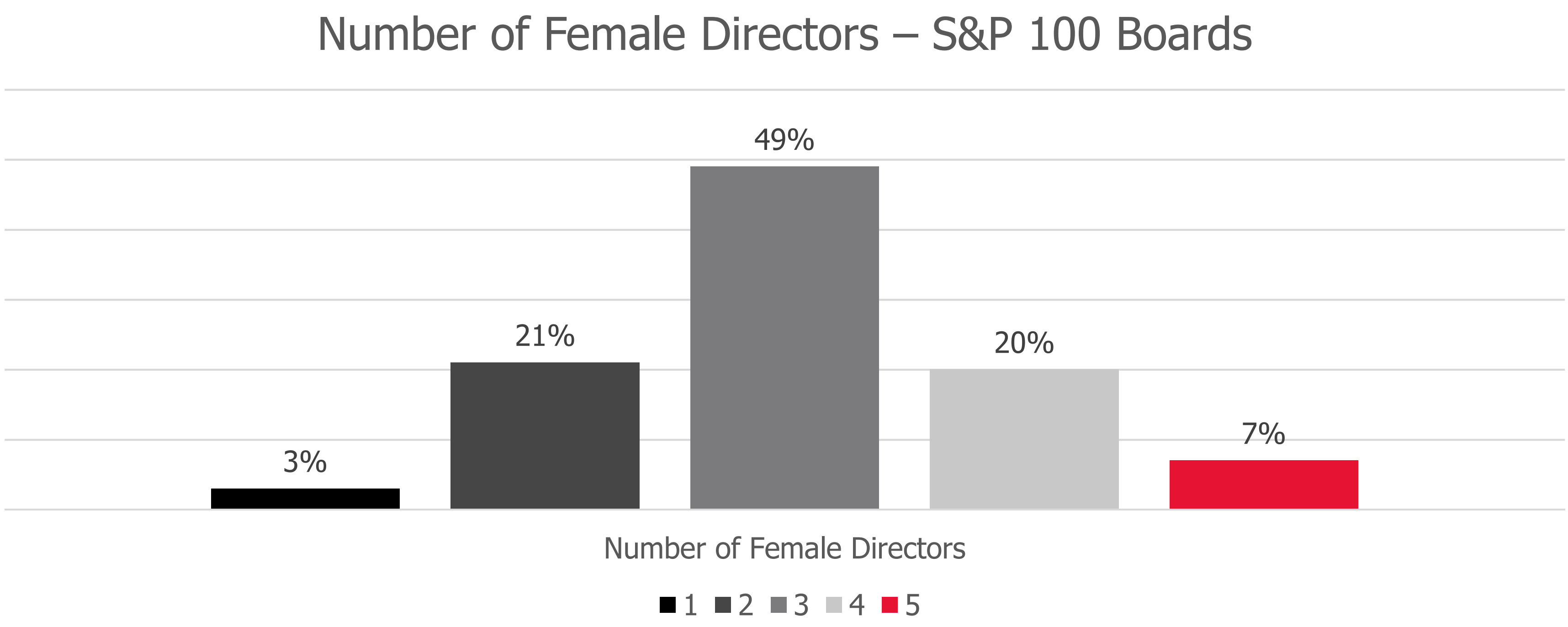
# Preparing for 2019 Pay Ratio Disclosure

- Should be able to use the same median employee in 2019 as in 2018
  - SEC rules generally require a company to identify the median employee only once every three years
  - Calculate total compensation for that same employee each year
- Exception applies if there is a material change to (i) the median employee or (ii) the workforce population or compensation
  - Significant acquisition or spin-off
  - Reduction in force
  - Material changes in compensation (either impacting the median employee or workforce as a whole) that would skew the pay ratio
- Disclose any changes to the pay ratio methodology used

# Board Diversity

- NYC Comptroller’s Boardroom Accountability Project 2.0
  - Called for 151 companies to disclose the races and genders of their directors, along with directors’ skills, in a standardized matrix format
- Institutional Investor Views
  - BlackRock expects to see at least two female directors on every board
  - Starting in 2020, State Street will vote against the entire nominating committee if the company does not have at least one woman on its board and has not engaged with State Street on gender diversity for three consecutive years
- ISS and Glass Lewis
  - Starting in 2019, Glass Lewis will recommend against governance committee chairs of Russell 3000 companies with all-male boards unless there is a sufficient rationale or disclosure of a plan to address the lack of female directors
  - ISS will flag companies that have no women on their boards
- Legislation in California and Pennsylvania
  - Designed to encourage gender diversity on boards

# Board Diversity in 2018



# Virtual Annual Meetings

- Rise in virtual annual meetings
  - During the 2018 proxy season, 212 companies held virtual annual meetings, compared to 180 in the prior year
- Continued criticism for virtual-only meetings:
  - NYC pension funds amended voting guidelines to oppose governance committee members at companies that hold virtual-only meetings
  - For 2019, Glass Lewis will recommend a vote against governance committee members unless shareholders are afforded the same rights and opportunities to participate in a virtual-only meeting
- Other considerations
  - Are there controversial items on the ballot?
  - Is the company facing significant shareholder dissent?
  - Are annual meetings widely or lightly attended?

# Perquisites

- The SEC has renewed its focus on perquisite disclosure
- Dow Chemical fined $1.75M ($3M of perk omissions over four years)
  - Relied on an improper standard of business purpose to exclude perks
  - SEC order requires Dow Chemical to retain an independent consultant for a one-year period to review perk policies, controls and training and then report to the company and SEC regarding its recommendations (i.e., to comply with Item 402 and adopt appropriate internal controls)
- Recent Energy XXI enforcement action for failure to disclose at least $1M of CEO perks over a five-year period

# Section 162(m) Developments

- 2017 Tax Cuts and Jobs Act made significant changes to Section 162(m) $1M deduction limitation
  - Includes CFO as a covered employee
  - Eliminates exceptions for commissions and "qualified performance based compensation"
  - Once a covered employee, always a covered employee
- Compensation payable under a written binding contract that was in existence on November 2, 2017 is grandfathered as long as it is not materially modified
  - Significant issues with determining what is grandfathered
  - When does negative discretion prevent grandfathering?
  - Be careful not to materially modify grandfathered agreements
- Retain 162(m) questions in D&O questionnaires

# Executive Compensation and Pay for Performance

- Metric selection and goal setting
  - Executive compensation has become a way for shareholders to understand the connection between what management and the board view as long-term value drivers and company actions to achieve such goals
  - Rigor of goal setting is a key element of executive compensation analysis
  - ISS has identified as a red flag setting targets below prior-year achievement
- Emerging issues with stock repurchase programs and incentive compensation metrics
  - Many companies have announced stock repurchase programs
  - Investor criticism – and even shareholder proposals – highlight concerns about stock repurchase programs positively impacting the calculation of incentive metric payouts with goals such as earnings per share

# Board Evaluations

- An EY study found that 93% of Fortune 100 companies that filed proxy statements in 2018 provided at least some substantive disclosure about their board evaluation processes
- Best practices include:
  - Peer review of fellow directors
    - Exelon's 2018 proxy disclosure indicated that director performance assessments were revised to include peer review from fellow directors and input from senior management
  - Annual review of the assessment process (what's working, what's not) to prevent stagnation
  - Disclosure of improvements in the process
    - Regions Financial stated in its 2018 proxy that, as a "direct result" of the 2017 director evaluation process, the board created a refreshment and recruitment plan and suggested improvements to the director orientation and continuing education programs
  - Use of third parties to help with the process

# Excerpt from Allstate's 2018 Proxy Disclosure

### Steps to Achieve Board Effectiveness

Board and Committees

| Process | Performed By | Description |
|---|---|---|
| Evaluation at every in-person meeting | Independent Directors | • Measures effectiveness of Board and committee oversight<br>• Ensures objectives were satisfied, all agenda items sufficiently considered and information presented was sufficient, complete, understandable and organized<br>• Identifies issues that need additional dialogue |
| Biennial review of responsibilities and time allocation | Board and Committees | • Ensures all necessary agenda items were considered to fulfill Board and committee responsibilities<br>• Adjustments made to future agendas and timelines |
| Annual evaluation NEW | Board | • Ensures Boards and committees are functioning effectively<br>• Results reviewed by nominating and governance committee and summarized for full Board; recommendations for improvement are reviewed and plans initiated |

**OUTCOME**

Based on the Board's new evaluation process, enhancements were made to Board meeting schedules, agendas and materials.

# ESG DEVELOPMENTS

# ESG During 2018

- Shareholder engagement on ESG issues and related litigation concerns
  - Developing formalized policies around shareholder engagement
  - Historically passive investors, such as BlackRock, Vanguard and State Street, are actively looking for ESG engagement—diversity, sustainability and proxy access
- Assessing corporate culture (sexual harassment and sexist behavior)
  - Part of BlackRock's human capital management engagement initiative (promoting a healthy culture and preventing unwanted behaviors)
  - CalPERS is also considering looking into corporate cultures and sexual harassment
  - Consider at least semiannual reports to the board on these types of complaints
  - Consider unstructured board tours so that the board can get a better feel for the corporate culture

# Human Capital Management and Corporate Culture

- Attention to talent and human capital management (including sexual harassment and sexist behavior)
  - Investors looking for disclosures regarding corporate culture and how culture encourages performance, strategic decision making and innovation
  - BlackRock is looking for company disclosures on how the company is meeting workforce demands
  - CalPERS is evaluating corporate cultures and sexual harassment, including requests for EEO-1 data, along with board demographics enabling insight into overall diversity and leadership pipeline

# ESG Issues and Developments

- ISS and Glass Lewis are both rating companies on ESG matters
  - ISS's evaluation is based on factors from Global Reporting Initiative (GRI), Sustainability Accounting Standards Board (SASB) and Financial Stability Board's Task Force on Climate-Related Financial Disclosure (TCFD)
  - Glass Lewis historically has used Sustainalytics (GRI), but recently announced that it is incorporating SASB into its framework
- Growing confusion regarding appropriate disclosure framework
  - GRI is currently the dominant framework
  - BlackRock and Bloomberg encouraging companies to report using TCFD
  - Lack of consistency across industries and different peer companies used by different rating agencies (over 650 rating agencies)

# ESG Frameworks

- The primary frameworks (GRI, TCFD, and SASB) each have a specific focus or approach, and are supported by different stakeholders
- In a September 2018 interview, State Street's head of ESG investing noted that the SASB and GRI frameworks are "key," stating:

  *It's surprising to me how many board members are not aware of SASB and the growing importance of ESG scores in driving investment. I would definitely say that from an ESG messaging perspective, ESG scores are going to be as important in driving investor dollars into shares as credit scores are for fixed income.*

- BlackRock and Vanguard are members of the SASB Investor Advisory Group
- ISS's newly launched Environmental & Social framework measures companies' ESG disclosures relative to
  - Industry-specific peers; and
  - Risk-based standards and recommendations from GRI, SASB, and TCFD

# ESG Frameworks At-a-Glance

| | **GRI**<br>***Global Reporting Institute***<br>**(Most Popular)** | **TCFD**<br>***Task Force on Climate-Related Financial Disclosures*** | **SASB**<br>***Sustainability Accounting Standards Board*** | **CDP**<br>***Formerly known as Carbon Disclosure Project*** | **UN SDG**<br>***UN Sustainable Development Goals (SDGs)*** |
|---|---|---|---|---|---|
| Founded | 1997 | 2015 | 2011 | 2000 | 2015 |
| Format | Modular standards that contain requirements, recommendations, and guidance | Climate-related financial disclosures to be made in mainstream annual filings (Form 10-K) within existing disclosure framework | Quantitative; includes standards by sector; focuses on materiality from a financial reporting perspective | Questionnaires within four "programs": climate change, water, forests, and supply chain | Aspirational goals, targeting 2030 for achievement |
| Selected Prominent Backers | CDP; Glass Lewis; IFC; ISS; OECD; Sustainalytics; UNCTAD; UNEP | Bank of England; BlackRock; Bloomberg; CalPERS/CalSTRS; Deloitte; Glass Lewis; ISS; Moody's; S&P | BlackRock; Bloomberg; CalPERS/CalSTRs; Deloitte; Glass Lewis; ISS; KKR; Moody's; Morningstar; Nasdaq | World Bank; TCFD | The UN |
| Prominence | Used by 93% of the world's 250 largest companies | Supported by more than 500 companies | Final standards yet to be published | In 2017, over 1,300 companies provided carbon emissions disclosures to CDP | 38% of the Fortune 50 publicly support the UN SDGs |

# Steps Toward Harmonization of Standards

- ESG frameworks and standards continue to evolve rapidly
- In September 2018, the head of Sustainalytics's ESG Ratings indicated that "integration of ESG factors plays an increasingly important role in investment decisions"
- Concern –
  - In August 2018, Vanguard noted in a whitepaper that the voluntary disclosure regime and the "subjective nature" of ESG ratings can lead to "inconsistencies" and "material differences" in how companies are assessed on ESG
- However, in December 2018 SEC Chair Jay Clayton indicated that the SEC should <u>not</u> require public companies to follow SASB and other third-party standards on ESG

# ESG Steps for Public Companies to Consider

- Benchmark ESG efforts against peers and broader industry
- Consider integrating TCFD and SASB frameworks, and identify material metrics
  - Indicate in the body of the disclosure document how factor correlates to each reporting framework being used
  - Indicate the extent to which a framework element is not being reported upon and why
- Highlight participation in industry ESG-related initiatives

# 2018 Investor/Advisor Activism

- State Street is evaluating S&P 500 companies for noncompliance with the Investor Stewardship Group (ISG) governance principles
  - Letters sent to board chairs and lead directors requesting they evaluate and disclose their compliance with principles outlined by ISG
  - State Street will use a screening methodology that identifies voting guidelines encompassed in the six ISG corporate governance principles, and companies that do not meet at least three of 13 voting guidelines will be targeted for further engagement
  - If not adequately explaining governance approach, it may hold the board accountable at election time

# 2018 Investor/Advisor Activism

- BlackRock – A connection between company management of ISG risk factors and long-term value creation
- ISS E&S Quality Score
  - A new system of governance rating evaluating the quality of companies' ES disclosures relative to industry peers
  - Evaluation based on 380 factors used by standard setters (e.g., GRI, SASB, TCFD)
  - About 1,500 companies graded in first-year in energy, materials and capital goods with expanded 2018 coverage to 5,000 companies
  - Not supposed to impact voting recommendations on management proposals

## 2018 Investor/Advisor Activism

- Activist hedge funds are focusing on ESG issues
  - Jana Partners announced launch of social responsibility fund
  - Value Act Capital Partners has its own ESG themed fund
  - Trian Partners and Blue Harbor Capital have incorporated ESG principles into their investment strategies
- World Federation of Exchanges (WFE) recently issued updated metrics for exchanges that opt to issue ESG reporting guidance
  - 30 baseline metrics including climate risk mitigation, emissions intensity, gender, pay ratio, human rights, ethics and anticorruption and disclosure
  - More than 35 exchanges have issued or committed to issue ESG reporting guidance to listed companies, including Nasdaq

# 2018 DIRECTOR-RELATED DEVELOPMENTS

## Director Compensation Litigation

- Delaware applies the entire fairness standard in reviewing challenges to discretionary director compensation (*Investors Bancorp* case – December 13, 2017)
  - Under the entire fairness standard, directors have the burden of proving that their self-interested actions were entirely fair to the company (in both amount and process)
    - Entire fairness standard imposes a heavy burden on directors (cannot support a motion to dismiss or likely even a motion for summary judgment)
    - In practice, the company is forced to settle unless it is prepared to engage in expensive, time-consuming, distracting and embarrassing litigation and a trial on the merits

## Director Compensation Litigation (cont.)

- Business Judgment Rule (BJR) standard is the presumption that the board acted in good faith and in the best interests of shareholders
- Under *Investors Bancorp*, to have the BJR apply to director compensation decisions, director equity awards approved by shareholders must be "specific" as to amounts and terms
- BJR standard for shareholder ratification of director compensation is available only in two circumstances:
  - shareholders approve specific director compensation awards
  - when the plan is self-executing (fixed amounts and fixed criteria/automatic formulaic grants)

# Director Compensation

- Some companies are asking for shareholder approval of director compensation (e.g., JP Morgan Chase incorporated director compensation program into the omnibus incentive plan submitted for approval in 2018)
- Other companies are choosing to retain discretion to set director compensation, and are establishing processes to minimize risk, including a robust process for evaluating, approving and disclosing director compensation
- Starting in 2020, ISS will begin recommending against the board members responsible for nonemployee director pay if there is a pattern of excessive pay over multiple years without a compelling rationale

# Director Compensation (cont.)

- Companies should have a robust process for evaluating and approving director compensation, including
  - Benchmarking against an appropriate peer group
  - Receiving advice from compensation experts
  - Separating director compensation decisions from executive compensation decisions, including having the decisions made at separate meetings
- Equity plans submitted for shareholder approval should, at a minimum, include meaningful director award limits

# Director Compensation (cont.)

- Follow best practices
  - Implement stock ownership requirements that are meaningful and consistent with market practice
  - Consider holding requirements
- Consider having shareholders approve nondiscretionary formulaic grants for directors
- Include thorough proxy disclosure of director compensation process and peer benchmarking

# Other Claims

- Continue to see actions brought against directors where equity grants exceed plan limits
  - Plaintiffs' lawyers are reviewing the Grants of Plan-Based Awards table against plan limits
- Continue to see actions brought for misleading/incomplete proxy disclosure if equity plan proposal disclosure does not meet technical disclosure requirements
  - For example, number of "eligible" participants in each class, not "actual"
- Continue to see claims being made if confidentiality provisions do not have an express carve-out for whistleblowing
  - Veiled threat to report the company to SEC Enforcement

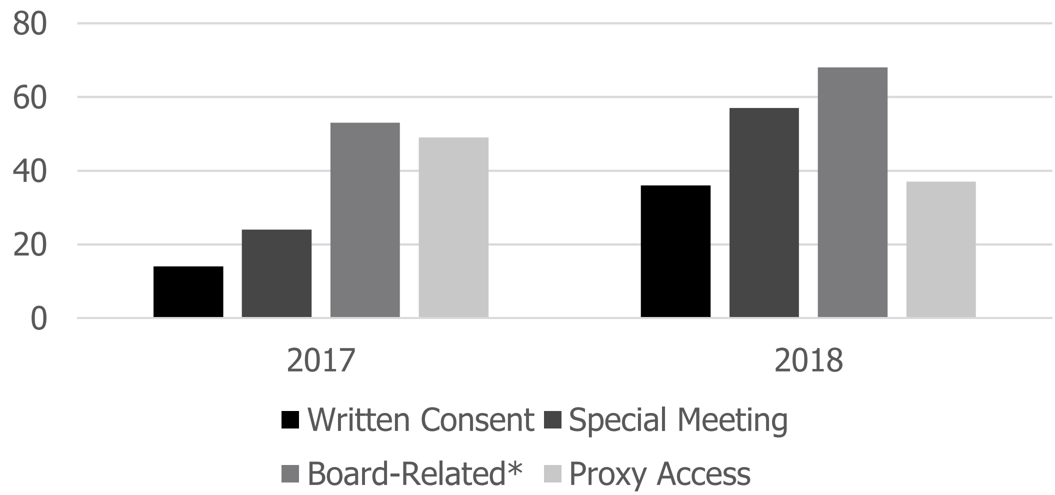
# Other Claims/Minimizing Risk

- Confirm that proxy disclosures, particularly plan proposals, include every disclosure technically required (even if seems outdated or nonsensical)
- Confirm that all awards are within plan limits (assuming maximum payout)
- Check confidentiality provisions in contracts and confirm they have carve-outs for whistleblowing (particularly an issue now with hyperlinking of exhibits)

# SHAREHOLDER PROPOSALS

# Overview of 2018 Shareholder Proposal Trends

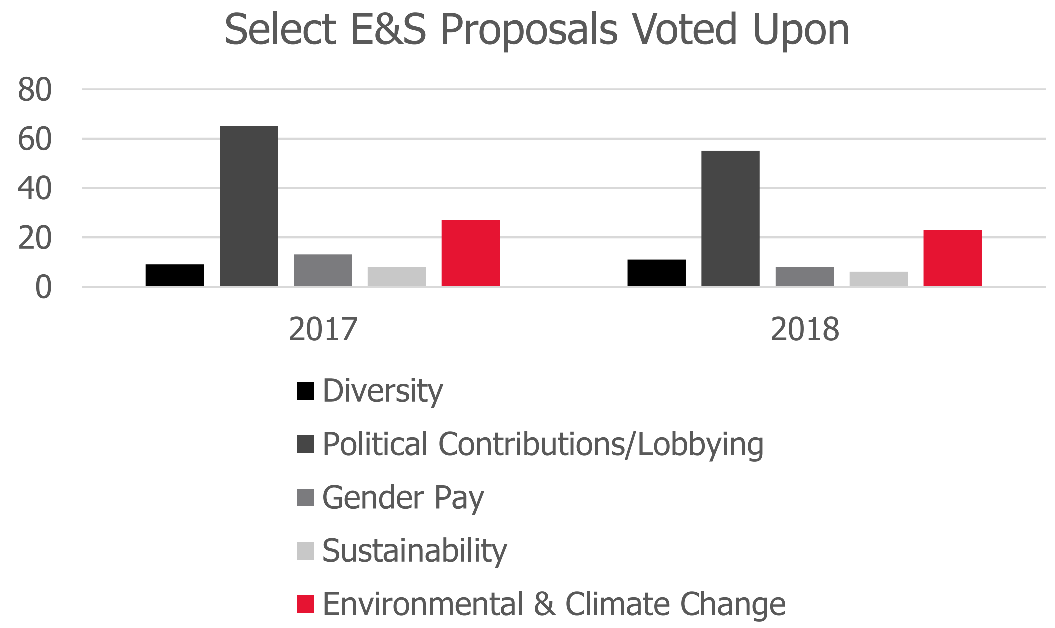
- **Governance-related** proposals increased significantly year-over-year, primarily due to:
  - "Written Consent" proposals voted upon increased by over 150%
  - "Right to Call Special Meeting" proposals voted upon more than doubled
  - Average support for each declined slightly in 2018




*Independent chair; declassify board; adopt majority voting in election of directors*

# Overview of 2018 Shareholder Proposal Trends (cont.)

- **Environmental and social** (E&S) proposals overshadowed governance and compensation-related proposals in 2018
  - Over 400 E&S related shareholder proposals submitted; 150 went to a vote
  - Support for each proposal type increased slightly year-over-year

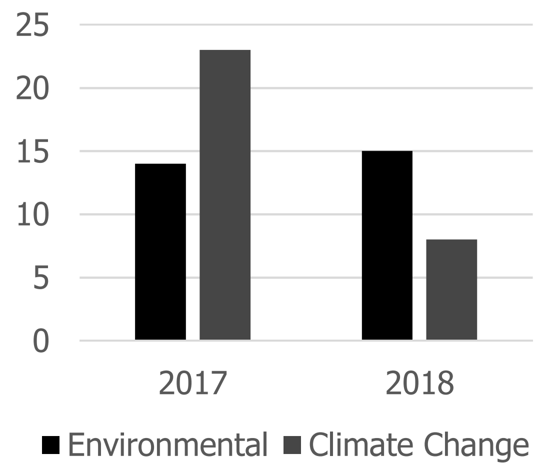


# Overview of 2018 Shareholder Proposal Trends (cont.)

- **Executive-compensation** related proposals increased slightly year-over-year, with slightly higher average support
  - Popular proposals include pro-rata vesting of equity awards, adoption or strengthening of clawback provisions/policies, submitting severance agreements to shareholder vote, and E&S links to compensation

# E&S Focus on Shareholder Proposals

- Environmental and Climate Change Proposals
  - While environmental/greenhouse gas/emissions proposals were up slightly in 2018, the number of climate change/"two degree scenario" proposals declined significantly:




  - General support from ISS, Glass Lewis, and several institutional investors for environmental/climate change proposals

# E&S Focus on Shareholder Proposals (cont.)

- Political Spending and Lobbying
  - Often tied to climate change
  - Proposals requesting more disclosure around corporate lobbying and election spending
  - Rarely receive majority backing, but 2018 saw a slight uptick in average support
  - Several institutional investors maintain long-standing approach of voting against or abstaining on election spending proposals

# Shareholder Proposal Trends (cont.)

- Diversity
  - Continues to be a significant focus on diversity, both at the board and general employee levels
  - Shareholder proposals seek to increase gender diversity on the board and senior executive team, including by tying CEO pay to diversity goals
  - Closing gender pay gaps was a particular focus with respect to financial institutions in 2018
    - Citigroup and BoA became the first banks to conduct and disclose results of pay audit of global workforces and commit to increasing pay of women and minorities as warranted
    - Retailers are another industry of focus, since women are typically a large share of the workforce
  - Social investment funds are also are requesting workforce diversity reports from banks and financial institutions showing a breakdown of companies’ employee population (i.e., by race, gender and Employer Information Report EEO-1 job categories)

# ISS AND GLASS LEWIS UPDATES FOR 2019

# ISS UPDATES

# ISS Guidelines – Board Diversity

- Board Diversity Policy Update
  - Will make negative vote recommendations against the nominating committee chair due to lack of female directors beginning in 2020
  - Potential mitigating factors (in extraordinary circumstances) include:
    - A commitment to appoint women to the board
    - Women on the board in the prior annual meeting

# ISS Guidelines – Board Attendance

- Board Attendance Policy Update
  - "Chronic poor attendance" is three or more consecutive years of attending less than 75% of board and committee meetings without reasonable explanation
  - Will recommend votes against directors with poor attendance
  - In cases of directors who have attended less than 75% of meetings without justification for three or more years, ISS will recommend against voting for:
    - The chair of the nominating committee (after three years)
    - All members of the nominating committee (after four years)
    - The whole board (after five years)

# ISS Guidelines – Management Proposals

- Management Proposals on the Ratification of Existing Charter or Bylaw Provisions
  - New policy where ISS will recommend against votes for individual directors, governance committee members, or the full board if the board asks shareholders to ratify existing charter or bylaw provisions (unless such governance provisions align with best practices)
    - Intended to discourage companies from using the Rule 14a-8 no-action process to exclude shareholder proposals
  - ISS will consider the following factors (among others) in light of a management ratification proposal:
    - The presence of a related shareholder proposal on the ballot;
    - Related disclosure;
    - The impact of the current provision on shareholders' rights; and
    - The company's past history regarding such matters

# ISS Guidelines – E&S Proposals

- ISS will now examine primarily whether shareholder proposals on environmental or social issues are likely to enhance or protect shareholder value
- ISS also will consider, in addition to the following factors, any significant controversies, fines, penalties or litigation associated with the company's environmental or social practices:
  1. Are the issues presented in the proposal better addressed through legislation or regulation?
  2. Has the company already responded appropriately to the E&S issues?
  3. Is the proposal unduly burdensome or overly prescriptive?
  4. How does the company approach the issue compared to industry standard practices?
  5. Is the requested information already available to shareholders?
  6. Would the requested information reveal proprietary or confidential information?

# ISS Guidelines – Director Performance

- Beginning in 2020, ISS will issue negative vote recommendations against compensation committee members responsible for setting "excessive" nonemployee director compensation for two or more consecutive years without adequate justification
  - ISS may consider director pay excessive if the pay exceeds that received by the top 2% to 3% of directors in the same index and sector
- ISS will recommend in favor of shareholder proposals to eliminate retirement plans for nonemployee directors

# ISS Guidelines – Executive Compensation

- ISS will recommend votes case by case on proposals to exclude the impact of share buybacks from the calculation of incentive program performance metrics
  - Factors to include the nature of the buyback program and the role of per-share metrics
- Informational Economic Value Added metrics will be phased in to ISS research reports over the coming proxy season
- ISS is unlikely to support front-loaded awards that cover more than four years (the grant year and three future years), and commitments not to grant additional awards over the covered period should be honored
- ISS indicated that adverse vote recommendations may result in severance payments in connection with a "Good Reason" definition that presents windfall risks, such as pay for performance failure
- While compensation plan amendments that remove general references to IRC §162(m) qualification will be viewed neutrally, ISS will view shifts away from performance-based compensation to discretionary or fixed pay elements negatively

# ISS Guidelines – Equity Plan Scorecard

- ISS has updated its Equity Plan Scorecard (EPSC) policy to clarify that:
  - The change-in-control vesting factor is based on the quality of the disclosure of applicable provisions
  - Equity compensation estimated to dilute shareholders' holdings by more than 25% will be viewed negatively
  - There is increased positive weight on shorter plan durations to allow more frequent shareholder approval
- ISS will look negatively upon disclosure of change-in-control award vesting disclosure if:
  - It does not specifically address vesting treatment for both time- and performance-based awards
  - If the vesting of either type of award is discretionary

# GLASS LEWIS UPDATES

# Glass Lewis Updates

- Board Diversity
  - For meetings held after the start of 2019, Glass Lewis will begin recommending votes against the nominating committee chair at companies with no female directors
  - May also recommend votes against other nominating committee members, depending on factors including disclosure of diversity considerations
- ESG Oversight
  - Will note whether large companies disclose which directors or board committees are charged with oversight of environmental and/or social issues
  - If such risks are being mismanaged or detrimental to shareholders, may recommend voting against the responsible members of the board, or, if responsibility is not clear, the audit committee

# Glass Lewis Updates

- Special Meeting Proposals and Excluded Shareholder Proposals
  - If a shareholder and the company have conflicting proposals regarding the right of shareholders to call a special meeting, Glass Lewis will recommend voting for the proposal with the lower threshold
    - Glass Lewis's preferred threshold is 10% to 15%
    - If special meeting rights are not already provided, Glass Lewis will recommend voting for the shareholder proposal
    - If a shareholder proposal has been excluded from the proxy statement in favor of a vote on the ratification of a materially different management proposal, Glass Lewis will recommend voting against ratification and against the nominating committee chair
  - If a company excludes a shareholder proposal that Glass Lewis deems to be in the interest of shareholders, in very limited circumstances after a facts-and-circumstances-based analysis, it will recommend voting against members of the nominating committee

# Glass Lewis Updates (cont.)

- Executive Compensation
  - Will recommend voting against all compensation committee members when new excise tax gross-up provisions are included in employment agreements with executives
  - Now placing greater weight on the structure and execution of front-loaded equity incentive awards
  - Will not recommend against incentive compensation plans with subjective performance components given adequate justification
  - Will negatively consider excessive sign-on awards or multiyear guaranteed bonuses
  - Increased focus on executive entitlements, the wording of employment agreements, and the structure of clawback policies (i.e., whether clawbacks exceed minimum legal requirements)

# Glass Lewis Updates (cont.)

- Auditor Ratification
  - In addition to audit fees, recent material restatements, accounting policies and other factors, will now consider the auditor's tenure, history of inaccurate audits, and any ongoing litigation or controversies related to an auditor's effectiveness
  - In limited circumstances, may recommend voting against the ratification of an auditor
- Quorums
  - Generally will support management proposals lowering the quorum to one-third of shares entitled to vote

# WHAT TO EXPECT IN 2019

# 2019 Proxy Disclosure Focal Points

- Gender and Other Diversity in the Boardroom
- ESG/CSR Disclosures
  - Ensure that the company's ESG and/or CSR story – and any relevant initiatives – are broadcast clearly in the proxy statement
- Visuals (and Readability) Matter
  - Summaries should be succinct and stand alone (i.e., not just a repeat of information elsewhere in the proxy statement)
  - Consider the use of graphics and charts to call out important information

# 2019 Proxy Disclosure Focal Points (cont.)

- Clear Disclosure of Performance Goals, Unusual Grants and Severance Terms
- Disclose Process for Setting Director Compensation
- Disclose Shareholder Outreach Efforts
- Consider Potential Applicability of New Smaller Reporting Company Status
  - Scaled disclosure may be available

# CLE

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Mims Maynard Zabriskie advises on complex executive compensation and employee benefit plan matters, including the design, negotiation, and implementation of executive compensation, equity compensation, and tax–qualified retirement plans and shareholder approval of equity plans. She counsels large publicly and privately owned businesses, including Fortune 500 enterprises, technology companies, and universities on a range of legal issues related to executive compensation governance, and employee benefit plans. She also advises on benefits and executive compensation issues that arise during major corporate transactions, including mergers and acquisitions, sales, IPOs, and spinoffs.

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