



**Monday, October 1, 2012**

**4:30 PM - 6:00 PM**

**403 – Maintaining Corporate Continuity in  
the Face of Shareholder Proposals: Frequent  
Assaults in This Year's Proxy Season and  
How to Fend them Off**

**Andrea Charters**

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*Partner*

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**John Saia**

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**P. Bartlett Wu**

*Attorney*

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## Faculty Biographies

### **Andrea Charters**

Andrea L. Charters is a vice president and associate general counsel at Rosetta Stone, Inc., the leading language learning software-as-a-service provider. Her practice focuses on enterprise-driven legal work for international business operations in China, Korea, Japan and the United Kingdom and on U.S. securities law.

Ms. Charters was an adjunct professor at Washington University School of Law in St. Louis, where she taught international business transactions and trade, and is a frequent speaker on international business, data protection, intellectual property and securities law topics.

She is an honors graduate of Yale University and Harvard Law School.

### **David Lynn**

David M. Lynn is a partner in the Washington D.C. office of Morrison & Foerster, and is co-chair of the firm's global public companies practice. He is the former chief counsel of the division of corporation finance at the U.S. Securities and Exchange Commission. Mr. Lynn's practice is focused on advising a wide range of clients on SEC matters, securities transactions and corporate governance. Mr. Lynn is widely regarded as a leading authority on the recently enacted Jumpstart Our Business Startups Act, as well as the corporate governance and executive compensation provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Mr. Lynn was chief counsel for the division of corporation finance for five years. He initially served on the SEC staff as an attorney-advisor and subsequently as the special counsel in the office of real estate and business services of the division of corporation finance, where he formulated and implemented disclosure policies applicable to securities offering of real estate investment trusts and other real estate companies. While in private practice, Mr. Lynn advised clients on SEC investigations, securities transactions, mergers and acquisitions and corporate governance.

Mr. Lynn serves as the chair of the Subcommittee on Securities Registration of the ABA business law section's Federal Regulation of Securities Committee.

Mr. Lynn received a BBA and MS in finance from Loyola College, MD, and a law degree from the University of Maryland School of Law.

## 403 Maintaining Corporate Continuity in the Face of Shareholder Proposals: Frequent Assaults in This Year's Proxy Season and How to Fend them Off

**John Saia**

John G. Saia is senior counsel at McKesson Corporation, a healthcare services and information technology company dedicated to making the business of healthcare run better. His responsibilities include securities regulation, mergers and acquisitions, treasury and corporate governance matters. He is also lead counsel for McKesson's global sourcing division and serves as a board member for its employee political action committee.

Prior to joining McKesson, Mr. Saia was with the international law firm, DLA Piper US LLP. While at DLA Piper, he focused on capital market transactions and mergers and acquisitions, including counseling public and pre-public companies on the interpretation and application of disclosure and compliance rules under the federal securities laws. Prior to joining DLA Piper, Mr. Saia served as special counsel in the division of corporation finance at the U.S. Securities and Exchange Commission (SEC). As special counsel, Mr. Saia was actively involved in nearly every aspect of public reporting, including managing the SEC's review of initial public offerings, proxies, mergers, tender offers, going-private transactions, periodic and current reports for compliance with the federal securities laws. While at the SEC, Mr. Saia received the Chairman's 2002 Capital Markets Award for his work with the Section 21(a) Certification Task Force.

He currently serves as a board member of the Museum of Craft and Folk Art in San Francisco.






Mr. Saia received his bachelor degree from Santa Clara University and his law degree from George Washington University Law School.

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## Maintaining Corporate Continuity in the Face of Shareholder Proposals: Frequent Assaults in This Year's Proxy Season and How to Fend them Off






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## Quick Review of Handling S/H Proposals

Bart Wu  
Calyx Institute

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## Quick Review of Handling S/H Proposals

- **Process**
  - Highlights (14a-8\_\_)
  - (a)-(h), (j)-(l) concern procedural matters.
    - → 120d before date proxy mat. distrib. (e)(2)
    - → \$2,000 mkt. value or 1% of sh. eligible to vote on proposal. (b)(2)
    - → 14d for S/H to respond to Co. notice of defect. (f)
    - → 1 proposal (c); 500 words max. (d)
    - → 80d (j) request NAL before distribution ???
    - → Attendance in person or by representative. (h)






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## Quick Review of Handling S/H Proposals

- (i)(1) – (i)(13) concern substantive bases to object to proposal ± stmt in support
  - (i)(1) Improper subj. for S/H under state law of organization
  - (i)(2) Would cause Co. to violate applicable state, fed. or foreign law
  - (i)(3) Contrary to proxy rules


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## Quick Review of Handling S/H Proposals

- →(i)(4) Re. personal claim or grievance
- →(i)(5) Re. <5% of assets/gross sales/ earnings and unrelated to Co.'s business
- →(i)(6) Co. lacks power/auth to implement
- →(i)(7) Re. ordinary business operations
- →(i)(8) Re. election to BOD


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## Quick Review of Handling S/H Proposals

- →(i)(9) Conflicts with Co.'s proposal(s)
- →(i)(10) Substantially implemented
- →(i)(11) Substantially duplicative of proposal already included in current proxy material
- →(i)(12) Substantially same subject as proposal included in last 3 yrs. and rec'd <3,6,10%
- →(i)(13) Re. specific amts of \$ or dividends

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## Quick Review of Handling S/H Proposals

- **Staff Interpretations**
  - Corp. Fin. has issued 7 Staff Legal Bulletins (SLB 14-14F):  
Helpful to work backward from F to 14.
    - 14F: (b)(2)(i) (Hain)
    - 14E: (i)(7)
    - 14D: (i)(1,2,6); (b)
    - 14C: (i)(6,7); (l)
    - 14B: (i)(3); (f); (j)
    - 14A: (i)(7)
    - 14: General Summary; mechanics

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## Quick Review of Handling S/H Proposals

- **(i)(7)-Ordinary Business Operations**
  - Very popular basis to object, but not necessarily most successful
    - Staff position has evolved since SLB14A
      - Formerly, Staff viewed any proposal requiring Co. to engage in an evaluation of risk as excludable because it dealt with Ordinary Business Operations


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## Quick Review of Handling S/H Proposals

- Now, Staff focuses on the subject matter that gives rise to the risk, and will determine if the subject matter is “so significant” and has a “sufficient nexus” to the Co. so that the Bd’s management of that risk is a “significant policy matter.” (SLB 14E).
- At the CSL Comm. Meeting with SEC staff this June, Director Cross identified factors they consider in determining if significant policy matter such as press reports, Presidential statements, Congressional hearings on a subject. Frequency of S/H proposals, however, is not weighed.


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## Quick Review of Handling S/H Proposals


- » For example,
  - » Staff previously viewed CEO succession planning as an Ord Bus. Ops. because it concerned hiring/promotion/termination of employees.
  - » Now, Staff views such planning as raising a “significant policy issue” re governance that “transcends the day-to-day business matter of managing the workforce.” Thus, not excludable.




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## Quick Review of Handling S/H Proposals

- » Similarly, Staff for some years has concluded that proposals that concern a Co.'s minimizing or eliminating operations that may adversely affect the environment or public health are not excludable. (SLB 14C).
- » Also, proposals re. human rights, climate change and other environmental, social and governance-related issues.


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## Quick Review of Handling S/H Proposals

- **(i)(3)-Contrary To Proxy Rules**
  - Another popular, but slippery basis to object to proposal and to all or portions of the statement of support.
    - Reasons to object:
      - Vague and indefinite
      - Impugns character, integrity, personal reputation or conduct without factual support
      - Includes opinions given as facts

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## Quick Review of Handling S/H Proposals

- **(i)(6)-Co. lacks power/auth to implement**
  - Frequently cited against proposals for director independence.
    - Typical objection is that proposal doesn't provide for cure if loss of independence
      - Staff may allow if proposal offers any flexibility (e.g., “whenever possible”, or cure period). SLB 14C

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## Quick Review of Handling S/H Proposals

- (i)(6) also cited when proposer “requests”, “recommends” or “requires” Bd. amend Co. charter.
  - Typical objection is that Bd. lacks auth/power to amend charter
    - Staff may allow proposer to revise to provide that the Bd. “take the steps necessary” to amend Co. charter. (SLB 14 D)


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## Quick Review of Handling S/H Proposals

- (b)(2) & (f)- Deficiency Notices
  - Demonstrating eligibility to make proposal.
    - Introducing Brokers' Letters
      - » SEC considered as acceptable proof for following issuance of NAL in Hain Celestial (2008).
      - » But multiple challenges in court over past several years by Apache Corp. in S.D. Texas.


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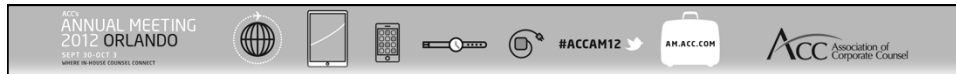


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## Quick Review of Handling S/H Proposals


- » Court held narrowly that Apache could exclude the proposal based on challenged facts re. custodian.
- » Since Apache decisions, Corp. Fin. Staff has with SLB 14F discontinued Hain Celestial practice thus conforming to the Texas decisions.



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# 2012 Shareholder Spring?

Andrea L. Charters, VP& AGC,  
Rosetta Stone










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# 2012 Shareholder Spring?

**Proposals up 3%**

- Political Contributions and Lobbying Costs
- Executive Compensation
- Corporate Governance (Declassifying Boards, Director Nomination Policy, Separation of CEO and Chair, Calling Special Meetings, Action by Written Consent, Majority Voting and Proxy Access, Auditor Rotation)
- MOFO's 2012 Proxy Season Field Guide offers an integrated overview of shareholder activism, proxy advisory firm issues and SEC initiatives  
<http://www.mofo.com/files/Uploads/Images/Proxy-Season-Field-Guide-2012.pdf>








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## Political and Compensation Proposals

- These remain common but generally fail to pass
- Served primarily as a mechanism for shareholders to express their views
- In 2011 and 2012, NO political issue proposals passed at S&P 500 companies and their votes in favor were low
- In 2011, at S&P 500 companies, 2 proposals passed related to compensation, but NO proposals passed in 2012 on these issues
- Sources:
  - Proxy Monitor <http://www.proxymonitor.org/Forms/2012Finding4.aspx>
  - Sullivan & Cromwell  
[http://www.sullcrom.com/files/Publication/fdd28332-7b79-4d37-9ada-89da9bc111a9/Presentation/PublicationAttachment/40dd1c4d-ab16-4208-99ba-873cfe9c3f06/SC\\_Publication\\_2012\\_Proxy\\_Season\\_Review.pdf](http://www.sullcrom.com/files/Publication/fdd28332-7b79-4d37-9ada-89da9bc111a9/Presentation/PublicationAttachment/40dd1c4d-ab16-4208-99ba-873cfe9c3f06/SC_Publication_2012_Proxy_Season_Review.pdf)






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## Corporate Governance Proposals

- Contrary to the former two categories, in 2011 and 2012, dozens of Governance proposals passed
- This is particularly alarming, since Governance proposals, as we will discuss, are the hardest to get any traction against through SEC processes
- The passage of Governance proposals should prompt issuers to consider whether they can muster the votes to prevent embarrassing votes against their governance structures


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## Governance Proposals

- At S&P 500 companies, in 2011, 52 Governance proposals passed and in 2012, 68 passed
- 2-3 a year related to independent Chairs
- 1-4 a year related to calling special meetings
- 5-11 a year related to rights to act by written consent
- The overwhelming majority, 20 in 2011 and 35 in 2012 related to Declassifying Boards
- 7-9 related to adopting majority voting
- 7 in each year related to eliminating supermajority provisions
- None passed related to cumulative voting


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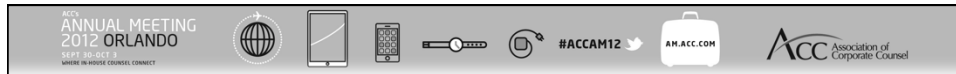


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## Declassified Board Proposals


- Particularly attacked by the Harvard Law School Shareholder Rights Project
- Classified boards are a powerful anti-takeover tool and a long-standing structure for continuity in corporate governance.
- In recent years, however, classified boards have come under attack and are becoming far less prevalent, as shareholders have begun pressing for de-classification.
- Opposition to classified boards may be motivated both by a desire to change existing leadership and to make companies more attractive to potentially acquiring bidders.



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# Dealing with the SEC

David M. Lynn  
Morrison & Foerster LLP




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## The SEC's Annual Task Force

- The SEC Staff's shareholder proposal task force is typically staffed with lawyers from the Office of Chief Counsel and Disclosure Operations.
- In 2012, there were 19 attorneys working on shareholder proposals.
- The Staff considered 322 proposals through the end of June, and the average response time was 38 days.

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## The No-Action Request

- The Staff will consider correspondence provided by both the company and the proponent (or counsel representing the parties).
- The Staff is considering how to respond to the no-action request included in the company's letter.
- Unlike other no-action letters, the Staff responds with both “no” and “yes.”

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## The No-Action Request

- In the Staff Legal Bulletins, the SEC Staff has provided procedural guidance about the no-action process, including about the materials a company must include when submitting a no-action request.
- Under Rule 14a-8(j)(1), a company must submit its request to the Office of Chief Counsel no later than 80 calendar days before it files its definitive proxy statement.



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## The No-Action Request

- No-action requests describe the proposal and the reasons that a company believes it can exclude the proposal from its proxy materials.
- Under Rule 14a-8(g), the burden is on the company to demonstrate that it is entitled to exclude a proposal.
- Companies often raise more than one procedural and/or substantive basis to exclude a proposal.

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## The Staff's Approach

- The Staff will consider each substantive basis for exclusion raised by the company.
- The Staff will not consider substantive bases for exclusion that are not raised in the no-action request.
- In writing the request, it is important to consider guidance provided by SEC releases, Staff Legal Bulletins and prior no-action responses.

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## The Staff's Answers

- While the SEC Staff's responses typically address whether the company has a basis to exclude the proposal, there also may be times when the Staff will say that there appears to be some basis for the company's objection, but the problem can be cured if, for example the shareholder makes a mandatory proposal into a nonbinding proposal, or deletes certain words or sentences in the proposal to avoid vagueness.

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## Appeals

- The Staff will consider requests for reconsideration through letters submitted to the Office of Chief Counsel.
- Also, Under Section 2.02.1(d) of the SEC's Rules of Practice, parties can ask the SEC to review a Staff no-action response, if it involves a "matter of substantial importance and where the issues are novel or unique."




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# Strategies for Addressing Shareholder Proposals

John G. Saia  
McKesson Corporation



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## Receiving a Proposal

- Intake Checklist
  - Ownership Verification – Record Holder or “Street Name”
  - Continued Ownership Statement
  - Multiple Proposals
  - 500-Word Limit
  - Late Submission
  - Failure to Present Prior Proposal
  - Failure to Hold Required Number of Securities


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## Key Deadlines

- Notice of Defect due within 14 calendar days of Receipt
- Submission of an SEC No-Action Letter Request
  - Basis and Likelihood of Success
  - 80 calendar day deadline under Rule 14a-8(j)


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## Key Considerations

- Confirming Receipt
- Proponent Profile
- History and Voting Record
- Voting Policies of Institutional Investors and the Proxy Advisory Firms
- Proxy Solicitor and Vote Projection(s)
- Alerting the Board and Senior Management
- Engagement with the Proponent

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## Key Considerations

- Proxy Disclosure
  - Clearly Stated Vote Requirement
  - Statement in Opposition
- Solicitation Strategy
- Engagement of a Proxy Solicitor
- Voting Policies of Institutional Investors
- Additional Soliciting Material
- Vote Tracking

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## Key Considerations

- Annual Meeting
  - Attendance by the Proponent(s)
  - Procedural Safeguards
  - Reporting Results
- Media and Employee Response
- Item 5.07 to Form 8-K
- Postmortem Review

# FREQUENTLY ASKED QUESTIONS ABOUT SHAREHOLDER PROPOSALS AND PROXY ACCESS

## Shareholder Proposals

### *What are shareholder proposals?*

Shareholder proposals are matters that shareholders of a public company seek to have acted on at an annual or other meeting of the company. In accordance with the requirements specified in state corporation laws and in a company's organizational documents, a shareholder could seek to have a matter voted on by raising the matter at a meeting of shareholders. Alternatively, a qualifying shareholder could seek to include the proposal in the company's proxy statement under Rule 14a-8 adopted under Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and thereby have the company solicit proxies with respect to the proposal that would be presented at the meeting.

### *Who submits shareholder proposals to companies?*

Shareholder proposals come from a wide variety of shareholders, sometimes referred to as "proponents." Shareholder proponents may be individual investors who are seeking to raise a particular issue or implement a policy at a company, corporate "gadflies" who seek to

bring about changes to corporate activity through the shareholder proposal process, activist investors who are seeking to bring about a change-in-control or a change in the strategy or policies of the company, and institutional investors who may be focused on particular corporate governance or social issues.

### *Who regulates the shareholder proposal process?*

The Securities and Exchange Commission (the "SEC") has adopted Rule 14a-8 as a means to control the process whereby proponents seek to have shareholder proposals included in the proxy statements of public companies, and the staff of the SEC (the "Staff") is involved in considering the arguments of companies that seek to exclude shareholder proposals based on the operation of Rule 14a-8 through a process whereby companies typically seek a "no-action letter" from the Staff with regard to whether the company may exclude the shareholder proposal. Under Rule 14a-8, a company must include a shareholder proposal in its proxy materials unless it violates one of the rule's eligibility and procedural requirements or falls within one of the rule's thirteen substantive bases for exclusion.

### **The Scope of Rule 14a-8**

***Does Rule 14a-8 require that all shareholder proposals be included in a company's proxy statement?***

Under Rule 14a-8, a company must include a shareholder proposal in its proxy materials unless it violates one of the rule's eligibility and procedural requirements, or one of the thirteen substantive bases for exclusion specified in the rule.

***What are the eligibility and procedural requirements for shareholder proposals under Rule 14a-8?***

Rule 14a-8 imposes several eligibility and procedural requirements on shareholders who rely on the rule. A shareholder may only submit one proposal per meeting, must own at least \$2,000 or 1% of securities entitled to vote on the proposal and must limit its proposal to 500 words. A shareholder must submit the proposal at least 120 days before the date of the company's proxy statement for the previous year's annual meeting (or a reasonable time before the company begins to print and mail its proxy materials if the company did not have an annual meeting during the previous year, or if the date of the annual meeting has been changed by more than 30 days from the date of the previous year's annual meeting). A company that intends to rely on the rule to exclude a proposal must submit its "no-action" request 80 days in advance of the date that it proposes to file its definitive proxy materials.

***What are the substantive requirements under Rule 14a-8?***

Under paragraph (i) of Rule 14a-8, a company may exclude a shareholder proposal from its proxy materials if the proposal falls into one of thirteen specific

substantive bases for exclusion. These substantive bases represent areas that the SEC has determined over the years to not be appropriate matters for consideration by shareholders through the shareholder proposal process. To exclude a proposal, a company must first notify the SEC, which is typically done through a request for a "no-action" letter. In the no-action letter request, a company may argue that the subject shareholder proposal can be excluded under more than one basis for exclusion.

***How does the no-action letter process work with respect to shareholder proposals?***

The central component of the Rule 14a-8 process is the no-action letter. A no-action letter is a letter from the Staff that provides the Staff's informal view regarding whether it would recommend enforcement action to the SEC if the company takes the course of action described in the no-action request. No-action letters reflect the Staff's views concerning the application of securities laws to a particular set of facts. In the context of Rule 14a-8, no-action letters often serve as a key hurdle for shareholders that hope to include a proposal in a company's proxy materials.

There is no rule that requires the submission of no-action requests, nor is there a rule that requires that the Staff respond to such requests. Companies submit requests to comply with Rule 14a-8(j), which requires that companies "file their reasons" with the SEC. The Staff responds to such requests as a convenience to both companies and shareholders, and in order to assist both companies and shareholders in complying with the proxy rules. While the Staff's no-action letters typically address whether the company has a basis to exclude the proposal, there also may be times when the Staff will

say that there appears to be some basis for the company's objection, but the problem can be cured if the proponent changes the proposal in some specific way, for example, the proponent makes a mandatory proposal into a nonbinding proposal, or deletes certain words or sentences in the proposal to avoid vagueness.

Some companies have elected to submit a notice to the SEC of the company's intention to exclude the proposal, and then file suit in federal court seeking a declaratory judgment as to whether the proposal may be excluded under Rule 14a-8(i)(8).

### **The Eligibility and Procedural Requirements of Rule 14a-8**

#### *What are the requirements as to ownership for submitting shareholder proposals?*

A shareholder proposal may be submitted under Rule 14a-8 by a proponent who has held at least \$2,000 worth of the company's stock (or 1% of the shares eligible to vote, whichever figure is smaller) continuously for at least one year before the date the proposal is submitted to the company. Further, the proponent must hold the securities through the date of the annual meeting.

#### *How does a proponent demonstrate that the ownership requirements have been satisfied?*

Under Rule 14a-8(b), at the time a shareholder submits a proposal, the shareholder must prove eligibility by being a record holder of the securities that the company could verify on its own, or by submitting either:

- A written statement from the record holder of the securities (usually a broker

or bank that is a Depository Trust Company ("DTC") participant) verifying that, at the time the shareholder submits the proposal, the shareholder continuously held at least \$2,000 in market value or 1% of the company's securities entitled to vote on the proposal at the meeting for at least one year by the date the shareholder submitted the proposal; or

- A copy of a Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting the shareholder's ownership of the shares as of or before the date on which the one-year eligibility period begins.

Rule 14a-8(b)(2)(i) provides that, in addition to the proof of ownership, "You [the shareholder proponent] must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders."

#### *What must a proponent submit if the proponent is not the record holder of the securities?*

Usually, a proponent would submit a written statement from the "record" holder of the securities (usually a broker or bank that is a DTC participant) verifying that, at the time the shareholder submits the proposal, the shareholder continuously held at least \$2,000 in market value or 1% of the company's securities entitled to vote on the proposal at the meeting for at least one year by the date the shareholder submitted the proposal. In Staff Legal Bulletin No. 14F ("SLB 14F"), the Staff clarified that only DTC participants should be viewed as "record" holders of securities that are deposited with DTC. In accordance with this guidance, a shareholder



that owns shares through a broker or bank that is not a DTC participant must obtain and submit two proof of ownership statements—one from the shareholder's broker or bank confirming the shareholder's ownership and one from the DTC participant through which the securities are held confirming the ownership of the shareholder's broker or bank.

A company that seeks to exclude a shareholder proposal from its proxy materials on the basis of proof of ownership now must take at least the following steps: (i) determine whether the shareholder is a registered shareholder by checking its list of registered shareholders; (ii) review the proof of ownership to see if the bank or broker providing such proof is a DTC participant by comparing such bank or broker's name against the list of DTC participants; and (iii) notify the shareholder that the person that provided proof of ownership is not a DTC participant and request that the shareholder obtain a second letter demonstrating proof of ownership from the bank or broker that is a DTC participant through which the other bank or broker holds shares.

***Is there particular language that a proponent should have its broker or bank use when providing the proof of ownership information?***

SLB 14F also suggests that a shareholder proponent use the following format to have its broker or bank provide the required proof of ownership as of the date the shareholder plans to submit the proposal: "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."

***How does a proponent determine the market value of the securities held for the purposes of eligibility to submit a proposal under Rule 14a-8?***

The Staff noted in Staff Legal Bulletin No. 14 ("SLB 14") that, in order to determine whether the shareholder satisfies the \$2,000 threshold, the Staff looks at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at \$2,000 or greater, based on the average of the bid and ask prices. If bid and ask prices are not available, then the market value is determined by multiplying the number of securities the shareholder held for the one-year period by the highest selling price during the 60 calendar days before the shareholder submitted the proposal. The Staff notes that that a security's highest selling price is not necessarily the same as its highest closing price.

***How many proposals may a shareholder proponent submit?***

Under Rule 14a-8(c), a proponent may submit no more than one proposal for a particular shareholders' meeting.

***How long can a shareholder proposal be?***

Under Rule 14a-8(d), the proposal, including any accompanying supporting statement, may not exceed 500 words.

The Staff notes, in SLB 14, that any statements which are arguments "in support of the proposal" are considered to be part of the supporting statement, therefore, any title or heading in the proposal meeting that test may be counted toward the 500-word limitation. In general, the reference to a website address does not violate the 500 word limitation by virtue of

indirectly including the content of the website in the proposal and supporting statement. In SLB 14, the Staff indicated that it counts a website address as one word for purposes of the 500-word limitation because the Staff does not believe that a website address raises the concern that Rule 14a-8(d) was intended to address.

***What is the deadline for submitting a shareholder proposal?***

Rule 14a-8(e)(2) requires that proposals for a regularly scheduled annual meeting be 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. The deadline for shareholder proposals is included in the company's proxy statement, and is determined by (i) starting with the release date disclosed in the previous year's proxy statement; (ii) increasing the year by one; and (iii) counting back 120 calendar days.

***Must a proponent or a proponent's designee attend the meeting to present the proposal?***

Rule 14a-8(h)(1) requires that the proponent or the proponent's qualified representative attend the shareholders' meeting to present the proposal. Rule 14a-8(h)(3) provides that a company may exclude a proponent's proposals for two calendar years if the company included one of the proponent's proposals in its proxy materials for a shareholders' meeting, neither the proponent nor the proponent's qualified representative appeared and presented the proposal, and the proponent did not demonstrate "good cause" for failing to attend the meeting or present the proposal.

If a proponent voluntarily provides a written statement evidencing an intention to act contrary to

Rule 14a-8(h)(1) and not attend the meeting, Rule 14a-8(i)(3) (discussed below) may serve as a basis for the company to exclude the proposal because the proponent's actions are contrary to the proxy rules.

***What must a company do if it seeks to exclude a proposal based on the failure of the proponent to meet one these eligibility and procedural requirements?***

If a shareholder fails to follow the eligibility or procedural requirements of Rule 14a-8, Rule 14a-8(f) provides that a company may exclude a proposal from its proxy materials due to eligibility or procedural defects if (i) within 14 calendar days of receiving the proposal, the company provides the shareholder with written notice of the defect or defects with the proposal, including the time frame for responding; and (ii) the shareholder fails to respond to this notice within 14 calendar days of receiving the notice of the defect or defects, or the shareholder timely responds but does not cure the eligibility or procedural defect(s). If the shareholder does not timely respond or remedy the defect(s) and the company intends to exclude the proposal, the company must still submit, to the Staff and the shareholder, a copy of the proposal and the reasons for excluding the proposal.

The company does not need to provide the shareholder with a notice of defect if the defect cannot be remedied; however, the company must still submit its reasons regarding exclusion of the proposal to the Staff and the shareholder. The shareholder may, but is not required to, submit a reply to the Staff with a copy sent to the company.

*Under what circumstances must a company accept a revised shareholder proposal?*

Under guidance provided in SLB 14F, if a shareholder proponent submits a revised proposal before the company's deadline for shareholder proposals, the company must accept the revised proposal. If a shareholder submits a revised proposal after the company's deadline, the company does not have to accept the revised proposal.

*Does the Staff provide responses to no-action requests by e-mail?*

The Staff indicated in SLB 14F that it now transmits Rule 14a-8 no-action responses by e-mail to companies and proponents, provided that they include e-mail addresses for recipients in their correspondence.

*Can a no-action letter be withdrawn?*

If a company determines that it does not want to obtain a Staff response to a pending no-action request, because, for example, the company has negotiated with the proponent to withdraw the proposal or the company has elected to include the proposal in its proxy statement, then the company should submit a letter to the Staff requesting withdrawal of the no-action request.

**The Substantive Bases for Exclusion of Shareholder Proposals under Rule 14a-8**

*Rule 14a-8(i)(1) provides that a proposal is excludable when it is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization. Under what circumstances is this basis for exclusion applicable?*

Rule 14-8(i)(1) focuses on proposals that would not be a proper subject for shareholder action. With respect to

subjects and procedures for shareholder votes, most state corporation laws provide that a corporation's charter or bylaws can specify the types of proposals that are permitted to be brought before the shareholders for a vote at an annual or special meeting. The SEC indicates that, depending on the subject matter, a proposal that would bind the company if approved by shareholders may not be considered proper under state law. Proposals cast as recommendations or requests that the board of directors take specified action, however, are generally considered proper under state law. As a result, the Staff will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise. The Staff will let a proponent amend a proposal to make it a "precatory" recommendation if the company objects to the mandatory nature of the proposal.

The Staff has consistently granted no-action relief to corporations under Rule 14a-8(i)(1) where a shareholder proposal mandates action that, under state law, falls within the powers of the board of directors. For example, the Staff has allowed companies to exclude proposals that would require a board to declassify a staggered board, while the Staff has permitted proposals requesting company "take the steps necessary" to declassify staggered board.

Companies must provide a supporting opinion of counsel when the reason for exclusion is based on matters of state or foreign law. Further, under a 2007 amendment to Delaware law, the SEC may request a legal interpretation from the Delaware Supreme Court. In June 2008, the SEC certified to the Supreme Court questions about the propriety under state law of a shareholder proposal submitted to CA by the AFSCME pension plan.

*Rule 14a-8(i)(2) provides that a proposal is excludable when the proposal would, if implemented, cause the company to violate any state, federal or foreign law to which it is subject. Under what circumstances is this basis for exclusion applicable?*

Rule 14a-8(i)(2) focuses on situations where the implementation of the shareholder proposal would result in a violation of any state, federal or foreign law. Such a violation could include a violation of applicable corporate law, or it could include the violation of other laws applicable to the company and its operations. For example, the Staff has allowed a company to exclude a proposal that would require mandatory board retirement age, where doing so would violate a state age discrimination law. A note to Rule 14a-8(i)(2) provides that a company cannot exclude a proposal on the basis that it would violate foreign law if compliance with that law would result in violation of state or federal law. As with requests to exclude under Rule 14a-8(i)(1), the Staff will permit a proponent to amend a proposal to make it a “precatory” recommendation if the company objects to the mandatory nature of the proposal as a potential violation of state corporate law.

As with Rule 14a-8(i)(1), companies must provide a supporting opinion of counsel when the reason for exclusion is based on matters of state or foreign law. Further, under a 2007 amendment to Delaware law, the SEC may request a legal interpretation from the Delaware Supreme Court.

*Rule 14a-8(i)(3) provides that a proposal is excludable when the proposal or supporting statement is contrary to any of the SEC’s proxy rules, including Rule 14a-9, which prohibits materially false or misleading*

*statements in proxy soliciting materials. Under what circumstances is this basis for exclusion applicable?*

The Staff has indicated that reliance on Rule 14a-8(i)(3) to exclude or modify a statement may be appropriate where: (i) statements directly or indirectly impugn character, integrity, or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; (ii) the company demonstrates objectively that a factual statement is materially false or misleading; (iii) the resolution contained in the proposal is so inherently vague or indefinite that neither the shareholders voting on the proposal, nor the company implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires — this objection also may be appropriate where the proposal and the supporting statement, when read together, have the same result; and (iv) substantial portions of the supporting statement are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which it is being asked to vote.

By contrast, in Staff Legal Bulletin No. 14B (“SLB 14B”), the Staff indicated that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on Rule 14a-8(i)(3) in the following circumstances: (1) the company objects to factual assertions because they are not supported; (2) the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered; (3) the company objects to factual assertions because those assertions may be interpreted by shareholders in a

manner that is unfavorable to the company, its directors, or its officers; and/or (4) the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

Under these standards, a request to exclude a proposal *in its entirety* under Rule 14a-8(i)(3) is unlikely to be granted.

***Rule 14a-8(i)(4) provides that a proposal is excludable when the proposal relates to the redress of a personal claim or grievance against the company or any other person, or is designed to result in a benefit to the shareholder, or to further a personal interest, which is not shared by the other shareholders at large. Under what circumstances is this basis for exclusion applicable?***

Rule 14a-8(i)(4) focuses on proposals involving matters that are deemed not to rise to the level that shareholders as a whole should vote on as a shareholder proposal. For example, if a proponent is involved in litigation with the company, and the proposal deals with a matter being litigated, that could serve as grounds to exclude the proposal on the theory that the proponent is pursuing its own agenda. The SEC has stated that Rule 14a-8(i)(4) is designed to “insure that the security holder proposal process [is] not abused by proponents attempting to achieve personal ends that are not necessarily in the common interest of the issuer’s shareholders generally.” See SEC Release No. 34-20091 (August 16, 1983).

In considering exclusion requests under Rule 14a-8(i)(4), the Staff often looks to the particular motives of proponent. However, a proponent’s particular objectives need not be apparent from a

proposal’s plain language in order to be excludable under Rule 14a-8(i)(4). Rather, proposals phrased in broad terms that “might relate to matters which may be of general interest to all security holders” may be omitted from proxy materials “if it is clear from the facts ... that the proponent is using the proposal as a tactic designed to ... further a personal interest.” See SEC Release No. 34-19135 (October 14, 1982). These types of exclusion requests often involve proposals by disgruntled former employees of a company relating to personal issues that the former employees have with the company.

***Rule 14a-8(i)(5) provides that a proposal is excludable when the proposal relates to operations that account for less than 5% of the company’s total assets at the end of its most recent fiscal year, and for less than 5% of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business. Under what circumstances is this basis for exclusion applicable?***

Rule 14a-8(i)(5) is referred to as the “relevance rule.” A significant focus of the Staff is on whether the proposal relates to operations that are “not otherwise significantly related to the company’s business.” As a practical matter, the Rule 14a-8(i)(5) exclusion has not been frequently raised successfully in recent years, because proponents have been able to frame issues in a way that adequately establishes the significance of an issue, even if the economic impact may be minimal. The SEC stated in SEC Release No. 34-19135 (October 14, 1982):

Historically, the Commission staff has taken the position that certain proposals, while relating to only a small portion of the issuer’s

operations, raise policy issues of significance to the issuer's business.... For example, the proponent could provide information that indicates that while a particular corporate policy which involves an arguably economically insignificant portion of an issuer's business, the policy may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities.

The Staff has typically been relatively permissive when the Rule 14a-8(i)(5) basis for exclusion has been raised by companies, permitting proposals to be included in proxy statements when they are deemed to be of social or political "significance" and somehow related to the company's business, even in some instances where 5% asset and gross sales thresholds were not met.

***Rule 14a-8(i)(6) provides that a proposal is excludable when the company would lack the power or authority to implement the proposal. Under what circumstances is this basis for exclusion applicable?***

Rule 14a-8(i)(6) focuses on proposals requesting that a board of directors do something that it lacks the power or authority to implement. For example, the Staff has allowed exclusion of a proposal that would require a company to breach existing contracts; however, the Staff has permitted revisions to such a proposal so that it applied only to future contracts. Further, the Staff has held that Rule 14a-8(i)(6) applies to a shareholder proposal that, if adopted by the company's shareholders, would cause the company to violate applicable state law. With respect to shareholder proposals that, if adopted by the company's

shareholders, would cause the company to violate applicable state law, *see Noble Corporation* (January 19, 2007); *SBC Communications Inc.* (January 11, 2004); *Xerox Corp.* (February 23, 2004). As with Rule 14a-8(i)(1) and Rule 14a-8(i)(2), companies must provide a supporting opinion of counsel when the reason for exclusion is based on matters of state or foreign law. Further, under a 2007 amendment to Delaware law, the SEC may request a legal interpretation from the Delaware Supreme Court.

***Rule 14a-8(i)(7) provides that a proposal is excludable when the proposal deals with a matter relating to the company's ordinary business operations. Under what circumstances is this basis for exclusion applicable?***

The SEC has explained that the analysis under the "ordinary business" exclusion is based on two key considerations. First, certain tasks "are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Examples that the SEC has cited include employee hiring, promotion and termination decisions, decisions on production quality or quantity, or the retention of suppliers. Even so, some proposals "focusing on sufficiently significant social policy issues" (such as employment discrimination policies) transcend day-to-day operational matters and raise issues "so significant" that shareholders should be afforded the opportunity to express their views. The second key consideration relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which, shareowners, as a group, would not be in a position to make an informed judgment." Examples cited were proposals involving "intricate detail" or seeking to

impose “specific timeframes or methods for implementing complex policies.”

Most of the no-action letters under Rule 14a-8(i)(7) arise because the fact that a proposal relates to ordinary business matters does not conclusively establish that a company may exclude the proposal from its proxy materials. As the SEC stated in SEC Release No. 34-40018 (May 21, 1988), proposals that relate to ordinary business matters but that focus on “sufficiently significant social policy issues . . . would not be considered to be excludable because the proposals would transcend the day-to-day business matters.” Among the areas considered to be significant social policy issues are: renewable energy generation; antibiotics in foods; health care reform; collateralization of derivatives; loan foreclosures; risk oversight; CEO succession planning; executive compensation; auditor rotation; environmental matters; South Africa; Myanmar; human rights; net neutrality; and predatory lending.

*Rule 14a-8(i)(8) provides that a proposal is excludable when the proposal relates to an election for membership on the company's board of directors or analogous governing body. Under what circumstances is this basis for exclusion applicable?*

The SEC adopted amendments to Rule 14a-8 in 2010 in connection with its “proxy access” rulemaking, discussed in more detail in these Frequently Asked Questions. Rule 14a-11, the SEC’s proxy access rule, was vacated, but the amendments to Rule 14a-8(i)(8) recently became effective. Rule 14a-8(i)(8) may permit the type of “private ordering” for proxy access through the shareholder proposal process that many commenters had supported in the course of the proxy

access rulemaking. Under Rule 14a-8(i)(8), as amended, a company may no longer exclude under this basis a shareholder proposal that would amend or request that the company consider amending governing documents to facilitate director nominations by shareholders or disclosures related to nominations made by shareholders, as long as such proposal does not conflict with Rule 14a-11 and is not otherwise excludable under some other procedural or substantive basis in Rule 14a-8. The SEC also codified some of the Staff’s historical interpretations of Rule 14a-8(i)(8) which permitted exclusion of a shareholder proposal that would: (i) seek to disqualify a nominee standing for election; (ii) remove a director from office before the expiration of his or her term; (iii) question the competence, business judgment, or character of a nominee or director; (iv) nominate a specific individual for election to the board of directors, other than through the Rule 14a-11 process, an applicable state law provision, or an issuer’s governing documents; or (v) otherwise affect the outcome of an upcoming election of directors.

*Rule 14a-8(i)(9) provides that a proposal is excludable when the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting. Under what circumstances is this basis for exclusion applicable?*

A company may properly exclude a proposal from its proxy materials under Rule 14a-8(i)(9) “if the proposal directly conflicts with one of the company’s own proposals to be submitted to shareholders at the same meeting.” The SEC has stated that the subject proposals need not be “identical in scope or focus” in order for this basis for exclusion to be available. See SEC Release No. 34-40018 (May 21, 1998).

Consistent with the SEC's position, the Staff has consistently concurred that where a shareholder proposal and a company-sponsored proposal present alternative and conflicting decisions for shareholders, and where submitting both proposals could provide inconsistent and ambiguous results, the shareholder proposal may be excluded under Rule 14a-8(i)(9).

***Rule 14a-8(i)(10) provides that a proposal is excludable when the company has already substantially implemented the proposal. Under what circumstances is this basis for exclusion applicable?***

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has "substantially implemented" the proposal.

Interpreting the predecessor to Rule 14a-8(i)(10), the SEC stated in Release No. 34-12598 (July 7, 1976) that the rule was "designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management." To be excluded, the proposal does not need to be implemented in full or exactly as presented by the proponent. Instead, the standard for exclusion is substantial implementation. *See* SEC Release No. 34-40018 (May 21, 1998, *note 30 and accompanying text*); *see also* SEC Release No. 34-20091 (August 16, 1983).

The Staff has stated that, in determining whether a shareholder proposal has been substantially implemented, it will consider whether a company's particular policies, practices, and procedures "compare favorably with the guidelines of the proposal," and not where those policies, practices, and procedures are embodied. *Texaco, Inc.* (March 28, 1991). The Staff has provided no-action relief under Rule 14a-8(i)(10) where a company has satisfied the essential objective of the

proposal, even if the company (i) did not take the exact action requested by the proponent, (ii) did not implement the proposal in every detail or (iii) exercised discretion in determining how to implement the proposal. *See, e.g., Exelon Corp.* (February 26, 2010); and *Anheuser-Busch Companies, Inc.* (January 17, 2007). In these cases, the Staff concurred with the company's determination that the proposal was substantially implemented in accordance with Rule 14a-8(i)(10) when the company had taken actions that included modifications from what was directly contemplated by the proposal, including in circumstances when the company had policies and procedures in place relating to the subject matter of the proposal, or the company had otherwise implemented the essential objectives of the proposal.

***Rule 14a-8(i)(11) provides that a proposal is excludable when 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. Under what circumstances is this basis for exclusion applicable?***

Rule 14a-8(i)(11) creates a means to ensure that only one shareholder proposal relating to substantially the same matter is included in the company's proxy statement. The shareholder proposal that is the first submitted is the one that is included (absent some other basis for exclusion). In this regard, management cannot choose among multiple proposals. Rule 14-8(i)(11) involves three elements: (i) substantially duplicative proposals; (ii) the order in which such proposals were received; and (iii) the inclusion of the first-received proposal in the proxy materials. The purpose of Rule 14a-8(i)(11) is to avoid shareholder confusion and to prevent various



proponents from including in proxy materials several versions of essentially the same proposal.

*Rule 14a-8(i)(12) provides that a proposal is excludable when 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 receive a specified percentage of the vote. Under what circumstances is this basis for exclusion applicable?*

Rule 14a-8(i)(12) operates as follows:

- The company should look back three calendar years to see if it previously included a proposal or proposals dealing with substantially the same subject matter. If it has not, Rule 14a-8(i)(12) is not available as a basis to exclude a proposal from this year's proxy materials.
- If it has, the company should then count the number of times that a proposal or proposals dealing with substantially the same subject matter was or were included over the preceding five calendar years.
- The company should look at the percentage of the shareholder vote that a proposal dealing with substantially the same subject matter received the last time it was included.

Only votes for and against a proposal are included in the calculation of the shareholder vote of that proposal. Abstentions and broker non-votes are not included in this calculation. This basis for exclusion is not frequently utilized because the minimum previous thresholds for support (3%, 6%, or 10%, depending on

how frequently the proposal was proposed during previous five calendar years) are so low.

*Rule 14a-8(i)(13) provides that a proposal is excludable when the proposal relates to specific amounts of cash or stock dividends. Under what circumstances is this basis for exclusion applicable?*

The basis for exclusion in Rule 14a-8(i)(13) is viewed as a function of the board of directors, not shareholders. For example, the Staff has allowed exclusion of a shareholder proposal seeking declaration of a dividend of 75% of earnings per share. Proposals seeking that company's distribute specific amounts of cash or stock dividends have been relatively uncommon in recent years.

### The SEC's "Proxy Access" Rulemaking

*What is "proxy access" or "shareholder access"?*

Under the SEC's proxy solicitation rules, only the company's director nominees are included in the company's proxy statement and proxy card. If shareholders want to nominate their own candidates, then, in addition to complying with applicable state corporation law and the company's charter and bylaws, a nominating shareholder must prepare its own proxy statement and proxy card and conduct its own proxy solicitation for the director candidates. This is referred to as a "proxy contest." The terms "proxy access" or "shareholder access" refers to an alternative approach whereby director nominees from qualifying shareholders must be included in the company's proxy statement and on the Company's proxy card.

*Did the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") require that the SEC adopt a proxy access rule?*

Section 971 of the Dodd-Frank Act provided the SEC with the authority to promulgate "proxy access" rules, allowing specified shareholders to include director nominees in a company's proxy materials. The Dodd-Frank Act did not prescribe specific standards for these rules, and the SEC had in fact proposed proxy access rules prior to enactment of the Dodd-Frank Act.

*Did the SEC adopt a proxy access rule and what is the status of that rule?*

The SEC issued final rules facilitating shareholder director nominations on August 25, 2010, and such rules were scheduled to become effective on November 15, 2010. However, the effectiveness of those rules was stayed due to litigation challenging the rules.

Under Rule 14a-11 as adopted by the SEC, qualifying shareholders or groups holding at least 3% of the voting power of a company's securities, who had held their shares for at least three years, would have had the right to include director nominees in proxy materials upon meeting certain other requirements. An amendment to Rule 14a-8 provided that companies may not exclude from their proxy materials shareholder proposals for less restrictive proxy access procedures.

On September 29, 2010, the Business Roundtable and Chamber of Commerce of the United States of America filed a petition with the United States Court of Appeals for the District of Columbia Circuit (the "Court") seeking judicial review of the changes to the SEC's proxy access rule, and on the same day filed with the SEC a request to stay the effective date of Rule 14a-11. On October 4, 2010, the SEC granted the request for a

stay of the Rule 14a-11 and associated rules pending resolution of the petition for review by the Court. On July 22, 2011, the Court vacated Rule 14a-11. The Court held that the SEC was "arbitrary and capricious" in promulgating Rule 14a-11, based principally on the SEC's failure to adequately address the economic effects of the rule. The Court expressed significant concerns about the conclusions that the SEC reached and the agency's consideration of comments during the course of the rulemaking. The Court did not address the First Amendment challenge to the rule that had been raised by the petitioners.

On September 6, 2011, the SEC issued a statement indicating that it would not seek rehearing of the Court's decision, nor would it seek Supreme Court review of the decision; however, the Staff would continue to study the viability of a proxy access rule. The statement also indicated that the amendment to Rule 14a-8 referenced above would go into effect when the Court's mandate was finalized, which occurred on September 14, 2011. As a result, the amendments to Rule 14a-8 (along with other rules adopted in connection with Rule 14a-11) became effective on September 20, 2011, following the SEC's publication of a notice announcing the effective date of the rule changes.

*What changes did the SEC make to the shareholder proposal rule and what is the status of those changes?*

The amendments to Rule 14a-8 that the SEC adopted in 2010, which became effective on September 20, 2011, may serve to facilitate, under certain circumstances, the type of "private ordering" for proxy access through the shareholder proposal process that many commenters had supported in the course of the proxy access rulemaking.

Under Rule 14a-8(i)(8), as amended, a company may no longer exclude a shareholder proposal that would amend or request that the company consider amending governing documents to facilitate director nominations by shareholders or disclosures related to nominations made by shareholders, as long as such proposal does not conflict with Rule 14a-11 and is not otherwise excludable under some other procedural or substantive basis in Rule 14a-8. The SEC also codified some of the Staff's historical interpretations of Rule 14a-8(i)(8) which permitted exclusion of a shareholder proposal that would: (i) seek to disqualify a nominee standing for election; (ii) remove a director from office before the expiration of his or her term; (iii) question the competence, business judgment or character of a nominee or director; (iv) nominate a specific individual for election to the board of directors, other than through the Rule 14a-11 process, an applicable state law provision, or an issuer's governing documents; or (v) otherwise affect the outcome of an upcoming election of directors.

*Are there other bases under which companies could exclude a shareholder proposal seeking to establish proxy access at a company?*

While the SEC's amendments to Rule 14a-8(i)(8) eliminated one basis to exclude proxy access shareholder proposals, there may be other options for seeking to exclude proxy access shareholder proposals. An issuer could argue (i) that the proposal is contrary to the proxy rules under Rule 14a-8(i)(3), i.e., the resolution contained in the proposal is inherently vague or indefinite; (ii) that by adopting its own proxy access bylaw amendment, the shareholder's proxy access proposal has been "substantially implemented" under Rule 14a-8(i)(10); (iii) the shareholder proposal conflicts

with a similar company-sponsored proposal under Rule 14a-8(i)(9); or (iv) that another basis for exclusion specified in Rule 14a-8(i) applies, based on the specific language of the proposal and the supporting statement or the particular circumstances of the company or the proponent.

*Are companies adopting a proxy access bylaw as a result of the prospect of shareholder proposals seeking to establish proxy access?*

Many companies are taking a "wait-and-see" approach with respect to amending their bylaws to permit proxy access in order to allow greater flexibility in responding to future shareholder proposals. Less than twenty proxy access shareholder proposals were submitted to companies in the months after the Rule 14a-8 amendments became effective. A number of these proposals have been based on a model proxy access proposal drafted by U.S. Proxy Exchange, an organization of retail investors. These shareholder proposals tend to have lower ownership thresholds and shorter holding period requirements than the SEC rule that was vacated. In this regard, the ownership threshold is usually between 1% and 5% of outstanding shares and the length of ownership is usually between one and three years of continuous ownership.

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## **SUBSTANTIVE BASES FOR EXCLUSION OF SHAREHOLDER PROPOSALS UNDER EXCHANGE ACT RULE 14a-8**

Under Rule 14a-8, a company must include a shareholder proposal in its proxy materials unless it violates one of the rule's procedural requirements or one of thirteen substantive requirements.

### ***Procedural Requirements***

Rule 14a-8 imposes several procedural requirements on shareholders who rely on the rule. A shareholder may only submit one proposal per meeting, must own at least \$2,000 or 1% of securities entitled to vote on its proposal and must limit its proposal to 500 words. A shareholder must submit the proposal at least 120 days before the date of the company's proxy statement for the previous year's annual meeting (or a reasonable time before the company begins to print and mail its proxy materials if the company did not have an annual meeting during the previous year, or if the date of the annual meeting has been changed by more than 30 days from the date of the previous year's annual meeting). A company that intends to rely on the rule to exclude a proposal must submit its no-action request 80 days in advance of the date that it proposes to file its definitive proxy materials.

### ***Substantive Requirements***

Under paragraph (i) of Rule 14a-8, a company may exclude a shareholder proposal from its proxy materials if the proposal falls into one of thirteen substantive bases for exclusion. The attached chart outlines each of these thirteen substantive bases for exclusion. To exclude a proposal, a company must first notify the SEC, which is typically done through a request for a "no-action" letter. In the no-action letter request, a company may argue that the subject shareholder proposal can be excluded under more than one basis for exclusion.

### ***The No-Action Letter Process***

The central component of the Rule 14a-8 process is the no-action letter. A no-action letter is a letter from the staff of the SEC that provides the staff's informal view regarding whether it would recommend enforcement action to the SEC if the company takes the course of action described in the no-action request. No-action letters reflect the staff's views concerning the application of the securities laws to a particular set of facts. In the context of Rule 14a-8, no-action letters often serve as a key hurdle for shareholders that hope to include a proposal in a company's proxy materials. There is no rule that requires the submission of no-action requests, nor is there a rule that requires that the staff of the SEC respond to such requests. Companies submit requests to comply with Rule 14a-8(j), which requires that companies "file their reasons" with the Commission. The SEC responds to such requests as a convenience to both companies and shareholders, and in order to assist both companies and shareholders in complying with the proxy rules. While the SEC staff's no-action letters typically address whether the company has a basis to exclude the proposal, there also may be times when the staff will say that there appears to be some basis for the company's objection, but the problem can be cured if, for example the shareholder makes a mandatory proposal into a nonbinding proposal, or deletes certain words or sentences in the proposal to avoid vagueness.

<b>Rule 14a-8(i) Sub-paragraph</b>	<b>Basis for Exclusion</b>	<b>Explanation</b>	<b>Examples</b>
(1)	The proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization.	<p>Rule 14-8(i)(1) focuses on proposals that would not be a proper subject of shareholder action. With respect to subjects and procedures for shareholder votes, most state corporation laws provide that a corporation's charter or bylaws can specify the types of proposals that are permitted to be brought before the shareholders for a vote at an annual or special meeting. The SEC indicates that, depending on the subject matter, a proposal that would bind the company if approved by shareholders may not be considered proper under state law. Proposals cast as recommendations or requests that the board of directors take specified action, however, are generally considered proper under state law. As a result, the SEC staff will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.</p> <p>The SEC staff will let a proponent amend a proposal to make it a "precatory" recommendation if the company objects to the mandatory nature of the proposal.</p> <p>The SEC staff has consistently granted no-action relief to corporations under Rule 14a-8(i)(1) where a shareholder proposal mandates action that, under state law, falls within the powers of the board of directors. For example, the SEC staff has allowed companies to exclude proposals that would require board to declassify a staggered board, while the SEC staff has permitted proposals requesting company "take the steps necessary" to declassify staggered board.</p> <p>Companies must provide a supporting opinion of counsel when the reason for exclusion is based on matters of state or foreign law. Further, under a 2007 amendment to Delaware law, the SEC may request a legal interpretation from the Delaware Supreme Court. In June 2008 the SEC certified to the Supreme Court questions about the propriety under state law of a shareholder proposal submitted to CA by the AFSCME pension plan.</p>	<p>In 2011, <a href="#">National Technical Systems, Inc.</a> requested no-action advice regarding a proposal requesting that the company hire an investment banking firm to initiate a search for a buyer of the company in order to maximize shareholder value. The company argued that it could exclude the proposal under Rule 14a-8(i)(1) as not being a proper subject for shareholder action based on Corporations Code Section 300(a). The SEC staff concluded that there may be a basis for exclusion under Rule 14a-8(i)(1) but noted that "it appears that this defect could be cured, however, if the proposal were recast as a recommendation or request to the board of directors." Accordingly, the staff granted no action relief unless the proponent recasts the proposal within seven days of receipt of the staff's letter.</p> <p><i>See also American International Group, Inc.</i> (March 12, 1999) (exclusion allowed where the shareholder proposal was "phrased as a demand on the Company and its Board of Directors [making it] mandatory rather than precatory"); <i>CVS Corporation</i> (December 15, 1998) (exclusion allowed because shareholder proposal "[sought] to mandate action on matters that, under state law, fall within the management powers of a company's board of directors"); <i>The Boeing Company</i> (February 25, 1997) (exclusion allowed because a shareholder proposal "mandating or directing board action is inconsistent with the discretionary authority granted to a board of directors [under state law]"); <i>General Electric Company</i> (January 27, 2004) (exclusion allowed by a New York corporation where the shareholder proposal was "cast as a demand to the Board rather than as a precatory proposal").</p>

<b>Rule 14a-8(i) Sub-paragraph</b>	<b>Basis for Exclusion</b>	<b>Explanation</b>	<b>Examples</b>
(2)	The proposal would, if implemented, cause the company to violate any state, federal or foreign law to which it is subject.	<p>Rule 14a-8(i)(2) focuses on situations where the implementation of the shareholder proposal would result in a violation of any state, federal or foreign law. Such a violation could include a violation of applicable corporate law, or it could include the violation of other laws applicable to the company and its operations. For example, the SEC staff has allowed a company to exclude a proposal that would require mandatory board retirement age, where doing so would violate a state age discrimination law.</p> <p>A Note to 14a-8(i)(2) provides that a company cannot exclude a proposal on the basis that it would violate foreign law if compliance with that law would result in violation of state or federal law</p> <p>As with requests to exclude under Rule 14a-8(i)(1), the SEC will permit a proponent to amend a proposal to make it a “precatory” recommendation if the company objects to the mandatory nature of the proposal as a potential violation of state corporate law.</p> <p>As with Rule 14a-8(i)(1), companies must provide a supporting opinion of counsel when the reason for exclusion is based on matters of state or foreign law. Further, under a 2007 amendment to Delaware law, the SEC may request a legal interpretation from the Delaware Supreme Court. In June 2008 the SEC certified to the Supreme Court questions about the propriety under state law of a shareholder proposal submitted to CA by the AFSCME pension plan.</p>	<p>In 2011, <a href="#">Alaska Air Group</a> requested no-action advice regarding a proposal requesting that the board initiate the appropriate process to amend Alaska’s certificate of incorporation to provide for a partial waiver of the “fraud-on-the-market” presumption of reliance in securities actions. The SEC Staff permitted exclusion of the proposal, on the basis that the proposal would cause the company to violate the anti-waiver provisions of the federal securities law.</p> <p>In 2011, <a href="#">Vail Resorts</a> requested no-action advice regarding a proposed bylaw amendment to make distributions to shareholders a higher priority than debt repayment or asset acquisition, and to take all actions necessary to implement such vote. The SEC Staff permitted exclusion of the proposal based on an opinion of Delaware counsel that the proposal would violate Delaware law in three ways: first, by preventing the board from discharging its duty to manage the business and affairs of the company, second, by improperly giving automatic priority to distributions to shareholders over repayment to creditors and third, by causing the company to breach certain of its debt agreements.</p> <p>In 2011, <a href="#">Abbott Laboratories</a> requested no-action advice regarding a proposal requesting that the board take the steps necessary so that each shareholder voting requirement impacting the company that calls for a greater than simple majority vote be changed to a majority of the votes cast for and against the proposal in compliance with applicable laws. The SEC staff permitted exclusion of the proposal because a “simple majority” voting standard based on shares cast for and against was not a permitted voting standard under certain statutory provisions.</p>

<b>Rule 14a-8(i) Sub-paragraph</b>	<b>Basis for Exclusion</b>	<b>Explanation</b>	<b>Examples</b>
(3)	The proposal or supporting statement is contrary to any of the SEC's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.	<p>The SEC staff has indicated that reliance on Rule 14a-8(i)(3) to exclude or modify a statement may be appropriate where: (1) statements directly or indirectly impugn character, integrity, or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; (2) the company demonstrates objectively that a factual statement is materially false or misleading; (3) the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires — this objection also may be appropriate where the proposal and the supporting statement, when read together, have the same result; (4) and substantial portions of the supporting statement are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which she is being asked to vote.</p> <p>By contrast, the SEC staff has indicated that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on Rule 14a-8(i)(3) in the following circumstances: (1) the company objects to factual assertions because they are not supported; (2) the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered; (3) the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or (4) the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.</p> <p>Under these standards, a request to exclude proposals in their entirety under Rule 14a-8(i)(3) is unlikely to be granted.</p>	<p>In 2011, <a href="#">The Boeing Company</a> requested no-action advice regarding a proposal asking that the executive pay committee adopt a policy requiring that senior executives retain a significant percentage of stock acquired through equity pay programs until two years following the termination of their employment and to report to shareholders regarding the policy. The proposal also “comprises all practicable steps to adopt this proposal including encouragement and negotiation with senior executives to request that they relinquish, for the common good of all shareholders, pre-existing executive pay rights, if any, to the fullest extent possible.” The SEC staff was unable to conclude that Boeing met its burden of establishing that Boeing may exclude the proposal under Rule 14a-8(i)(3). Based on the arguments presented, the staff was unable to conclude that the proposal is so inherently vague or indefinite that neither the shareholders voting on the proposal, nor the company implementing the proposal, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.</p> <p>Occasionally, Rule 14a-8(i)(3) has served as a basis for excluding shareholder proposals that would violated proxy rules other than Rule 14a-9; <i>see, e.g., Exxon Mobil</i> (Mar. 7, 2001) (proposal contrary to Rule 14a-8(h)(1) because proponent would not attend meeting) and <i>General Electric</i> (Feb. 7, 2007) (proposal requested a three-prong say-on-pay proposal that was contrary to Rule 14a-4).</p>

Rule 14a-8(i) Sub-paragraph	Basis for Exclusion	Explanation	Examples
(4)	The proposal relates to the redress of a personal claim or grievance against the company or any other person, or is designed to result in a benefit to the shareholder, or to further a personal interest, which is not shared by the other shareholders at large.	<p>Rule 14a-8(i)(4) focuses on proposals that are deemed not to rise to the level that shareholders as a whole should vote on a matter. For example, if a proponent is involved in litigation with the company, and the proposal deals with a matter being litigated, that could serve as grounds to exclude the proposal on the theory that the proponent is pursuing its own agenda.</p> <p>The SEC has stated that Rule 14a-8(i)(4) is designed to “insure that the security holder proposal process [is] not abused by proponents attempting to achieve personal ends that are not necessarily in the common interest of the issuer’s shareholders generally.” Exchange Act Release No. 20091 (Aug. 16, 1983).</p> <p>In considering exclusion requests under Rule 14a-8(i)(4), the SEC often looks to the particular motives of proponent. However, a proponent's particular objectives need not be apparent from a proposal’s plain language in order to be excludable under Rule 14a-8(i)(4). Rather, proposals phrased in broad terms that “might relate to matters which may be of general interest to all security holders” may be omitted from proxy materials “if it is clear from the facts ... that the proponent is using the proposal as a tactic designed to ... further a personal interest.” Exchange Act Release No. 19135 (Oct. 14, 1982).</p> <p>These types of exclusion requests often involve proposals by disgruntled former employees of a company relating to personal issues that the former employees have with the company.</p>	<p>In 2011, <a href="#">D.R. Horton</a> requested no-action advice regarding a proposal which requested that D.R. Horton “audit its subsidiary DHI Mortgage for compliance with all federal and state laws, and that the Board confirms for the record that DHI Mortgage conforms to the requirements contained within its own corporate governance documents.” The Staff indicated that there appeared to be some basis for the view that D.R. Horton could exclude the proposal under Rule 14a-8(i)(4) because the proposal appeared to relate to the redress of a personal claim or grievance against the company.</p> <p>In <a href="#">Medical Information Technology, Inc.</a> (Mar. 3, 2009), a facially neutral proposal that would have required that the company “comply with government regulations that require that businesses treat all shareholders the same” was found to be excludable under Rule 14a-8(i)(4), when submitted by a proponent who had been engaged in a prolonged effort to sell his personally owned shares of stock in the company at an inflated price. Although the proposal itself made no mention of these efforts, the proposal’s intent was clear from the proponent’s ongoing litigation with the company regarding the same matter, as well as from the content of the proponent’s website that was referenced in his supporting statement. <i>See also Union Pacific Corp.</i> (Jan. 31, 2000) (facially neutral proposal related to non-discriminatory pension plan policies excludable when submitted by proponents who were using the proposal as a means to address an ongoing employment benefits dispute).</p>



<b>Rule 14a-8(i) Sub-paragraph</b>	<b>Basis for Exclusion</b>	<b>Explanation</b>	<b>Examples</b>
(5)	The proposal relates to operations that account for less than 5% of the company's total assets at the end of its most recent fiscal year, and for less than 5% of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business.	<p>Rule 14a-8(i)(5) is referred to as the "relevance rule." A significant focus of the SEC staff is on whether the proposal relates to operations that are "not otherwise significantly related to the company's business. As a practical matter, the Rule 14a-8(i)(5) exclusion has not been frequently raised successfully in recent years, because proponents have been able to frame issues in a way that adequately establishes the significance of an issue, even if the economic impact may be minimal.</p> <p>The SEC stated in Exchange Act Release No. 19135 (Oct. 14, 1982):</p> <p>"Historically, the Commission staff has taken the position that certain proposals, while relating to only a small portion of the issuer's operations, raise policy issues of significance to the issuer's business.... For example, the proponent could provide information that indicates that while a particular corporate policy which involves an arguably economically insignificant portion of an issuer's business, the policy may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities."</p> <p>The SEC staff has typically been relatively permissive when the Rule 14a-8(i)(5) basis for exclusion has been raised by companies, permitting proposals to be included in proxy statements when they are deemed to be of social or political "significance" and somehow related to the company's business, even in some instances where 5% asset and gross sales thresholds were not met. As an example of this, the SEC Staff would not concur with a no-action request by Halliburton with regard to a proposal requesting review of Halliburton operations in Iran, even though the 5% tests were not met.</p>	<p>In 2007, <i>Arch Coal, Inc.</i> sought to exclude a shareholder proposal under Rule 14a-8(i)(5) indicating that the company did not have or plan to have any power plant operations that were the subject of the shareholder proposal. Arch also explained that because its primary business was to mine, process and market low sulfur coal through its active mining operations, the proposal did not relate to any of Arch's assets, net earnings or gross sales and was therefore irrelevant to Arch's operations under Rule 14a-8(i)(5). The SEC staff permitted Arch to exclude the proposal on this basis.</p> <p>In <i>The Proctor &amp; Gamble Company</i> (Aug. 11, 2003), two shareholders submitted a proposal requesting that The Proctor &amp; Gamble Company ("P&amp;G") adopt a new policy forbidding human embryonic stem cell research. P&amp;G sought to exclude the proposal pursuant to Rule 14a-8(i)(5). P&amp;G indicated that it did not conduct human embryonic stem cell research and that it had no plans to conduct such research in the future. The SEC staff indicated that it would not recommend enforcement if P&amp;G excluded the proposal in reliance on Rule 14a-8(i)(5). See also <i>Hewlett-Packard Co.</i> (Jan. 7, 2003); and <i>Kmart Corp.</i> (Mar. 11, 1994).</p> <p>The Staff has indicated that proposals that are "ethically significant in the abstract but have no meaningful relationship to the [company's] business" may be excluded. See e.g., <i>Hewlett-Packard Company</i> (Jan. 7, 2003) (Israeli operations and land owned in Israel were not otherwise significantly related to the company's business); and <i>Merck &amp; Co., Inc.</i> (Jan. 4, 2006) (the company's practice of obtaining and distributing gifts obtained from the PRC was not otherwise significantly related to the company's business).</p>

Rule 14a-8(i) Sub-paragraph	Basis for Exclusion	Explanation	Examples
(6)	The company would lack the power or authority to implement the proposal.	<p>Rule 14a-8(i)(6) focuses on proposals requesting that the board do something that it lacks the power or authority to implement. For example, the SEC staff has allowed exclusion of proposal that would require company to breach existing contracts; however, the SEC staff has permitted revisions to such a proposal so that it applied only to future contracts.</p> <p>Further, the SEC Staff has held that Rule 14a-8(i)(6) applies to a stockholder proposal that, if adopted by the company's stockholders, would cause the company to violate applicable state law. With respect to stockholder proposals that, if adopted by the company's stockholders, would cause the company to violate applicable state law, <i>see, Noble Corporation</i> (Jan. 19, 2007); <i>SBC Communications Inc.</i> (Jan. 11, 2004); <i>Xerox Corp.</i> (Feb. 23, 2004).</p> <p>As with Rule 14a-8(i)(1) and Rule 14a-8(i)(2), companies must provide a supporting opinion of counsel when the reason for exclusion is based on matters of state or foreign law. Further, under a 2007 amendment to Delaware law, the SEC may request a legal interpretation from the Delaware Supreme Court. In June 2008 the SEC certified to the Supreme Court questions about the propriety under state law of a shareholder proposal submitted to CA by the AFSCME pension plan.</p>	<p>In <i>Kinetic Concepts</i> (Mar. 21, 2011), the SEC staff indicated that the company could exclude a proposal asking that the company take the steps necessary to reorganize the board into one class with each director subject to election each year under Rules 14a-8(i)(2), 14a-8(i)(6), and 14a-8(i)(8) to the extent it could, if implemented, disqualify directors previously elected from completing their terms on the board. The staff noted, however, that this defect could be cured if the proposal were revised to provide that it will not affect the unexpired terms of directors elected to the board at or prior to the upcoming annual meeting.</p> <p>In Staff Legal Bulletin 14C, the SEC noted:</p> <p>“Our analysis of whether a proposal that seeks to impose independence qualifications on directors is beyond the power or authority of the company to implement focuses primarily on whether the proposal requires continued independence at all times. . . . As such, when a proposal is drafted in a manner that would require a director to maintain his or her independence at all times, we permit the company to exclude the proposal under Rule 14a-8(i)(6) on the basis that the proposal does not provide the board with an opportunity or mechanism to cure a violation of the standard requested in the proposal. In contrast, if the proposal does not require a director to maintain independence at all times or contains language permitting the company to cure a director’s loss of independence, any such loss of independence would not result in an automatic violation of the standard in the proposal and we, therefore, do not permit the company to exclude the proposal under Rule 14a-8(i)(6).”</p>

<b>Rule 14a-8(i) Sub-paragraph</b>	<b>Basis for Exclusion</b>	<b>Explanation</b>	<b>Examples</b>
(7)	The proposal deals with a matter relating to the company's ordinary business operations.	<p>The SEC has explained that the analysis under the “ordinary business” exclusion is based on two key considerations. First, certain tasks “are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” Examples that the SEC has cited include employee hiring, promotion and termination decisions, decisions on production quality or quantity, or the retention of suppliers. Even so, some proposals “focusing on sufficiently significant social policy issues” (such as employment discrimination policies) transcend day-to-day operational matters and raise issues “so significant” that shareholder should be afforded the opportunity to express their views. The second key consideration relates to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which, shareowners, as a group, would not be in a position to make an informed judgment.” Examples cited were proposals involving “intricate detail” or seeking to impose “specific timeframes or methods for implementing complex policies.”</p> <p>Most of the no-action letters under Rule 14a-8(i)(7) arise because the fact that a proposal relates to ordinary business matters does not conclusively establish that a company may exclude the proposal from its proxy materials. As the Commission stated in Exchange Act Release No. 40018 (May 21, 1988), proposals that relate to ordinary business matters but that focus on “sufficiently significant social policy issues . . . would not be considered to be excludable because the proposals would transcend the day-to-day business matters.” Among the areas considered to be significant social policy issues are: renewable energy generation; antibiotics in foods; health care reform; collateralization of derivatives; loan foreclosures; risk oversight; CEO succession planning; executive compensation; auditor rotation; environmental matters; South Africa; Myanmar; human rights; and predatory lending.</p>	<p>For recent examples where the SEC staff permitted exclusion of a shareholder proposal based on Rule 14a-8(i)(7), see <a href="#">CSX Corporation</a> (Jan. 24, 2011); <a href="#">Duke Energy</a> (Jan. 24, 2011); <a href="#">FedEx</a> (Jun. 24, 2011).</p> <p>When first taking the position that the subject matter of a proposal related to a “significant social policy issue,” the SEC staff historically has stated that position clearly in its no-action response. <i>See, e.g., Johnson &amp; Johnson</i> (Feb. 3, 2003) (referring to a proposal requesting that the company establish and implement standards in response to the health pandemic of HIV/AIDS, TB); <i>The Walt Disney Co.</i> (Dec. 18, 2001) (referring to a proposal requesting that the adoption of a policy that would prohibit Disney’s independent accountants from providing non-audit services to the company, the Staff expressed the view that it was unable to concur with the company’s view that the proposal could be omitted in reliance on rule 14a-8(i)(7), noting “[i]n view of the widespread public debate concerning the impact of non-audit services on auditor independence”); and <i>PepsiCo Inc.</i> (Jan. 24, 2000) (referring to a proposal requesting that the board of directors adopt a policy of removing genetically engineered crops, organisms, or products thereof from all products sold or manufactured by PepsiCo which “appears to raise significant policy issues that are beyond the ordinary business operations of PepsiCo”).</p>

<b>Rule 14a-8(i) Sub-paragraph</b>	<b>Basis for Exclusion</b>	<b>Explanation</b>	<b>Examples</b>
(8)	The proposal relates to an election for membership on the company's board of directors or analogous governing body.	The SEC adopted amendments to Rule 14a-8 in 2010 in connection with its "proxy access" rulemaking. Rule 14a-11, the SEC's proxy access rule, was vacated, but the amendments to Rule 14a-8(i)(8) recently became effective. Rule 14a-8(i)(8) will permit the type of "private ordering" for proxy access through the shareholder proposal process that many commenters had supported in the course of the proxy access rulemaking. Under Rule 14a-8(i)(8), as amended, a company may no longer exclude under this basis a shareholder proposal that would amend or request that the company consider amending governing documents to facilitate director nominations by shareholders or disclosures related to nominations made by shareholders, as long as such proposal does not conflict with Rule 14a-11 and is not otherwise excludable under some other procedural or substantive basis in Rule 14a-8. The SEC also codified some of the Staff's historical interpretations of 14a-8(i)(8) which permitted exclusion of a shareholder proposal that would: (1) seek to disqualify a nominee standing for election; (2) remove a director from office before the expiration of his or her term; (3) question the competence, business judgment or character of a nominee or director; (4) nominate a specific individual for election to the board of directors, other than through the Rule 14a-11 process, an applicable state law provision, or an issuer's governing documents; or (5) otherwise affect the outcome of the upcoming election of directors.	There are no examples of no-action requests seeking to exclude a shareholder proposal under Rule 14a-8(i)(8) as it has recently been amended.

<b>Rule 14a-8(i) Sub-paragraph</b>	<b>Basis for Exclusion</b>	<b>Explanation</b>	<b>Examples</b>
(9)	The proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting.	<p>A company may properly exclude a proposal from its proxy materials under Rule 14a-8(i)(9) "if the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting." The SEC has stated that the subject proposals need not be "identical in scope or focus" in order for this basis for exclusion to be available. <i>See</i> Exchange Act Release No. 40018 (May 21,1998).</p> <p>Consistent with the SEC's position, the SEC Staff has consistently concurred that where a stockholder proposal and a company-sponsored proposal present alternative and conflicting decisions for stockholders and that submitting both proposals could provide inconsistent and ambiguous results, the stockholder proposal may be excluded under Rule 14a-8(i)(9).</p>	<p>In 2011, <a href="#">Altera Corporation</a> sought to exclude a proposal which asked the board to take the steps necessary unilaterally (to the fullest extent permitted by law) to amend the bylaws and each appropriate governing document to give holders of 10% of the company's outstanding common stock (or the lowest percentage permitted by law above 10%) the power to call a special meeting. The SEC staff indicated that there appeared to be some basis for the view that Altera may exclude the proposal based on its representation that matters to be voted on at the upcoming stockholders' meeting included a conflicting proposal sponsored by Altera to amend Altera's bylaws to permit holders of 20% or more of Altera's outstanding shares to call a special meeting.</p> <p><i>See also The Hain Celestial Group, Inc.</i> (Sep. 16, 2010; <i>recon. denied</i> Oct. 6, 2010); <i>Chevron Corporation</i> (Feb 6, 2010; <i>recon. denied</i> Mar. 1, 2010); <i>NiSource Inc.</i> (Jan. 6, 2010; <i>recon. denied</i> Feb. 22, 2010); <i>Becton, Dickinson &amp; Co.</i> (Nov. 12, 2009; <i>recon denied</i> December 22, 2009); <i>and H.J. Heinz Co.</i> (May 29, 2009).</p>

<b>Rule 14a-8(i) Sub-paragraph</b>	<b>Basis for Exclusion</b>	<b>Explanation</b>	<b>Examples</b>
(10)	The company has already substantially implemented the proposal.	<p>Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has “substantially implemented” the proposal. Interpreting the predecessor to Rule 14a-8(i)(10), the SEC stated that the rule was “designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management.” Exchange Act Release No. 12598 (Jul. 7, 1976). To be excluded, the proposal does not need to be implemented in full or exactly as presented by the proponent. Instead, the standard for exclusion is substantial implementation. <i>See</i> Exchange Act Release No. 40018 (May 21, 1998, <i>n.30 and accompanying text</i>); <i>see also</i> Exchange Act Release No. 20091 (Aug. 16, 1983).</p> <p>The SEC staff has stated that, in determining whether a stockholder proposal has been substantially implemented, it will consider whether a company’s particular policies, practices and procedures “compare favorably with the guidelines of the proposal,” and not on where those policies, practices and procedures are embodied. <i>Texaco, Inc.</i> (Mar. 28, 1991). The Staff has provided no-action relief under Rule 14a-8(i)(10) when a company has satisfied the essential objective of the proposal, even if the company (i) did not take the exact action requested by the proponent, (ii) did not implement the proposal in every detail or (iii) exercised discretion in determining how to implement the proposal. <i>See, e.g., Exelon Corp.</i> (Feb. 26, 2010); and <i>Anheuser-Busch Companies, Inc.</i> (Jan. 17, 2007). In these cases, the SEC staff concurred with the company’s determination that the proposal was substantially implemented in accordance with Rule 14a-8(i)(10) when the company had taken actions that included modifications from what was directly contemplated by the proposal, including in circumstances when the company had policies and procedures in place relating to the subject matter of the proposal, or the company had otherwise implemented the essential objective of the proposal.</p>	In <i>Applied Materials, Inc.</i> (Dec. 19, 2008) the SEC staff concurred with the company that it could omit a stockholder proposal relating to supermajority voting requirements from its proxy statement based on actions of the board of directors that substantially implemented the stockholder proposal. In <i>Applied Materials</i> , the certificate of incorporation and the by-laws required supermajority votes for certain amendments and for approval of certain transactions with interested stockholders. A stockholder submitted a proposal requesting that the board of directors take steps necessary so that each charter and bylaw voting requirement calling for a greater than simple majority vote would be changed to a majority of the votes cast for and against related proposals in compliance with applicable laws. After the proposal was submitted, the board of directors of Applied Materials determined that the supermajority voting thresholds of the applicable provisions should be changed to a majority of outstanding shares, and that the provisions relating to approval of certain business combinations with interested stockholders should be eliminated. Applied Materials represented to the staff that it would provide its stockholders with an opportunity to approve the amendments to the certificate of incorporation eliminating all supermajority voting requirements at the upcoming annual meeting. The SEC staff concurred with the conclusion that the stockholder proposal could be excluded under Rule 14a-8(i)(10), in light of the board action and the anticipated stockholder action to eliminate all of the supermajority voting provisions in the company’s certificate of incorporation.

<b>Rule 14a-8(i) Sub-paragraph</b>	<b>Basis for Exclusion</b>	<b>Explanation</b>	<b>Examples</b>
(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.	<p>Rule 14a-8(i)(11) creates a means to ensure that only one shareholder proposal relating to substantially the same matter is included in the company's proxy statement. The shareholder proposal that is the first submitted is the one that is included (absent some other basis for exclusion). In this regard, management cannot choose among multiple proposals.</p> <p>Rule 14-8(i)(11) involves three elements: (i) substantially duplicative proposals, (ii) the order in which such proposals were received and (iii) the inclusion of the first-received proposal in the proxy materials. The purpose of Rule 14a-8(i)(11) is to avoid shareholder confusion and to prevent various proponents from including in proxy materials several versions of essentially the same proposal.</p>	In <a href="#">Comcast Corporation</a> (Feb. 14, 2011), the SEC staff concurred that there was a basis for the view that Comcast may exclude a cumulative voting shareholder proposal under Rule 14a-8(i)(11), noting that the proposal was substantially duplicative of a previously submitted proposal that will be included in Comcast's 2011 proxy materials.

Rule 14a-8(i) Sub-paragraph	Basis for Exclusion	Explanation	Examples
(12)	<p>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 receive a specified percentage of the vote.</p>	<p>Rule 14a-8(i)(12) operates as follows:</p> <p>(1) The company should look back three calendar years to see if it previously included a proposal or proposals dealing with substantially the same subject matter. If it has not, Rule 14a-8(i)(12) is not available as a basis to exclude a proposal from this year's proxy materials</p> <p>(2) If it has, the company should then count the number of times that a proposal or proposals dealing with substantially the same subject matter was or were included over the preceding five calendar years.</p> <p>(3) The company should look at the percentage of the shareholder vote that a proposal dealing with substantially the same subject matter received the last time it was included.</p> <p>Only votes for and against a proposal are included in the calculation of the shareholder vote of that proposal. Abstentions and broker non-votes are not included in this calculation.</p> <p>This basis for exclusion is not frequently utilized because the minimum previous thresholds for support (3%, 6% or 10%, depending on how frequently the proposal was proposed during previous five calendar years) are so low.</p>	<p>In <a href="#">Hormel Foods Corporation</a> (Nov. 10, 2011), the SEC staff concurred that there was some basis for the view that Hormel may exclude a proposal under rule 14a-8(i)(12)(i) because a proposal dealing with substantially the same subject matter was included in Hormel's proxy materials in prior years and received less than 3% support.</p> <p>In <a href="#">Goldman Sachs &amp; Co</a> (Feb. 7, 2011), the SEC staff was unable to concur with the company's request to exclude a proposal based on Rule 14a-8(i)(12), because in the staff's view, the proposal did not deal with substantially the same subject matter as the proposal included in the company's 2008 proxy materials.</p>



<b>Rule 14a-8(i) Sub-paragraph</b>	<b>Basis for Exclusion</b>	<b>Explanation</b>	<b>Examples</b>
(13)	The proposal relates to specific amounts of cash or stock dividends.	<p>The basis for exclusion in Rule 14a-8(i)(13) is viewed as a function of the board of directors, not shareholders. For example, the SEC staff has allowed exclusion of a shareholder proposal seeking declaration of a dividend of 75% of earnings per share.</p> <p>Proposals seeking that company's distribute specific amounts of cash or stock dividends have been relatively uncommon in recent years.</p>	In <a href="#"><i>International Business Machines</i></a> (Jan. 4, 2011), the SEC staff concurred that there was some basis under Rule 14a-8(i)(3) to exclude a shareholder proposal which requested that the board implement a special dividend, payable each quarter, that is "equal in total value to the expenditure for share repurchases in that quarter."

## Shareholder Proposals: Trends from Recent Proxy Seasons (2007-2011)

by Matteo Tonello and Melissa Aguilar

*A comprehensive analysis of shareholder proposals introduced in the recent proxy seasons can assist corporate directors and officers preparing for annual general meetings. In addition to providing voting results, this study examines data on proposal volume, topics, and sponsorship from samples of Russell 3000 and S&P 500 companies. It inaugurates a collaboration between The Conference Board and FactSet.*

In preparing for 2012 annual meetings, corporate counsel, corporate secretaries and governance officers, and board members (especially those serving on compensation or nominating committees) should evaluate necessary corporate actions in light of the 2011 voting results and the newly updated ISS proxy voting guidelines.

To provide assistance with the first prong of their analysis, this study examines shareholder proposals submitted to business corporations registered with the U.S. Securities and Exchange Commission (SEC) that held their annual general shareholder meetings (AGMs) between January 1, 2011 and August 3, 2011 and, at the time of their AGM, were in the Russell 3000 Index. The Russell 3000 Index was chosen as it assesses the performance of the largest 3000 U.S. companies, representing approximately 98 percent of the investable U.S. equity market.

The study inaugurates a collaboration between The Conference Board and FactSet Research Systems Inc. (FactSet); unless specifically noted, the study aggregates and analyzes data compiled by FactSet and drawn from public disclosure. 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](http://www.conference-board.org/proxyvoting).

Data reviewed in the report includes proposal volume, topics, and sponsorship; proponent types considered in the sponsorship analysis are described on p. 5 and reflect the categorization used by FactSet LionShares. The discussion of voting results is integrated with information on non-voted shareholder proposals—due to their withdrawal by sponsors, the decision by management to omit them from the voting ballot or other, undisclosed reasons. Omission figures indicate that the company was granted no-action relief from the staff of the SEC in connection with the exclusion of a shareholder proposal from its proxy materials, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934. Since the SEC began publishing no-action letters on its website only for letters issued after October 1, 2007, aggregate data provided in this report for 2007 should not be used for comparative purposes.

[START BOX]

### **The Methodology**

Aggregate data on shareholder proposals 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, the report aggregates companies within 20 industry groups (Chart 1), using the applicable Standard Industrial Classification (SIC) codes. 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 July.

[END BOX]

## **Shareholder Meetings**

The sample examined for the purpose of this report includes 2,511 companies in the Russell 3000 that held their annual shareholder meetings in the January 1-August 3, 2011 period. The sample includes non-U.S. companies registered with the U.S. Securities and Exchange Commission (SEC). In this section, the sample is compared with the S&P 500 and across industry groups.

### **By index**

The index analysis illustrated in Chart 1 shows that approximately 53 percent of companies in the Russell 3000 sample and 57 percent of companies in the corresponding S&P 500 sample held their annual shareholder meeting in May. In the Russell 3000, the month with the second highest number of shareholder meeting is June (19 percent); in the S&P 500, it is April (24 percent).

Chart 1, p. 27

### **Shareholder Meetings, by Index (2011)**

### **By industry**

Chart 2 breaks down the composition of the Russell 3000 sample by industry groups.

Chart 2, p. 28

### **Shareholder Meetings, by Industry (2011)**

# Shareholder Proposals

## Volume

### Per company

As shown in Chart 3, in the Russell 3000 sample examined for the purpose of this report (i.e. general shareholder meetings held in the January 1-August 3, 2011 timeframe), shareholders filed on average 0.28 proposals per company, compared to the average of 0.34 proposals per company submitted in the same period in 2010. The average was calculated by dividing the total number of proposals submitted in the sample period (Chart 4) by the total number of shareholder meetings held by index companies during the sample period (Chart 1).

By comparison, in the corresponding S&P 500 sample the average number of shareholder proposals per company declined from 1.54 in 2010 to 1.23 in 2011.

Chart 3, p. 29

### **Average Shareholder Proposal Volume per Company (2007-2011)**

### By index

In 2011, shareholders filed fewer proposals than in prior proxy seasons (Chart 4). In the Russell 3000 sample, shareholders filed a total of 691 proposals, 634 of which were related to issues of executive compensation, corporate governance, or social and environmental policy (Chart 7). For the same period in 2010, shareholders had filed 864 proposals, 814 of which related to corporate governance, social and environmental issues; by the end of calendar year 2010, the total number rose to 943 proposals.

By comparison, in the S&P 500 sample examined for the purpose of this report, the number of shareholder proposals declined from 681 in 2010 to 544 in 2011.

The declining trend regarding the overall number of shareholder proposals started in 2008, when the total number of shareholder proposals had reached a record high of 944 in the Russell 3000 and 731 in the S&P 500.

Chart 4, p. 30

### **Shareholder Proposal Volume, by Index (2007-2011)**

### By industry

Proposal volume varies considerably from industry to industry. The financial services sector consistently receives the highest number of shareholder proposals, as shown in Chart 5 and confirmed by 2011 data. In 2011, as many as 114 proposals (or 16.5 percent of the total, down from the 21.9 percent observed for the 2010 sample) were submitted by shareholders of financial companies. The industry analysis also highlights a significant increase in the percentage of shareholder proposals filed at Russell 3000 electronic

technology (manufacturing) companies: 11.4 percent of the total, up from the 6.7 percent of 2010 and almost as high as the level recorded in 2007. Overall, finance and electronic technology (manufacturing) companies appear to be almost twice as likely as their counterparts in most other industry groups to face a shareholder proposal in any given year.

Other sectors facing a relatively higher than average number of shareholder proposals include utilities (9.5 percent of the total in 2011), energy minerals (9.4 percent) and retail trade (8.5 percent). On the contrary, distribution services (1.3 percent) and technology services (1 percent) were the least exposed to shareholder proposals in 2011.

Chart 5, p. 31

### **Shareholder Proposal Volume, by Industry (2007, 2010, and 2011)**

#### **By sponsor**

The historical comparison on shareholder proposal volume by sponsor type shows that proposals introduced by activist hedge funds continued to increase from 2010 levels despite the decline registered for all other sponsor types. In the examined 2011 period, hedge funds filed 27 proposals (3.9 percent of the total), compared to 13 proposals (1.5 percent) submitted in the corresponding 2010 period (Chart 6). Another highlight from this analysis is the above-average decline in the number of proposals filed by labor unions over the last five years: 116 in the examined 2011 period (16.8 percent of the total), down from 164 in 2007 (or 27.2 percent of the corresponding sample for that year).

See “Sponsors,” on p. 5, for more information on the categorization of proposal sponsors used for the purpose of this report.

Chart 6, p. 32

### **Shareholder Proposal Volume, by Sponsor (2007, 2010, and 2011)**

#### **By subject**

The historical comparison on the number of shareholder proposals submitted by subject shows that proposals on social and environmental policy issues continued to increase from 2007 levels despite the decline observed in other subjects. Specifically, 243 proposals related to matters of social and environmental policy were submitted in 2011, constituting 35.2 percent of the total number of proposals for the sample period. The volume increased considerably from the 28.1 and 29.1 percent observed in 2010 and 2007, respectively. The explanations for this shift should be sought in the momentum that the debate on public policy issues (including global warming and healthcare reform) has gained in recent years as well as the increasing sensitivity of shareholders to the long-term value generation potentials of a cohesive corporate sustainability strategy.

By contrast, in 2011, companies in the Russell 3000 received merely a third of the shareholder proposals on executive compensation that had been submitted in 2007. Say-on-pay proposals had been among the most frequent type of proposal on executive compensation introduced by shareholders in the most recent years. The passage in 2010

of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which mandates that all publicly traded companies submit their executive-compensation plans to shareholders for an advisory vote, is therefore the most likely explanation of the sensible decline in volume for this subject category. Moreover, the greater workload associated with market-wide advisory votes may have deterred some activists from introducing this type of proposals. Chart 7 also illustrates a less prominent but steady increase, from 2007 to 2011, in the percentage of shareholder proposals on issues of corporate governance.

See “Subjects,” on p. 8, for more information on the categorization of proposal subjects used for the purpose of this report.

Chart 7, p. 33

### **Shareholder Proposal Volume, by Subject (2007, 2010, and 2011)**

## Sponsors

The categorization of proposal sponsors used for the purpose of this report was made by FactSet LionShares. 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** Includes investment funds resorting to hedging techniques such as derivative securities and short-selling to reduce their risk exposure (e.g., Soros Fund Management). As part of their investment strategies, some hedge funds 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.
- **Investment advisers** For the purpose of this report, an investment firm is considered an investment adviser if it does not have the majority of its investments in mutual funds and is not a subsidiary of a bank, brokerage firm, or insurance company. An investment adviser provides investment advice and manages a portfolio of securities (e.g., Franklin Mutual Advisors).
- **Labor unions** This category comprises labor union pension funds (e.g., The Service Employees International Union) and workers' associations.
- **Mutual fund managers** For the purpose of this report, an investment firm is considered a mutual fund manager if the majority of its investments is allocated to mutual funds. A mutual fund raises money from shareholders and reinvests the money in securities (e.g., BWD Rensburg Unit Trust Managers Ltd).

- **Named stockholder groups** This category refers to activist groups established as part of a specific shareholder activism campaign (e.g., The Committee for Concerned Cyberonics, Inc. Shareholders).
- **Public pension funds** This category is comprised of funds established by a state or local government to pay the benefits of retired workers (e.g., The California Public Employees Retirement System (CalPERS)).
- **Religious groups** This category includes religious organizations (e.g., Interfaith Center on Corporate Responsibility).
- **Other institutions** This category consists of 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.
- **Other stakeholders** This category comprises other non-individual and investment entities not categorized as an institution by FactSet LionShares. 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 41.8 percent of the shareholder proposals submitted at Russell 3000 companies (specifically, 289 proposals in the January 1-August 3, 2011 period). As shown in Chart 8, a similar share (43.8 percent) was found in the S&P 500 analysis. For both indexes, the second most represented group among sponsor types was labor unions (which submitted 116 proposals in the Russell 3000 sample and 101 proposals in the S&P 500—respectively, 16.8 and 18.6 percent of the total), followed by public pension funds (which submitted 77 proposals in the Russell 3000 sample and 56 proposals in the S&P 500—respectively, 11.1 and 10.3 percent of the total).

It is worth noting that none of the proposals submitted at S&P 500 companies were sponsored by activist hedge funds, which filed 27 proposals at smaller cap companies constituting the Russell 3000. In both indexes, mutual funds filed no proposals in the examined 2011 period.

Chart 8, p. 34

### Sponsor Type, by Index (2011)

### By industry

Even across business sectors, individuals rank consistently as the most prevalent type of sponsors of shareholder proposals (Chart 9). In finance companies, in particular, proposals sponsored by single individuals constituted almost half of the total number

received by the industry in the 2011 period (53 out of 114 proposals, or 46.5 percent). The only notable exception appears to be the health services sector, where labor unions filed one third of the shareholder proposals received by the industry in 2011 (5 out of 15 proposals, or 33.3 percent).

Labor-affiliated shareholders were also well represented among proposal sponsors in other unionized business sectors such as energy minerals (13 out of 65 proposals, or 20 percent) and transportation (3 out of 13 proposals, or 23.1 percent), whereas 21 of the 79 shareholder proposals (or 26.6 percent) received by electronic technology companies were filed by activist hedge funds.

Chart 9, p. 35

### **Sponsor Type, by Industry (2011)**

#### **By subject**

The sponsor type analysis by subject of Chart 10 shows that individual proponents are particularly sensitive to issues of corporate governance. Proposals filed by individual shareholders on this subject (180) are almost three times as many as those on social and environmental policy (67). On the other hand, findings also highlight the presence of sponsor types that are primarily focused on the pursuit of social and environmental policy reforms at companies in their investment portfolio: religious groups (36 of the 43 proposals submitted by this sponsor type pertain to social and environmental policy) and other stakeholders (26 of the 42 submitted related to social and environmental policy).

The chart also shows that labor unions have played a dominant role in the introduction of executive compensation proposals, backing 27 of the 66 proposals (or 40.9 percent) filed on this subject at Russell 3000 companies in the 2011 sample.

Finally, all resolutions introduced by hedge funds (27) appear to fall into the all-inclusive “other shareholder proposals” subject category; for a topic-based analysis of these proposals, see p. 24.

See “Subjects,” on p. 8, for more information on the categorization of proposal subjects used for the purpose of this report.

Chart 10, p. 37

### **Sponsor Type, by Subject (2011)**

#### **Most frequent sponsors, by sponsor type**

Table 1 ranks by type up to 10 of the most frequent sponsors of shareholder proposals. In the table, 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.



Mr. John Chevedden (individuals), AFL-CIO Reserve Fund (labor unions), Ramius LLC (hedge funds), Sisters of Charity of St. Elizabeth (religious groups), the New York City Pension Funds (public pension funds), and Walden Asset Management (other institutions) ranked first in their respective categories.

More than two-thirds of the proposals submitted at Russell 3000 companies by individuals came from Evelyn Y. Davis, Gerald R. Armstrong and members of the Steiner and Chevedden families.

Labor unions typically exert their influence through the stock holdings of employee pension funds. The most frequent sponsors in this category are the large private-sector union American Federation of Labor—Congress of Industrial Organization (AFL-CIO), the United Brotherhood of Carpenters Pension Fund, and investment vehicles managed by the Amalgamated Bank (America's 100-percent union-owned bank).

The New York City Pension Funds, under the management of the city's comptroller, have also been very active proponents, leading the public pension fund category with a total of 27 proposals filed in the Russell 3000 during the sample period.

Finally, the table shows that a large majority of proponents in the religious group category is constituted by entities affiliated with the Catholic church—predominantly orders of nuns led by the Sisters of Charity of St. Elizabeth.

Table 1, p. 65

### **Most Frequent Sponsors, by Sponsor Type (2011)**

## Subjects

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

- **Executive compensation** This subject category includes shareholder proposals requesting a shareholder advisory vote on executive compensation, limits on tax “gross-ups” and severance agreements, or the clawback of incentives. For a description of specific topics under this subject category, see p. 14.
- **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. 17.
- **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. 22.

- **Other shareholder proposals** This subject category includes shareholder proposals on asset divestiture, capital distributions, the election of dissident's director nominees or the removal of board members. For a description of specific topics under this subject category, see p. 24.

### By index

The subject analysis by index shows that larger companies are far more likely to receive proposals from shareholders (Chart 11). In particular, shareholder proposals on social and environmental policy submitted at S&P 500 companies represent about 88 percent of the total number of proposals on the same subject received by companies in the Russell 3000 sample; the proportion is only slightly lower for resolutions on executive compensation (85 percent) and decreases to 78 percent for corporate governance-related proposals.

Findings also reveal that the breakdown based on subject is similar across the two indexes. For example, the percentage of shareholder proposals on corporate governance in the Russell 3000 sample is 47, compared to 46.7 in the S&P 500. Companies in the S&P 500 index appear to be receiving a higher share of proposals on social and environmental policy (39.2 percent, compared to 35.1 in the Russell 3000).

Chart 11, p. 38

#### **Shareholder Proposal Subject, by Index (2011)**

### By industry

As shown by Chart 12, during the examined 2011 period, companies in the financial services industry received the highest number of shareholder proposals on executive compensation (13 proposals, or 19.7 percent of the total, compared to an average of 3.5 proposals across all industries) and corporate governance (64 proposals, compared to an average of 15 proposals across the other industries).

The industry analysis shows a more diversified distribution when it comes to resolutions on social and environmental policy, with the highest numbers in business sectors that often draw environmental and geopolitical scrutiny—particularly energy minerals (43 of the 243 shareholder proposals introduced on this subject in the sample period, or 17.7 percent), utilities (34 proposals, or 13.9 percent of the total number on this subject), and finance (32 proposals, or 13.2 percent). Services industries are clearly less exposed to shareholder activism on environmental and social policy issues, which tend to be related to the externality costs of manufacturing practices and to blue-collar workers' rights.

Chart 12, p. 39

#### **Shareholder Proposal Subject, by Industry (2011)**

### By sponsor

The subject analysis by sponsor highlights an interest by multiple types of investors in social and environmental policy issues. Chart 13, in particular, illustrates the distribution of shareholder proposals submitted on this subject across almost the entire spectrum of sponsor types, with a higher concentration among individual shareholders (67 of the 243 proposals submitted on the subject in the examined 2011 period, or 27.6 percent), public pension funds (39 proposals, or 16 percent), and religious groups (36 proposals, or 14.8 percent).

Individuals were the main proponents of corporate governance resolutions (180 of the 325 proposals submitted on the subject in the examined 2011 period, or 55.3 percent), whereas proposals on executive compensation were filed in equal proportion by single investors (26 of the 66 proposals introduced on this subject, or 39.4 percent) and labor unions (27 proposals, or 40.8 percent).

The “other shareholder proposals” category was dominated by hedge funds, which introduced 27 of the 57 proposals on this subject, or 47.4 percent. For a topic-based analysis of these proposals, see p. 24.

Chart 13, p. 42

#### **Shareholder Proposal Subject, by Sponsor (2011)**

### 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.

Table 2, p. 69

#### **Most Frequent Sponsors, by Subject (2011)**

### Withdrawn, Omitted, and Voted 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 voluntarily effects the requested change prior to the AGM or as a result of a private negotiation with management. 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, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934. Since the SEC began publishing no-action letters on its website only for letters issued after October 1, 2007, aggregate data provided in this report for 2007 should not be used for comparative purposes.

It should also be noted that the analysis of withdrawn, omitted, and voted proposals is limited to shareholder proposals on corporate governance, executive compensation, and social and environmental policy.

### By index

The index analysis of Chart 14 illustrates a decline in the percentage of shareholder proposals that went to a vote at 2011 annual general meetings, compared to data obtained for the same period of 2010. In the Russell 3000, 67.2 percent of submitted proposals were voted, down from 69.2 percent of the 2010 proxy season; in the S&P 500, the reduction was from 67.7 percent to 66.3 percent.

This softening trend was entirely compensated by an increase in the share of proposals withdrawn before the meeting. The percentage of withdrawn proposals was 5.8 percent in the Russell 3000 (up from 4.8 percent in 2010) and 6.5 percent in the S&P 500 (up from 5.2 percent in 2010), whereas no significant difference was observed with respect to the percentage of proposals omitted by management (24.8 percent in the Russell 3000 and 25.8 percent in the S&P 500).

Chart 14, p. 43

### **Withdrawn, Omitted, and Voted Shareholder Proposals, by Index (2007, 2010, and 2011)**

### By industry

As shown in Chart 15, the sectors with the highest percentage of voted proposals in the 2011 proxy season were industrial services (84.6 percent of the shareholder proposals filed at companies in the industry went to a vote) and consumer non-durables (84 percent). Finance companies saw the highest number of voted proposals across industries (78 proposals, or 71.5 percent of those submitted at companies in the sector), followed by energy minerals (48 proposals), retail trade (40) and utilities (39). Technology services and distribution services were the sectors with the lowest numbers of voted proposals (4 per sector). Transportation and health services showed the highest percentage of withdrawn proposals (23.1 and 20 percent, respectively, compared to 2.8 percent in producer manufacturing and 3.7 percent in finance companies), whereas distribution services and technology services led on the percentage of proposals that were omitted from the voting ballot (50 and 42.9 percent, respectively).

Chart 15, p. 47

### **Withdrawn, Omitted, and Voted Shareholder Proposals, by Industry (2011)**

### By sponsor

Chart 16 illustrates the analysis by sponsor type and highlights the large share of proposals submitted by individual investors that were ultimately omitted by management. Specifically, 107 of the 273 proposals (39.2 percent) by individuals were excluded from the voting ballot in reliance of securities laws. Findings also reveal that public pension funds are the sponsor type with the highest percentage of voted proposals (63 of the 76 proposals submitted, or 82.9 percent).

Moreover, the chart shows the degree with which sponsors decided to withdraw their proposals: 12 of 116 proposals submitted, or 10.3 percent, in the case of labor union and 8 of 76 proposal submitted, or 10.5 percent, in the case of public pension funds— compared to 2.6 percent of individuals and 2.3 percent of religious groups.

Chart 16, p. 49

#### **Withdrawn, Omitted, and Voted Shareholder Proposals, by Sponsor (2011)**

##### **By subject**

Approximately 71 percent of shareholder proposals on executive compensation were put to a vote in the 2011 proxy season, compared to 68.7 percent of those on corporate governance and 64 percent of those on social and environmental policy (Chart 17). The analysis based on subject also shows that executive compensation proposals had the highest percentage of withdrawals (10.6 percent, compared to 7.8 percent of those on social and environmental policy and only 3.4 percent of those on corporate governance).

Chart 17, p. 50

#### **Withdrawn, Omitted, and Voted Shareholder Proposals, by Subject (2011)**

## **Voting Results**

This section extends the shareholder proposal analysis to their voting results, with a focus on those that received majority support. 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 non-votes; an analysis of results as a percentage of shares outstanding, with data on non-votes is offered in the corresponding tables.

It should be noted that, similar to the discussion of withdrawn, omitted, and voted proposals, the analysis in this section is limited to shareholder proposals on corporate governance, executive compensation, and social and environmental policy.

##### **By index**

Table 3 displays voting results by index. As mentioned earlier, *for* and *against* votes as well as abstention levels are calculated both as a percent of votes cast and as a percent of shares outstanding. The analysis shows that the percentage of *for* votes is, in both cases, slightly higher in the Russell 3000 sample. In the S&P 500, 61.4 percent of shareholder proposals put to a vote in the 2011 period examined for the purpose of this report were voted against at the annual general meeting; in the Russell 3000, the percentage was 59.9.

Chart 18 corroborates the index-based analysis by illustrating the recent historical evolution in the percentage of shareholder proposals receiving majority support: in 2011, the percentage was 20.4 in the Russell 3000 (up from 16.8 percent in 2007) and 16.1 in the S&P 500 (up from 15.2 in 2007).

Table 3, p. 73

**Shareholder Proposal Voting Results, by Index (2011)**

Chart 18, p. 51

**Shareholder Proposals Receiving Majority Support, by Index (2007, 2010, and 2011)**

**By industry**

The voting result analysis by industry (Table 4) shows that non-energy minerals is the sector with the highest percentage of *for* votes to shareholder proposals, whereas the weakest support level was recorded for shareholder proposals in technology service companies (where, on average, as many as 75.5 percent of votes cast were *against*). The highest level of non-votes was detected in the communications sector (19 percent), while the lowest was in technology service companies (4.3 percent).

Chart 19 shows that non-energy minerals and commercial services were, in the 2011 proxy voting season, the sectors with the highest percentages of shareholder proposals receiving majority support (55.6 percent of shareholder proposals, in both cases). Interestingly, in the financial services industry majority support was obtained by 24.4 percent of shareholder proposals, a level lower than what was recorded in industrial services (36.4 percent) and transportation (28.6 percent). In consumer durables, only 1 of the 18 voted proposals (5.6 percent) received majority support.

Table 4, p. 74

**Shareholder Proposal Voting Results, by Industry (2011)**

Chart 19, p. 52

**Shareholder Proposals Receiving Majority Support, by Industry (2011)**

**By sponsor**

From the voting result analysis by sponsor type it emerges that, in the examined 2011 general meeting period, as many as 67.2 percent of votes on shareholder proposals submitted by religious group were *against* the proposal (Table 5). The highest level of votes *for* was observed for proposals by public pension funds (41 percent), while individuals registered the lowest levels of abstentions (4.3 percent). As shown by the breakdown of votes as a percent of share outstanding, the percentage of non-votes remained quite consistent across the spectrum of sponsor types and ranged from 10.9 to 13.5 percent.

Chart 20 shows that 33.3 percent of shareholder proposals submitted by public pension funds received majority support—the highest level across sponsor types. However, none of the resolutions introduced by religious groups and put to a vote obtained majority support.

Table 5, p. 75

**Shareholder Proposal Voting Results, by Sponsor (2011)**

Chart 20, p. 53

### **Shareholder Proposals Receiving Majority Support, by Sponsor (2011)**

#### **By subject**

The voting result analysis by subject of shareholder proposals filed in the 2011 proxy season (Table 6) shows that only 17.4 percent of votes cast proposals regarding social and environmental policy were *for* the proposed change; however, proposals on this subject also reported the highest levels of abstention from voting (15.4 percent, compared to an average of 1.7 percent for the other two subjects). The vote-*for* percentage was higher for proposals on executive compensation (25.2 percent) and highest for those on corporate governance (46.7 percent). The highest vote-*against* percentage was observed for executive compensation proposals (72.7). Levels of non-vote appeared consistent across the spectrum of subjects.

The major highlight from the analysis illustrated in Chart 21 is the sharp decline in percentage of shareholder proposals on executive compensation that received majority support (4.3 percent of voted proposals, from the 8 percent of 2010). In the social and environmental policy category, two of the 156 shareholder proposals voted received majority support.

When compared to findings for 2010, the percentage of corporate governance proposals that passed in 2011 with a majority of *for* votes was stable (37.2 percent of voted shareholder proposals on corporate governance filed at companies in the Russell 3000 sample).

Table 6, p. 76

### **Shareholder Proposal Voting Results, by Subject (2011)**

Chart 21, p. 54

### **Shareholder Proposals Receiving Majority Support, by Subject (2007, 2010, and 2011)**

## **Shareholder Proposals on Executive Compensation**

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 first introduced in 2006 requesting a policy instituting an annual advisory vote by shareholders to ratify the compensation of the company’s named executive officers. The vote is non-binding 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 U.S. 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 non-employee 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 (vote on) supplemental executive retirement plan (“SERP”)** 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 (vote on) death benefit payments (“golden coffin”)** 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 death. 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 (vote on) severance agreements (“golden parachute”)** 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.

### By topic

The historical analysis by topic of filed shareholder proposals on executive compensation (Chart 22) documents a shift of focus by investors from the say-on-pay issue (which had dominated the last few proxy seasons, before its mandatory introduction by federal law in late 2010) to requests related to the formulation of clawback policies to recoup variable components of pay packages (6.1 percent of the total number of proposals submitted on executive compensation in 2011, up from 3.7 percent in 2010 and 4.9 in 2007), the adoption of equity-retention requirements for senior executives (21.2 percent in 2011, while this type of resolutions had represented only 3.8 percent of the total in 2007), and the granting of a shareholder vote on “golden coffins” (7.6 percent in 2011, up from only 2.7 in 2010).

Chart 22, p. 55

### Shareholder Proposals on Executive Compensation, by Topic (2007, 2010, and 2011)

### Most frequent sponsors, by topic

Table 7 ranks by topic the most frequent sponsors of shareholder proposals on executive compensation.

Table 7, p. 77

## Shareholder Proposals on Executive Compensation—Most Frequent Sponsors, by Topic (2011)

### Voting results, by topic

As shown in Table 8, the executive compensation proposal topics that, in 2011, obtained the highest levels of *for* votes as a percentage of votes cast were the request to limit severance agreements (including through the introduction of a shareholder vote to ratify them: 42.9 percent of *for* votes), the request to strengthen pay and performance (34.5 percent) and the one to curb tax “gross-ups” (33.2 percent).

Chart 23 highlights the overall decline in the average support received by executive compensation proposals after the most recent regulatory intervention. The only notable exception to the overall downward trend concerns the requests to link pay and equity grants (as well as their vesting) to evaluated performance (the support of which rose from 29.2 percent of votes cast in 2010 to 34.5 percent in 2011) and the proposals to introduce caps on executive compensation (22.6 percent, up from 7.6 in 2010).

Table 8, p. 81

## Shareholder Proposals on Executive Compensation—Voting Results, by Topic (2011)

Chart 23, p. 56

## Shareholder Proposals on Executive Compensation—Average Support Level, by Topic (2007, 2010, and 2011)

## Shareholder Proposals on Corporate Governance

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

- **Adopt director nominee qualifications** Shareholder-sponsored proposals requesting 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** Shareholder proposals 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** Shareholder-sponsored proposals 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** Shareholder-sponsored proposals 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** Shareholder proposals 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** Shareholder-sponsored proposals 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** Shareholder proposals 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, and 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** Shareholder proposals to eliminate classified board structures (i.e. where directors are subject to staggered terms, typically running three years so only one-third 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 board size** Shareholder-sponsored proposals 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)** Shareholder-sponsored proposals to eliminate dual class/unequal voting share structure. It 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 supermajority vote requirements** Shareholder-sponsored proposals 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** Shareholder-sponsored proposals 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.
- **Include shareholder nominee in company proxy (proxy access)** Shareholder-sponsored proposals requesting the inclusion in proxy materials director candidate(s) nominated by shareholders.
- **Increase board size** Shareholder-sponsored proposals to increase the current number or the maximum number (where a range is established) of members of the board of directors.
- **Redeem (or require shareholder vote on) “poison pill”** Shareholder-sponsored proposals to redeem or require a shareholder vote on shareholder rights plans (“poison pills”).
- **Reduce difficulty to remove directors (with/without cause)** Shareholder-sponsored proposals 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** Shareholder-sponsored proposals requesting that the company reincorporate in any U.S. state. These proposals may be used against companies that reincorporated in tax havens (e.g., Bermuda).
- **Report on management succession plans** Shareholder-sponsored proposals requesting that the board adopts, periodically reviews, and discloses a written and detailed management (CEO) succession planning policy.
- **Require an independent lead director** Shareholder-sponsored proposals for a policy requesting that, in the absence of an independent board chairman, the company appoints 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 (non-independent) chairman is absent.

- **Require an independent director on board committee** Shareholder proposals 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 (CEOs) of other companies from serving on the board's compensation committee.
- **Restrict "overboarding"** Shareholder-sponsored proposals to discourage overextended directors by requiring the board service to be limited to a specified number of directorships.
- **Separate CEO/chairman positions** Shareholder proposals for the adoption of a policy separating the roles of chairman and CEO and/or requiring that the chairmanship is assumed by an independent director with no management duties, titles, or responsibilities.
- **Other board committee-related** Any 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 (increase)** 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)** 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).

By topic

The historical analysis by topic of filed shareholder proposals on corporate governance (Chart 24) shows the resurgence in the relative number of proposals to change the director election method from plurality to majority voting (13.2 percent of the total number of proposals submitted on corporate governance in 2011, up from 9.4 percent in 2010, which in turn had represented a significant decline from the 16.3 percent level reported in 2007). Other corporate governance topics to gain momentum in 2011 were board declassification (16.3 percent, up from 13.8 percent in 2010) and the ease of requirements to act by written consent (11.7 percent, up from 7.3 percent in 2010), while shareholder proposals seeking to allow cumulative voting almost doubled in volume (measured as a percentage of the total) since the prior year (8.3 percent, up from 4.8 percent in 2010). However, the percent of proposals to separate the CEO and board chairman was halved (7.7 percent, from 14.5 percent of 2010).

Chart 24, p. 57

#### **Shareholder Proposals on Corporate Governance, by Topic (2007, 2010, and 2011)**

##### [Most frequent sponsors, by topic](#)

Table 9 ranks by topic the most frequent sponsors of shareholder proposals on corporate governance.

Table 9, p. 82

#### **Shareholder Proposals on Corporate Governance—Most Frequent Sponsors, by Topic (2011)**

##### [Voting results, by topic](#)

As shown in Table 10, the corporate governance proposal topics that, in 2011, obtained the highest levels of *for* votes as a percentage of votes cast were the requests to declassify the board of directors (which won majority support with a record average 73 percent of *for* votes, up more than 13 percentage points from 2010), the requests for a shareholder vote on poison pills (67.2 percent) and the elimination of supermajority requirements (58.5 percent). The change from plurality to majority voting was confirmed in the 2011 proxy season as another shareholder favorite, winning the average support of 57.9 percent of votes cast.

Chart 25 highlights the overall upward trend regarding the average support received by corporate governance proposals on board declassification (73 percent in 2011, up from 59.2 percent in 2010 and 67.6 percent in 2007), CEO-chairman separation (33.6 percent of votes cast in favor in 2011, up from 28.1 percent in 2010 and 27 percent in 2007), and shareholder approval of poison pills (67.2 percent in 2011, up significantly from 32.3 percent in 2007). Decreasing levels of support were reported for topics such as the elimination of dual class equity structure, which depart from the one share-one vote principle (18.5 percent in 2011, down from 27.4 percent in 2010 and 31.5 percent in 2009).

Table 10, p. 89

#### **Shareholder Proposals on Corporate Governance—Voting Results, by Topic (2011)**

Chart 25, p. 60

### Shareholder Proposals on Corporate Governance—Average Support Level, by Topic (2007, 2010, and 2011)

## Shareholder Proposals on Social and Environmental Policy

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

- **Animal rights** Shareholder-sponsored proposals 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** Shareholder proposals 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** Shareholder-sponsored proposals to request that the board issue a report detailing the company's impact on the environment, or to request 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 described below. If a proposal focuses on preparing a sustainability report regarding environmental practices, it is generally classified in the "sustainability reporting" category described below. See Appendix for examples of proposals filed under these categories.
- **Health issues** Shareholder-sponsored proposals to request that the board institute policies to protect human health or that the board issue a report regarding the company's stance on certain health-related issues.
- **Human rights** Shareholder-sponsored proposals to request that the board institute policies to protect and/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** Shareholder-sponsored proposal 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** Shareholder-sponsored proposals to request that the board provide a report detailing the company's policies regarding political contributions.
- **Sustainability reporting** Shareholder-sponsored proposals 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** Shareholder-sponsored proposal 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.

### By topic

The historical analysis by topic of filed shareholder proposals on social and environmental policy (Chart 26) highlights the increasing interest by investors in political issues (27.6 percent of the total number of proposals submitted on social and environmental policy in 2011, up from 18.1 percent in 2010) and environmental issues (26.3 percent, up from 25.1 percent in 2010 and 17.6 percent in 2007). In particular, it is widely recognized that the U.S. Supreme Court's controversial *Citizen United v. Federal Election Commission* decision (2010)—holding that the First Amendment prohibits government from placing limits on independent spending for political purposes by corporations and unions—has given impetus to shareholder activists concerned about the lack of transparency in this area of corporate activities.

Chart 26, p. 61

### Shareholder Proposals on Social and Environmental Policy, by Topic (2007, 2010, and 2011)

### Most frequent sponsors, by topic

Table 11 ranks by topic the most frequent sponsors of shareholder proposals on social and environmental policy.

Table 11, p. 90

### Shareholder Proposals on Social and Environmental Policy—Most Frequent Sponsors, by Topic (2011)

### Voting results, by topic

As shown in Table 12, the social and environmental policy proposal topics that, in 2011, obtained the highest levels of *for* votes as a percentage of votes cast were the requests for a sustainability report (which received, on average, 26.3 percent of *for* votes) and for the adoption of a corporate policy on board diversity (23.3 percent). While no shareholder proposals concerning corporate political contributions approached majority support in 2011, they have garnered an average backing from 23.1 percent of shareholders casting their votes.



When compared to proposals on other subjects, proposals on social and environmental policy saw higher levels of abstentions from the vote (14 percent on average across topics, compared to 2 percent for executive compensation proposals and virtually no abstentions for corporate governance).

Chart 27 highlights the overall upward trend regarding the average support received by proposals on sustainability reporting (26.3 percent in 2011, up from 22.6 percent in 2010 and 23.5 percent in 2007), political issues (23.1 percent of votes cast in favor in 2011, up from 20.6 percent in 2010 and 16.6 percent in 2007), human rights (12.3 percent in 2011, up from 11.2 percent in 2010 and 10.2 percent in 2007), and board diversity (23.3 percent in 2011, up from 21 percent in 2010 and 20.5 percent in 2007).

Table 12, p. 98

#### **Shareholder Proposals on Social and Environmental Policy—Voting Results, by Topic (2011)**

Chart 27, p. 62

#### **Shareholder Proposals on Social and Environmental Policy—Average Support Level, by Topic (2007, 2010, and 2011)**

## Other Shareholder Proposals

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

- **Approve control share acquisition** Shareholder-sponsored proposals 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 are 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.
- **Divest asset (division)** Shareholder-sponsored proposals requesting the company sell/spin-off assets, divisions, or subsidiaries.
- **Elect dissident's director nominee** Shareholder-sponsored proposals 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)** Shareholder-sponsored proposals 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** Shareholder-sponsored proposals requesting that an investment banking firm be engaged to maximize shareholder value and/or seek the sale or liquidation of the company.
- **Remove director(s)** Shareholder-sponsored proposals 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** Shareholder-sponsored proposals to repeal any bylaw amendments adopted by the company during a proxy fight. This proposal type is usually a precautionary measure to pre-empt any potential defenses that the board might adopt during a proxy fight.
- **Return capital to shareholders (dividends/buyback)** Shareholder-sponsored proposals requesting the company return cash via dividends and share repurchases/self-tender offers.
- **Terminate investment advisory agreement** Shareholder sponsored proposals to terminate a closed-end fund's investment advisory agreement. The proposal may or may not be binding. Such 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.

### By topic

As shown in Chart 28, more than half of the proposals in the all-inclusive “other shareholder proposals” category regard the election of a dissident’s director nominee (52.6 percent, or 30 of the 57 proposals counted in this category).

Chart 28, p. 63

#### Other Shareholder Proposals, by Topic (2007, 2010, and 2011)

### Most frequent sponsors, by topic

Table 13 ranks by topic the most frequent sponsors of other shareholder proposals.

Table 13, p. 99

#### Other Shareholder Proposals—Most Frequent Sponsors, by Topic (2011)

### Voting results, by topic

As shown in Table 14, the other shareholder proposal topics documented by this report received high level of support, with *for* votes averaging 55 percent across all topics in 2011. Chart 29 shows that the average support level for proposals to elect a dissident

director's nominee increased to 84.4 in 2011, up from the 78.5 percent of votes cast reported in 2010.

Table 14, p. 101

**Other Shareholder Proposals—Voting Results, by Topic (2011)**

Chart 29, p. 64

**Other Shareholder Proposals—Average Support Level, by Topic (2007, 2010, and 2011)**

Chart 1

**Shareholder Meetings, by Index (2011)**

number of meetings (percent of total)

	Month								n=	Percentage of total							
	January	February	March	April	May	June	July	August		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
<b>S&amp;P 500</b>	13	10	16	107	252	37	8	1	444	2.93	2.25	3.60	24.10	56.76	8.33	1.80	0.23
<b>Russell 3000</b>	73	71	77	408	1328	479	58	17	2511	2.91	2.83	3.07	16.25	52.89	19.08	2.31	0.68

Source: The Conference Board/FactSet, 2012.

Chart 2

**Shareholder Meetings, by Industry (2011)**

number of meetings (percent of total)

<b>Industry</b>	<b>Shareholder Meetings</b>	<b>Percent of total</b>
Commercial Services	158	6.3%
Communications	43	1.7%
Consumer Durables	61	2.4%
Consumer Non-Durables	76	3%
Consumer Services	125	5%
Distribution Services	60	2.5%
Electronic Technology	225	9%
Energy Minerals	101	4%
Finance	571	22.7%
Health Services	59	2.3%
Health Technology	226	9%
Industrial Services	70	2.8%
Miscellaneous	13	0.5%
Non-Energy Minerals	50	2%
Process Industries	100	4%
Producer Manufacturing	177	7%
Retail Trade	128	5.1%
Technology Services	109	4.3%
Transportation	66	2.7%
Utilities	93	3.7%

n=2,511

*Source:* The Conference Board/FactSet, 2012.

Chart 3

**Average Shareholder Proposal Volume per Company (2007-2011)**

average number of shareholder proposals per company (total proposals; total meetings)

	<b>Russell 3000</b>			<b>S&amp;P 500</b>		
	<b>Average number of shareholder proposals per company</b>	<b>Total proposals</b>	<b>Total meetings</b>	<b>Average number of shareholder proposals per company</b>	<b>Total proposals</b>	<b>Total meetings</b>
<b>2007</b>	0.25	605	2410	1.17	502	430
<b>2008</b>	0.38	944	2452	1.64	731	446
<b>2009</b>	0.36	880	2440	1.45	648	448
<b>2010</b>	0.34	864	2547	1.54	681	442
<b>2011</b>	0.28	691	2511	1.23	544	444

*Source:* The Conference Board/FactSet, 2012.

Chart 4

**Shareholder Proposal Volume, by Index (2007-2011)**

number of shareholder proposals

<b>Russell 3000</b>	<b>Number of shareholder proposals</b>	<b>S&amp;P 500</b>	<b>Number of shareholder proposals</b>
2007	605	2007	502
2008	944	2008	731
2009	880	2009	648
2010	864	2010	681
2011	691	2011	544

*Source:* The Conference Board/FactSet, 2012.

Chart 5

**Shareholder Proposal Volume, by Industry (2007, 2010, and 2011)**

number of shareholder proposals (percent of total)

2011			2010			2007		
Industry	Number of shareholder proposals	Percent of total	Industry	Number of shareholder proposals	Percent of total	Industry	Number of shareholder proposals	Percent of total
Commercial Services	19	2.7%	Commercial Services	12	1.4%	Commercial Services	10	1.7%
Communications	29	4.2%	Communications	41	4.7%	Communications	20	3.3%
Consumer Durables	25	3.6%	Consumer Durables	34	3.9%	Consumer Durables	47	7.8%
Consumer Non-Durables	26	3.8%	Consumer Non-Durables	33	3.8%	Consumer Non-Durables	24	4%
Consumer Services	39	5.6%	Consumer Services	51	5.9%	Consumer Services	41	6.7%
Distribution Services	9	1.3%	Distribution Services	9	1%	Distribution Services	2	0.3%
Electronic Technology	79	11.4%	Electronic Technology	58	6.7%	Electronic Technology	72	12%
Energy Minerals	65	9.4%	Energy Minerals	79	9.2%	Energy Minerals	44	7.2%
Finance	114	16.5%	Finance	189	21.9%	Finance	86	14.2%
Health Services	15	2.2%	Health Services	15	1.7%	Health Services	10	1.7%
Health Technology	38	5.5%	Health Technology	55	6.6%	Health Technology	37	6.1%
Industrial Services	13	1.9%	Industrial Services	21	2.4%	Industrial Services	10	1.7%
Non-Energy Minerals	13	1.9%	Miscellaneous	1	0.1%	Non-Energy Minerals	7	1.2%
Process Industries	21	3%	Non-Energy Minerals	13	1.5%	Process Industries	28	4.6%
Producer Manufacturing	42	6.1%	Process Industries	27	3.1%	Producer Manufacturing	32	5.3%
Retail Trade	59	8.5%	Producer Manufacturing	50	5.8%	Retail Trade	63	10.4%
Technology Services	7	1%	Retail Trade	84	9.7%	Technology Services	10	1.7%
Transportation	13	1.9%	Technology Services	9	1%	Transportation	23	3.7%
Utilities	65	9.5%	Transportation	19	2.2%	Utilities	39	6.4%
			Utilities	64	7.4%			
	n=691			n=864			n=605	

Source: The Conference Board/FactSet, 2012



Chart 6

**Shareholder Proposal Volume, by Sponsor (2007, 2010, and 2011)**

number of shareholder proposals (percent of total)

<b>Sponsor type</b>	<b>2011 Number of proposals</b>	<b>Percent of total</b>	<b>2010 Number of proposals</b>	<b>Percent of total</b>	<b>2007 Number of proposals</b>	<b>Percent of total</b>
Individuals	289	41.8%	390	45.1%	226	37.4%
Labor unions	116	16.8%	155	17.9%	164	27.2%
Other institutions	13	1.9%	11	1.3%	11	1.8%
Other stakeholders	42	6.1%	55	6.4%	30	5%
Hedge funds	27	3.9%	13	1.5%	6	1%
Corporations	2	0.3%	0	0.0%	1	0%
Religious groups	43	6.2%	58	6.7%	46	7.6%
Public pension funds	77	11.1%	95	11.0%	57	9.4%
Investment advisers	40	5.8%	50	5.8%	27	4.5%
Mutual fund manager	0	0.0%	1	0.1%	0	0%
Named stockholder group	0	0.0%	4	0.5%	0	0%
Unknown	42	6.1%	32	3.7%	37	6.1%
	n=691		n=864		n=605	

*Source:* The Conference Board/FactSet, 2012.

Chart 7

**Shareholder Proposal Volume, by Subject (2007, 2010, and 2011)**

number of shareholder proposals (percent of total)

	<b>2011</b>		<b>2010</b>		<b>2007</b>	
	Number of shareholder proposals	Percent of total	Number of shareholder proposals	Percent of total	Number of shareholder proposals	Percent of total
<b>Corporate governance</b>	325	47%	384	44.5%	233	38.5%
<b>Executive compensation</b>	66	9.6%	187	21.6%	182	30.1%
<b>Social and environmental policy</b>	243	35.2%	243	28.1%	176	29.1%
<b>Other</b>	57	8.2%	50	5.8%	14	2.3%
	n=691		n=864		n=605	

*Source:* The Conference Board/FactSet, 2012.

**Sponsor Type, by Index (2011)**

number of shareholder proposals (percent of total)

**Russell 3000**

<b>Sponsor type</b>	<b>Number of proposals</b>	<b>Percent of total</b>
Individuals	289	41.8%
Labor unions	116	16.8%
Other institutions	13	1.9%
Other stakeholders	42	6.1%
Hedge funds	27	3.9%
Corporations	2	0.3%
Religious groups	43	6.2%
Public pension funds	77	11.1%
Investment advisers	40	5.8%
Mutual fund manager	0	0.0%
Named stockholder group	0	0.0%
Unknown	42	6.1%
	n=691	

**S&P 500**

<b>Sponsor type</b>	<b>Number of proposals</b>	<b>Percent of total</b>
Individuals	238	43.8%
Labor unions	101	18.6%
Other institutions	11	2.0%
Other stakeholders	30	5.5%
Hedge funds	0	0.0%
Corporations	0	0.0%
Religious groups	40	7.4%
Public pension funds	56	10.3%
Investment advisers	32	5.9%
Mutual fund manager	0	0.0%
Named stockholder group	0	0.0%
Unknown	36	6.5%
	n=544	

*Source:* The Conference Board/FactSet, 2012.

Chart 9

**Sponsor Type, by Industry (2011)**

number of shareholder proposals (percent of total)

	<b>Commercial Services</b>		<b>Communications</b>		<b>Consumer Durables</b>		<b>Consumer Non-Durables</b>		<b>Consumer Services</b>		<b>Distribution Services</b>	
	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total
<b>Corporations</b>			1	3.4%					4	10.3%		
<b>Hedge Funds</b>			13	44.8%	9	36%	7	26.9%	16	41%	8	88.9%
<b>Individuals</b>	6	31.6%										
<b>Investment Advisers</b>	3	15.8%	1	3.4%	1	4%	2	7.7%				
<b>Labor Unions</b>	2	10.5%	8	27.8%	5	20%	3	11.5%	9	23.1%		
<b>Other Institutions</b>							2	7.7%				
<b>Other Stake Holders</b>	6	31.6%	1	3.4%	3	12%	1	3.8%	4	10.3%	1	11.1%
<b>Public Pension Funds</b>	2	10.5%	3	10.3%	4	16%	3	11.6%	5	12.7%		
<b>Religious Groups</b>			2	6.9%			2	7.7%	1	2.6%		
<b>Unknown</b>					3	12%	6	23.1%				
	n=19		n=29		n=25		n=26		n=39		n=9	

n=691

<b>Electronic Technology</b>		<b>Energy Minerals</b>		<b>Finance</b>		<b>Health Services</b>		<b>Health Technology</b>		<b>Industrial Services</b>	
No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total
2	2.5%										
21	26.6%										
31	39.2%	11	16.9%	53	46.5%	3	20%	20	52.6%	5	38.5%
1	1.3%	8	12.3%	7	6.1%			2	5.3%		
10	12.7%	13	20%	18	15.8%	5	33.3%	3	7.9%	5	38.5%
1	1.3%	2	3.1%					1	2.6%		
1	1.3%	2	3.1%	6	5.3%			4	10.5%	1	7.7%
6	7.5%	10	15.4%	17	14.9%	2	13.3%	3	7.9%	1	7.7%
5	6.3%	8	12.3%	8	7%	4	26.7%	5	13.2%	1	7.7%
1	1.3%	11	16.9%	5	4.4%	1	6.7%				

n=79

n=65

n=114

n=15

n=38

n=13

<b>Non-Energy Minerals</b>		<b>Process Industries</b>		<b>Producer Manufacturing</b>		<b>Retail Trade</b>		<b>Technology Services</b>		<b>Transportation</b>		<b>Utilities</b>	
No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total
1	7.7%												
5	38.5%	8	38.2%	26	61.9%	27	45.8%	4	57.1%	8	61.5%	29	44.6%
		1	4.8%	3	7.1%	5	8.5%	1	14.3%			5	7.7%
5	38.5%	4	19%	4	9.5%	13	22%			3	23.1%	6	9.2%
		2	9.5%	2	4.8%	2	3.4%			1	7.7%		
		2	9.5%	1	2.4%	3	5.1%			1	7.7%	5	7.7%
2	15.3%	2	9.5%	4	9.5%	7	11.8%	2	28.6%			4	6.2%
		2	9.5%	2	4.8%	2	3.4%					1	1.5%
												15	23.1%

n=13

n=21

n=42

n=59

n=7

n=13

n=65

Chart 10

**Sponsor Type, by Subject (2011)**

number of shareholder proposals (percent of total)

	<b>Corporate Governance</b>		<b>Executive Compensation</b>		<b>Social and Environmental Policy</b>		<b>Other</b>	
	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total
Individuals	180	55.3%	26	39.4%	67	27.6%	16	28.1%
Labor unions	73	22.4%	27	40.9%	16	6.7%		
Other institutions					12	4.9%	1	1.8%
Other stakeholders	9	2.8%	3	4.5%	26	10.7%	4	7%
Corporations							2	3.5%
Religious groups	7	2.2%			36	14.8%		
Public pension funds	33	10.2%	4	6.1%	39	16%	1	1.8%
Hedge funds							27	47.3%
Investment advisers	11	3.4%	1	1.5%	26	10.7%	2	3.5%
Unknown	12	3.7%	5	7.6%	21	8.6%	4	7%
	n=325		n=66		n=243		n=57	
n=691								

Source: The Conference Board/FactSet, 2012.

Chart 11

**Shareholder Proposal Subject, by Index (2011)**

number of shareholder proposals (percent of total)

	<b>Russell 3000</b>			<b>S&amp;P 500</b>	
	Number of shareholder proposals	Percent of total		Number of shareholder proposals	Percent of total
Corporate Governance	325	47%	Corporate Governance	254	46.7%
Executive Compensation	66	9.6%	Executive Compensation	56	10.3%
Social and Environmental Policy	243	35.1%	Social and Environmental Policy	213	39.2%
Other	57	8.2%	Other	21	3.9%
	n=691			n=544	

Source: The Conference Board/FactSet, 2012.

Chart 12

**Shareholder Proposal Subject, by Industry (2011)**

number of shareholder proposals (percent of total)

<b>Corporate Governance</b>	Number of proposals	Percent of total
Commercial Services	12	3.7%
Communications	12	3.7%
Consumer Durables	10	3.1%
Consumer Non-Durables	12	3.7%
Consumer Services	20	6.2%
Distribution Services	7	2.2%
Electronic Technology	30	9.2%
Energy Minerals	15	4.6%
Finance	64	19.6%
Health Services	7	2.2%
Health Technology	21	6.5%
Industrial Services	9	2.8%
Non-Energy Minerals	11	3.4%
Process Industries	9	2.8%
Producer Manufacturing	19	5.8%
Retail Trade	30	9.2%
Technology Services	5	1.5%
Transportation	10	3.1%
Utilities	22	6.7%

n=325

**Executive Compensation**

Commercial Services	1	1.5%
Communications	2	3%
Consumer Durables	4	6.1%
Consumer Non-Durables	3	4.6%



Consumer Services	2	3%
Distribution Services	1	1.5%
Electronic Technology	7	10.6%
Energy Minerals	6	9.1%
Finance	13	19.7%
Health Services	0	0%
Health Technology	1	1.5%
Industrial Services	1	1.5%
Non-Energy Minerals	0	0%
Process Industries	2	3%
Producer Manufacturing	8	12.2%
Retail Trade	6	9.1%
Technology Services	0	0%
Transportation	1	1.5%
Utilities	8	12.1%

n=66

**Social and Environmental Policy**

Commercial Services	3	1.2%
Communications	12	4.9%
Consumer Durables	10	4.1%
Consumer Non- Durables	10	4.1%
Consumer Services	12	4.9%
Distribution Services	0	0%
Electronic Technology	15	6.2%
Energy Minerals	43	17.7%
Finance	32	13.2%
Health Services	8	3.4%
Health Technology	14	5.9%
Industrial Services	3	1.2%
Non-Energy Minerals	1	0.4%
Process Industries	10	4.1%
Producer Manufacturing	9	3.7%
Retail Trade	23	9.5%
Technology Services	2	0.8%
Transportation	2	0.8%

Utilities	34	13.9%
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n=243

**Other**

Commercial Services	3	5.3%
Communications	3	5.3%
Consumer Durables	1	1.8%
Consumer Non-Durables	1	1.8%
Consumer Services	5	8.8%
Distribution Services	1	1.8%
Electronic Technology	27	47.2%
Energy Minerals	1	1.8%
Finance	5	8.7%
Health Technology	2	3.5%
Non-Energy Minerals	1	1.8%
Producer Manufacturing	6	10.4%
Utilities	1	1.8%

n=57

Source: The Conference Board/FactSet, 2012.

Chart 13

**Shareholder Proposal Subject, by Sponsor (2011)**

number of shareholder proposals (percent of total)

**Corporate Governance**

Individuals	180	55.3%
Investment advisers	11	3.4%
Labor unions	73	22.5%
Other stakeholders	9	2.8%
Public pension funds	33	10.2%
Religious groups	7	2.2%
Unknown	12	3.6%

n=325

**Executive Compensation**

Individuals	26	39.4%
Investment advisers	1	1.5%
Labor unions	27	40.8%
Other stakeholders	3	4.5%
Public pension funds	4	6.1%
Unknown	5	7.7%

n=66

**Social and Environmental Policy**

Individuals	67	27.6%
Investment advisers	26	10.7%
Labor unions	16	6.7%
Other institutions	12	4.9%
Other stakeholders	26	10.7%
Public pension funds	39	16%
Religious groups	36	14.8%
Unknown	21	8.6%

n=243

**Other**

Individuals	16	28.1%
Investment advisers	2	3.5%
Hedge funds	27	47.4%
Corporations	2	3.5%
Other institutions	1	1.8%
Other stakeholders	4	7%
Public pension funds	1	1.7%
Unknown	4	7%

n=57

Source: The Conference Board/FactSet, 2012.

Chart 14

**Withdrawn, Omitted, and Voted Shareholder Proposals, by Index (2007, 2010, and 2011)**

number of shareholder proposals (percent of total)

**Russell 3000**

<b>2011</b>	<b>No. of proposals</b>	<b>Percent of total</b>
Voted	426	67.2%
Withdrawn	37	5.8%
Omitted	157	24.8%
Not voted, reason unspecified	10	1.6%
Not voted, other reason*	4	0.6%

n=634

\* Includes proposals at Apache Corp, KBR, Inc, and Kinetic Concepts, Inc. which each filed lawsuits in Federal District Court for the Southern District of Texas to exclude the respective proposals and were each granted declaratory judgment by the court. Also includes a proposal filed at Southwest Airlines Co., reported by the company in a May 24, 2011 Form 8K as not put to a vote because the proponent failed to properly present the proposal personally or through a qualified representative.

<b>2010</b>	<b>No. of proposals</b>	<b>Percent of total</b>
Voted	563	69.2%
Withdrawn	39	4.8%
Omitted	197	24.2%
Not voted, reason unspecified	14	1.7%
Not voted, other reason*	1	0.1%

n=814

\* Includes a proposal filed at Apache Corp. which excluded the proposal without seeking no-action relief from the SEC and instead filed suit in Federal District Court for the Southern District of Texas to exclude the proposal. The court granted the company's motion for declaratory judgment.

	<b>No. of proposals</b>	<b>Percent of total</b>
<b>2007</b>		
Voted	571	96.6%
Withdrawn	1	0.2%
Omitted	0	
Not voted, reason unspecified	18	3%
Not voted, other reason*	1	0.2%
	n=591	

\* Includes proposal at Bed Bath and Beyond that the company stated were not put to a vote because they were not presented at the meeting by any proponent.

### **S&P 500**

	<b>No. of proposals</b>	<b>Percent of total</b>
<b>2011</b>		
Voted	347	66.3%
Withdrawn	34	6.5%
Omitted	135	25.8%
Not voted, reason unspecified	5	1%
Not voted, other reason*	2	0.4%
	n=523	

\* Includes a proposal at Apache Corp., which filed suit in Federal District Court for the Southern District of Texas to exclude the proposal. The court granted the company's motion for declaratory judgment. Also includes a proposal at Southwest Airlines Co., which reported in a May 24, 2011 Form 8-K that the proposal was not put to a vote because the proponent failed to properly present the proposal personally or through a qualified representative. The proposal would have been approved with 399,756,879 "For" votes, 212,655,095 "Against" votes, 1,655,687 "Abstentions" and 78,990,651 "Broker Non-Votes".

	<b>No. of proposals</b>	<b>Percent of total</b>
<b>2010</b>		
Voted	452	67.7%
Withdrawn	35	5.2%
Omitted	172	25.8%
Not voted, reason unspecified	7	1%
Not voted, other reason*	2	0.3%
	n=668	

\* Includes a proposal filed at Occidental Petroleum Corp., was not presented by the proponent and was not voted on. Also includes a proposal filed at Apache Corp. which filed suit in Federal District Court for the Southern District of Texas to exclude the proposal. The court granted the company's motion for declaratory judgment.

	<b>No. of proposals</b>	<b>Percent of total</b>
<b>2007</b>		
Voted	486	97.4%
Withdrawn	2	0.4%
Omitted	1	0.2%
Not voted, reason unspecified	1	0.2%
Not voted, other reason*	9	1.8%
	n=499	

\*Includes a proposal at Bed Bath and Beyond which was not put to a vote because it was not presented at the meeting by any proponent.

Note: The analysis in these charts is limited to shareholder proposals on corporate governance, executive compensation, and social and environmental policy.

Source: The Conference Board/FactSet, 2012.

Chart 15

**Withdrawn, Omitted, and Voted Shareholder Proposals, by Industry (2011)**

number of shareholder proposals (percent of total)

	Commercial Services		Communications		Consumer Durables		Consumer Non-Durables		Consumer Services		Distribution Services		Electronic Technology		Energy Minerals	
	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total
<b>Withdrawn</b>	2	12.5%	1	3.9%	2	8.3%	1	4%	2	5.9%			5	9.6%	3	4.6%
<b>Omitted</b>	5	31.3%	9	34.6%	3	12.5%	3	12%	12	35.3%	4	50%	13	25%	11	17.2%
<b>Voted</b>	9	56.2%	16	61.5%	18	75%	21	84%	18	52.9%	4	50%	34	65.4%	48	75%
<b>Not voted, reason unspecified</b>									2	5.9%					1	1.6%
<b>Not voted, other reason</b>					1	4.2%									1	1.6%
	n=16		n=26		n=24		n=25		n=34		n=8		n=52		n=64	

Source: The Conference Board/FactSet, 2012.

Finance		Health Services		Health Technology		Industrial Services		Non-Energy Minerals		Process Industries		Producer Manufacturing	
No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total
4	3.7%	3	20%	2	5.6%					2	9.5%	1	2.8%
27	24.8%	4	26.7%	11	30.5%	2	15.4%	2	16.7%	4	19.1%	10	27.7%
78	71.5%	8	53.3%	23	63.9%	11	84.6%	9	75%	15	71.4%	24	66.7%
												1	2.8%
								1	8.3%				
n=109		n=15		n=36		n=13		n=12		n=21		n=36	



Retail Trade		Technology Services		Transportation		Utilities		Total
No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals
2	3.4%			3	23.1%	4	6.2%	37
15	25.4%	3	42.9%	2	15.4%	17	26.5%	157
40	67.8%	4	57.1%	7	53.8%	39	61%	426
2	3.4%					4	6.3%	10
				1	7.7%			4
n=59		n=7		n=13		n=64		n=634

Chart 16

**Withdrawn, Omitted, and Voted Shareholder Proposals, by Sponsor (2011)**

number of shareholder proposals (percent of total)

	Individuals		Investment Advisers		Labor Unions		Other Institutions	
	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total
<b>Withdrawn</b>	7	2.6%	2	5.3%	12	10.3%	2	16.7%
<b>Omitted</b>	107	39.2%	7	18.4%	19	16.4%		
<b>Voted</b>	152	55.7%	28	73.7%	83	71.6%	10	83.3%
<b>Not voted, other reason</b>	4	1.5%						
<b>Not voted, reason unspecified</b>	3	1.1%	1	2.6%	2	1.7%		
	n=273		n=38		n=116		n=12	

Source: The Conference Board/FactSet, 2012.

Other Institutions		Other Stakeholders		Public Pension Funds		Religious Groups		Unknown		Total
No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of total	No. of proposals	Percent of totals	No. of proposals
2	16.7%	5	13.2%	8	10.5%	1	2.3%			37
		9	23.7%	4	5.3%	11	25.6%			157
10	83.3%	23	60.5%	63	82.9%	31	72.1%	36	94.7%	426
										4
		1	2.6%	1	1.3%			2	5.3%	10
n=12		n=38		n=76		n=43		n=38		n=634

Chart 17

**Withdrawn, Omitted, and Voted Shareholder Proposals, by Subject (2011)**

number of shareholder proposals (percent of total)

**Corporate Governance**

	<b>No. of proposals</b>	<b>Percent of total</b>
<b>Withdrawn</b>	11	3.4%
<b>Omitted</b>	82	25.2%
<b>Voted</b>	223	68.7%
<b>Not voted, reason unspecified</b>	5	1.5%
<b>Not voted, other reason</b>	4	1.2%

n=325

**Executive Compensation**

	<b>No. of proposals</b>	<b>Percent of total</b>
<b>Withdrawn</b>	7	10.6%
<b>Omitted</b>	12	18.1%
<b>Voted</b>	47	71.2%

n=66

**Social and Environmental Policy**

	<b>No. of proposals</b>	<b>Percent of total</b>
<b>Withdrawn</b>	19	7.8%
<b>Omitted</b>	63	26%
<b>Voted</b>	156	64%
<b>Not voted, reason unspecified</b>	5	2.2%

n=243

Chart 18

**Shareholder Proposals Receiving Majority Support, by Index (2007, 2010, and 2011)**

percent of proposals receiving majority support (number of proposals receiving majority support; total proposals voted)

	<b>Proposals receiving majority support</b>	<b>Total proposals voted</b>	<b>Percent of proposals receiving majority support</b>
<b>Russell 3000</b>			
2011	87	426	20.4%
2010	111	563	19.7%
2007	96	570	16.8%
<b>S&amp;P 500</b>			
2011	56	347	16.1%
2010	76	452	16.8%
2007	74	486	15.2%

Note: Analysis excludes "Other Shareholder Proposals," as defined on p. X.

Source: The Conference Board/FactSet, 2012.

Chart 19

**Shareholder Proposals Receiving Majority Support, by Industry (2011)**

percent of proposals receiving majority support (number of proposals receiving majority support; total proposals voted)

	<b>Percent of proposals receiving majority support</b>	<b>Number of proposals receiving majority support</b>	<b>Total proposals voted</b>
Commercial Services	55.6	5	9
Communications	18.8	3	16
Consumer Durables	5.6	1	18
Consumer Non-Durables	14.3	3	21
Consumer Services	16.7	3	18
Distribution services	0	0	4
Electronic Technology	23.5	8	34
Energy Minerals	8.3	4	48
Finance	24.4	19	78
Health Services	25	2	8
Health Technology	26.1	6	23
Industrial Services	36.4	4	11
Non-Energy Minerals	55.6	5	9
Process Industries	26.7	4	15
Producer Manufacturing	20.8	5	24
Retail Trade	15	6	40
Technology Services	25	1	4
Transportation	28.6	2	7
Utilities	15.4	6	39

Note: Analysis excludes "Other Shareholder Proposals," as defined on p. X.

Source: The Conference Board/FactSet, 2012.

Chart 20

**Shareholder Proposals Receiving Majority Support, by Sponsor  
(2011)**

percent of proposals receiving majority support (number of proposals receiving majority support; total proposals voted)

<b>Sponsor Type</b>	<b>Proposals receiving majority support</b>	<b>Total proposals voted</b>	<b>Percent of proposals receiving majority support</b>
Individual	30	152	19.7
Investment Adviser	5	28	17.9
Labor Union	20	83	24.1
Other Institutions	2	10	20.0
Other Stake Holders	5	23	21.7
Public Pension Funds	21	63	33.3
Religious Groups	0	31	0.0
Unknown	4	36	11.1

Note: Analysis excludes "Other Shareholder Proposals," as defined on p. X.

Source: The Conference Board/FactSet, 2012.

Chart 21

**Shareholder Proposals Receiving Majority Support, by Subject (2007, 2010, and 2011)**

percent of proposals receiving majority support (number of proposals receiving majority support; total proposals voted)

	2011			2010			2007		
	Proposals receiving majority support	Total proposals voted	Percent of proposals receiving majority support	Proposals receiving majority support	Total proposals voted	Percent of proposals receiving majority support	Proposals receiving majority support	Total proposals voted	Percent of proposals receiving majority support
<b>Corporate Governance</b>	83	223	37.2	99	264	37.5	79	226	35
<b>Executive Compensation</b>	2	47	4.3	11	138	8	16	175	9.1
<b>Social and Environmental Policy</b>	2	156	1.3	1	161	0.6	1	170	0.6

Source: The Conference Board/FactSet, 2012.

Chart 22

**Shareholder Proposals on Executive Compensation, by Topic (2007, 2010, and 2011)**

number of shareholder proposals (percent of total)

	<b>No. of Proposals</b>	<b>Percent of total</b>	<b>2007</b>	
<b>2011</b>				
Advisory vote on compensation ("say on pay")	4	6.1	Advisory vote on compensation ("say on pay")	40 22
Cap (restrict) executive compensation	1	1.5	Cap (restrict) executive compensation	14 7.7
Expand compensation-related disclosure	7	10.6	Director compensation-related	2 1.1
Limit tax "gross-ups"	2	3	Expand compensation-related disclosure	11 6
Limit (vote on) supplemental executive retirement plan ("SERP")	3	4.5	Limit (vote on) supplemental executive retirement plan ("SERP")	14 7.7
Limit (vote on) death benefit payments ("golden coffin")	5	7.6	Limit (vote on) severance agreements ("golden parachute")	12 6.6
Limit (vote on) severance agreements ("golden parachute")	7	10.6	Link compensation to performance ("pay for performance")	66 36.3
Link compensation to performance ("pay for performance")	7	10.6	Recoup incentive pay ("clawback")	9 4.9
Recoup incentive pay ("clawback")	4	6.1	Require equity retention period	7 3.8
Require equity retention period	14	21.2	Other executive compensation issues	7 3.8
Other executive compensation issues	12	18.2		
	n=66			n=182
<b>2010</b>			<i>Source: The Conference Board/FactSet</i>	2012
Advisory vote on compensation ("say on pay")	65	34.8		
Cap (restrict) executive compensation	19	10.2		
Expand compensation-related disclosure	15	8		
Limit tax "gross-ups"	3	1.6		
Limit (vote on) supplemental executive retirement plan ("SERP")	1	0.5		
Limit (vote on) death benefit payments ("golden coffin")	5	2.7		
Limit (vote on) severance agreements ("golden parachute")	6	3.2		
Link compensation to performance ("pay for performance")	24	12.8		
Recoup incentive pay ("clawback")	7	3.7		
Require equity retention period	33	17.6		
Other executive compensation issues	9	4.8		
	n=187			



Chart 23

**Shareholder Proposals on Executive Compensation—Average Support Level, by Topic (2007, 2010, and 2011)**

for votes as percent of votes cast

	<b>2011</b>	<b>2010</b>	<b>2007</b>
	<b>For As a</b>	<b>For As a</b>	<b>For As a</b>
	<b>Percentage of</b>	<b>Percentage of</b>	<b>Percentage of</b>
	<b>Votes Cast</b>	<b>Votes Cast</b>	<b>Votes Cast</b>
Advisory vote on executive compensation ("say on pay")	14.3	41.4	36.9
Cap (restrict) executive compensation	22.6	7.6	4.7
Expand compensation-related disclosure	9.6	11	12.1
Limit tax "gross-ups"	33.2	39.9	n/a
Limit (vote on) supplemental executive retirement plan ("SERP")	29.5	41.9	32.4
Limit (vote on) death benefit payments ("golden coffin")	27.6	39.4	n/a
Limit (vote on) severance agreements ("golden parachute")	42.9	54.1	53.2
Link compensation to performance ("pay for performance")	34.5	29.2	30
Recoup incentive pay ("clawback")	26	42.1	28
Require equity retention period	23.5	23.7	22
Other executive compensation issues	16.2	36.4	26.4

n/a = No voted proposals.

Source: The Conference Board/FactSet, 2012.

Chart 24

**Shareholder Proposals on Corporate Governance, by Topic (2007, 2010, and 2011)**

number of shareholder proposals (percent of total)

	<b>No. of proposals</b>	<b>Percent of total</b>
<b>2011</b>		
Adopt director nominee qualifications	4	1.2%
Allow cumulative voting	27	8.3%
Allow for (or ease requirement to) act by written consent	38	11.7%
Allow for (or ease requirement to) call special meetings	47	14.5%
Change from plurality to majority voting	43	13.2%
Declassify board	53	16.3%
Eliminate dual class structure (unequal voting)	7	2.2%
Eliminate supermajority vote requirements	34	10.5%
Require an independent lead director	1	0.3%
Require an independent director on board committee	1	0.3%
Report on management succession plans	5	1.5%
Reincorporate in another state	2	0.6%
Reduce difficulty to remove directors (with/without cause)	1	0.3%
Redeem (or require shareholder vote on) "poison pill"	2	0.6%
Separate CEO/chairman positions	25	7.7%
Other board structure-related	1	0.3%
Other corporate governance issues	34	10.5%
	n=325	
<b>2010</b>		
Adopt director nominee qualifications	4	1.1%
Adopt term limits for directors	1	0.3%
Allow cumulative voting	19	4.8%

Allow for (or ease requirement to) act by written consent	28	7.3%
Allow for (or ease requirement to) call special meetings	72	18.8%
Approve dissident expense reimbursement	7	1.8%
Change from plurality to majority voting	36	9.4%
Declassify board	53	13.8%
Eliminate dual class structure (unequal voting)	2	0.5%
Eliminate supermajority vote requirements	46	12%
Establish committee or protocol for shareholder proposals receiving majority vote	3	0.8%
Increase board size	2	0.5%
Require an independent lead director	1	0.3%
Require an independent director on board committee	9	2.3%
Report on management succession plans	4	1%
Reincorporate in another state	5	1.3%
Reduce difficulty to remove directors (with/without cause)	1	0.3%
Redeem (or require shareholder vote on) "poison pill"	6	1.6%
Separate CEO/chairman positions	56	14.5%
Other board structure-related	6	1.6%
Other corporate governance issues	23	6%

n=384

**2007**

Adopt director nominee qualifications	9	3.9%
Adopt term limits for directors	1	0.4%
Allow cumulative voting	24	10.3%
Allow for (or ease requirement to) call special meetings	18	7.7%
Approve dissident expense reimbursement	2	0.9%
Change from plurality to majority voting	38	16.3%
Declassify board	37	15.8%
Decrease board size	1	0.4%
Eliminate dual class structure (unequal voting)	5	2.1%
Eliminate supermajority vote requirements	21	9%

Establish committee or protocol for shareholder proposals receiving majority vote	3	1.3%
Include shareholder nominee in company proxy (proxy access)	2	0.9%
Redeem (or require shareholder vote on) "poison pill"	17	7.3%
Reincorporate in another state	3	1.3%
Require an independent director on board committee	1	0.4%
Restrict "overboarding"	3	1.3%
Separate CEO/chairman positions	40	17.2%
Other board structure-related	2	0.9%
Other takeover defense-related (increase)	1	0.4%
Other takeover defense-related (reduce)	2	0.9%
Other corporate governance issues	3	1.3%

n=233

Source: The Conference Board/FactSet, 2012.

Chart 25

**Shareholder Proposals on Corporate Governance—Average Support Level, by Topic (2007, 2010, and 2011)***for votes as percent of votes cast*

	<b>For As a Percent of Votes Cast</b>		
	<b>2011</b>	<b>2010</b>	<b>2007</b>
Adopt director nominee qualifications	19.5	24.7	4
Adopt term limits for directors	n/a	n/a	2.9
Allow cumulative voting	29.7	27.2	32.8
Allow for (or ease requirement to) act by written consent	47.8	53.8	n/a
Allow for (or ease requirement to) call special meetings	40.4	42.6	55.3
Approve dissident expense reimbursement	n/a	35	7.6
Change from plurality to majority voting	57.9	56	49.6
Declassify board	73	59.2	67.6
Decrease board size	n/a	n/a	3
Eliminate dual class structure (unequal voting)	18.5	27.4	31.5
Eliminate supermajority vote requirements	58.5	72.5	66.3
Establish committee or protocol for shareholder proposals receiving majority vote	n/a	31.8	37.4
Include shareholder nominee in company proxy (proxy access)	n/a	n/a	40.8
Increase board size	n/a	3.1	n/a
Restrict "overboarding"	n/a	n/a	16.9
Redeem (or require shareholder vote on) "poison pill"	67.2	55.3	32.3
Reduce difficulty to remove directors (with/without cause)	47	52.7	n/a
Reincorporate in another state	38.7	20.9	41.5
Report on management succession plans	26.9	28.7	n/a
Require an independent lead director	11.9	n/a	n/a
Require an independent director on board committee	13.6	8	14.6
Separate CEO/chairman positions	33.6	28.1	27
Other board committee-related	n/a	4.3	n/a
Other corporate governance issues	15.5	20.5	30.1

n/a = No voted proposals.

*Source:* The Conference Board/FactSet, 2012.

Chart 26

**Shareholder Proposals on Social and Environmental Policy, by Topic (2007, 2010, and 2011)**

number of shareholder proposals (percent of total)

	<b>No. of proposals</b>	<b>Percent of total</b>
<b>2011</b>		
Animal rights	13	5.3%
Board diversity	2	0.8%
Environmental issues	64	26.3%
Health issues	22	9.1%
Human rights	21	8.6%
Labor issues	17	6.9%
Political issues	67	27.7%
Sustainability reporting	14	5.8%
Other social issues	23	9.5%
	n=243	
<b>2010</b>		
Animal rights	22	9.1%
Board diversity	2	0.8%
Environmental issues	61	25.1%
Health issues	16	6.6%
Human rights	30	12.4%
Labor issues	24	9.9%
Political issues	44	18.1%
Sustainability reporting	17	6.9%
Other social issues	27	11.1%
	n=243	
<b>2007</b>		
Animal rights	16	9.1%
Board diversity	3	1.8%
Environmental issues	31	17.6%
Health issues	26	14.7%
Human rights	13	7.4%
Labor issues	24	13.6%
Political issues	33	18.7%
Sustainability reporting	17	9.7%
Other social issues	13	7.4%
	n=176	

Source: The Conference Board/FactSet, 2012.

Chart 27

**Shareholder Proposals on Social and Environmental Policy—Average Support Level, by Topic (2007, 2010, and 2011)**for votes as percent of votes  
cast

	For as Percent of Votes Cast		
	2011	2010	2007
Animal rights	3.8	3.2	5.3
Board diversity	23.3	21	20.5
Environmental issues	14.5	16	12.8
Health issues	10.6	8.2	7
Human rights	12.3	11.2	10.2
Labor issues	20	23.5	19.1
Political issues	23.1	20.6	16.6
Sustainability reporting	26.3	22.6	23.5
Other social issues	2.5	7.6	13.2

Source: The Conference Board/FactSet,  
2012.

Chart 28

**Other Shareholder Proposals, by Topic (2007, 2010, and 2011)**

number of shareholder proposals (percent of total)

	<b>No. of proposals</b>	<b>Percent of total</b>
<b>2011</b>		
Divest asset (division)	2	3.5%
Elect dissident's director nominee	30	52.6%
Fill board vacancies (reduce defense)	1	1.8%
Miscellaneous	13	22.8%
Remove director(s)	6	10.5%
Repeal bylaw amendments adopted during proxy fight	1	1.8%
Return capital to shareholders (dividends/buybacks)	4	7%
	n=57	
<b>2010</b>		
Approve adjournment of meeting	1	2%
Approve control share acquisition	1	2%
Elect dissident's director nominee	29	58%
Hire adviser to evaluate strategy alternatives/Seek company sale or liquidation	1	2%
Miscellaneous	10	20%
Remove director(s)	5	10%
Repeal bylaw amendments adopted during proxy fight	1	2%
Return capital to shareholders (dividends/buyback)	1	2%
Terminate investment advisory agreement	1	2%
	n=50	
<b>2007</b>		
Divest asset (division)	2	14.3%
Hire adviser to evaluate strategy alternatives/Seek company sale or liquidation	5	35.7%
Miscellaneous	1	7.1%
Remove director(s)	5	35.7%
Return capital to shareholders (dividends/buyback)	1	7.1%
	n=14	

*Source:* The Conference Board/FactSet, 2012.



Chart 29

**Other Shareholder Proposals—Average Support Level, by Topic (2007, 2010, and 2011)**

for votes as percent of votes cast

	<b>For as Percent of Votes Cast</b>		
	<b>2011</b>	<b>2010</b>	<b>2007</b>
Approve adjournment of meeting	n/a	85.5	n/a
Approve control share acquisition	n/a	83.1	n/a
Divest asset (division)	n/a	n/a	3.6
Elect dissident's director nominee	84.4	78.5	n/a
Fill board vacancies (reduce defense)	90.8	n/a	n/a
Hire adviser to evaluate strategy alternatives/Seek company sale or liquidation	n/a	1.5	12
Remove director(s)	62.4	n/a	21.4
Repeal bylaw amendments adopted during proxy fight	90.8	n/a	n/a
Return capital to shareholders (dividends/buyback)	1.9	n/a	5.5
Terminate investment advisory agreement	n/a	21	n/a
Miscellaneous	n/a	17.3	6.5

n/a = No voted proposals.

Source: The Conference Board/FactSet, 2012.

Table 1

**Most Frequent Sponsors, by Sponsor Type (2011)****Corporations**

<b>Rank</b>	<b>Sponsor Name</b>	<b>No. of Proposals</b>
1	Bel Fuse Inc.	2

**Hedge Funds**

<b>Rank</b>	<b>Sponsor Name</b>	<b>No. of Proposals</b>
1	Ramius LLC	14
	FrontFour Capital Group LLC	4
	MMI Investments, LP	4
2	Carl C. Icahn	3
3	Barington Capital Group, LP	1
	Pentwater Capital Management LP	1

**Individuals**

<b>Rank</b>	<b>Sponsor Name</b>	<b>No. of Proposals</b>
1	John Chevedden	55
2	Kenneth Steiner	30
3	Gerald R. Armstrong	25
4	Evelyn Y. Davis	24
5	William Steiner	18
6	James McRitchie	6
	Ray T. Chevedden	6
7	Peter W. Lindner	5
8	James W. Mackie	4
	Ray T. Chevedden and Veronica G. Chevedden Family Trust	4
9	Douglas S. Doremus	3
	Jing Zhao	3
	Lawrence L. Bryan	3
	Richard R. Treumann	3
10	Angelina Iannacone	2
	Chris Rossi	2

David Brook	2
Elizabeth Currier	2
Emil Rossi	2
Kenneth Wachtell	2
Normal W. Davis	2

### Investment Advisers

Rank	Sponsor Name	No. of Proposals
1	John C. Harrington	6
2	Domini Social Investments LLC	5
	Trillium Asset Management Corp.	5
3	Calvert Asset Management Co., Inc.	4
	Tides Foundation	4
4	Green Century Capital Management, Inc.	3
	NorthStar Asset Management, Inc.	3
5	Calvert Social Index Fund	2
	GAMCO Investors	2
6	Darlington Partners, LP	1
	First Affirmative Financial Network	1
	Green Century Equity Fund	1
	Harrington Investments, Inc.	1
	Miller/Howard Investments, Inc.	1
	Ram Trust Services, Inc.	1

### Labor Unions

Rank	Sponsor Name	No. of Proposals
1	AFL-CIO Reserve Fund	16
2	The United Brotherhood of Carpenters Pension Fund	10
3	Amalgamated Bank LongView LargeCap 500 Index Fund	8
	Sheet Metal Workers National Pension Fund	8
4	Trowel Trades S&P 500 Index Fund	7
5	International Brotherhood of Electrical Workers	6
	International Brotherhood of Teamsters	6
6	SEIU Master Trust	5
7	American Federation of State, County and Municipal Employees	4
	Central Laborers' Pension Fund	4
8	The United Association S&P 500 Index Fund	3
	UNITE HERE	3

	United Brotherhood of Carpenters and Joiners of America	3
9	AFL-CIO	2
	Laborers National Staff Pension Fund	2

#### Public Pension Funds

Rank	Sponsor Name	No. of Proposals
1	New York City Pension Funds	27
2	New York State Common Retirement Fund	13
3	The Florida State Board of Administration	7
4	Firefighters' Pension System of the City of Kansas City, Missouri, Trust	5
5	California State Teachers Retirement System	4
	Massachusetts Laborers' Pension Fund	4
6	The California Public Employees Retirement System	3
7	Connecticut Retirement Plans & Trust Funds	2
	The City of Philadelphia Public Employees Retirement System	2
	The Laborers' District Council and Contractors' Pension Fund of Ohio	2
8	Legal & General Assurance	1
	Miami Firefighters' Relief and Pension Fund	1
	Office of the Comptroller of New York City	1
	Office of the State Comptroller of the State of New York	1
	The Miami Fire Fighters' Relief & Pension Fund	1

#### Religious Groups

Rank	Sponsor Name	No. of Proposals
1	Sisters of Charity of St. Elizabeth	7
2	Unitarian Universalist Association of Congregations	5
3	Missionary Oblates of Mary Immaculate	4
4	Province of St. Joseph of the Capuchin Order	3
5	Sisters of St. Francis of Philadelphia	2
	The Mercy Investment Program	2
	Trinity Health	2
6	Benedictine Sisters of Virginia	1
	Board of Pensions of the Presbyterian Church	1
	Catholic Healthcare West	1
	Congregation of the Passion of the Holy Cross Province	1
	Congregation of the Sisters of St. Agnes	1
	Detroit Province of the Society of Jesus	1

Evangelical Lutheran Church In America Board of Pensions	1
Franciscan Sisters of Mary	1
Human Life International	1
School Sisters of Notre Dame, Mankato Province	1
Sisters of Charity of the Blessed Virgin Mary	1
Sisters of St. Dominic of Caldwell New Jersey	1
Sisters of St. Francis of Dubuque, Iowa	1
Sisters of the Humility of Mary	1
The Domestic and Foreign Missionary	1
The Presbyterian	1

#### Other Institutions

Rank	Sponsor Name	No. of Proposals
1	Walden Asset Management	9
2	Northstar Asset Management Inc.	2
3	Agape Foundation	1
	Jewish Voice for Peace	1

#### Other Stakeholders

1	Nathan Cummings Foundation	13
2	People for the Ethical Treatment of Animals Inc.	8
3	National Legal and Policy Center	4
	National Center for Public Policy Research	4
	Kovpak II, LLC	4
4	William M. Hamada Revocable Trust	3
5	The Christopher Reynolds Foundation	2
	The Community Reinvestment Association of North Carolina	2
	The Humane Society of the United States	2
6	As You Sow	1
	Association of BellTel Retirees	1
	Faye S. Rosenthal Living Trust	1
	June A. Wright Family Trust	1
	The Park Foundation	1

Source: The Conference Board/FactSet, 2012.

Table 2

**Most Frequent Sponsors, by Subject (2011)**

<b>Executive Compensation</b>			
<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>Pro.</b>
1	Amalgamated Bank LongView LargeCap 500 Index Fund	Labor Unions	7
2	AFL-CIO Reserve Fund	Labor Unions	7
3	Gerald R. Armstrong	Individuals	4
4	John Chevedden	Individuals	3
5	International Brotherhood of Teamsters	Labor Unions	3
	Evelyn Y. Davis	Individuals	2
	Kenneth Steiner	Labor Unions	2
	Central Laborers' Pension Fund	Labor Unions	2
	SEIU Master Trust	Labor Unions	2
	Trowel Trades S&P 500 Index Fund	Labor Unions	2
	Massachusetts Laborers' Pension Fund	Public Pension Funds	2
	Nathan Cummings Foundation	Other Stakeholder	2
	<i>(omissis)</i>	Individuals	1
	John C. Harrington	investment Adviser	1
	AFSCME Employee Pension Fund	Labor Unions	1
	CtW Investment Group	Labor Unions	1
	CWA Employees Pension Fund	Labor Unions	1
	International Brotherhood of DuPont Workers	Labor Unions	1
	UNITE HERE	Labor Unions	1
	New York State Common Retirement Fund	Public Pension Funds	1
	The Laborers' District Council and Contractors' Pension Fund of Ohio	Public Pension Funds	1
	Association of BellTel Retirees	Other Stakeholder	1

**Corporate Governance**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	John Chevedden	Individuals	52
2	Kenneth Steiner	Individuals	28
3	Gerald R. Armstrong	Individuals	21

5	William Steiner	Individuals	18
6	Evelyn Y. Davis	Individuals	16
7	AFSCME Employee Pension Fund	Labor Unions	11
	The United Brotherhood of Carpenters Pension Fund	Labor Unions	10
		Public Pension	
8	New York City Pension Funds	Funds	9
9	Sheet Metal Workers National Pension Fund	Labor Unions	8
		Public Pension	
10	The Florida State Board of Administration	Funds	7
		Other	
	Nathan Cummings Foundation	Stakeholder	7

### Social and Environmental Policy

Rank	Sponsor Name	Sponsor Type	Pro.
	New York City Pension Funds	Public Pension	
1		Funds	18
	New York State Common Retirement Fund	Public Pension	
2		Funds	10
	Walden Asset Management	Other	
3		Institutions	8
	People for the Ethical Treatment of Animals Inc.	Other	
		Stakeholders	8
4	Evelyn Y. Davis	Individuals	6
	AFL-CIO Reserve Fund	Labor Unions	6
	Domini Social Investments LLC	Investment	
5		Advisers	5
	AFSCME Employee Pension Fund	Labor Unions	5
	Sisters of Charity of St. Elizabeth	Religious	
		Groups	5
	Unitarian Universalist Association of Congregations	Religious	
		Groups	5
6	James W. Mackie	Individuals	4
	Calvert Asset Management Co., Inc.	Investment	
		Advisers	4
	Trillium Asset Management Corp.	Investment	
		Advisers	4
	Nathan Cummings Foundation	Other	
		Stakeholders	4
7	Douglas S. Doremus	Individuals	3
	Jing Zhao	Individuals	3
	Lawrence L. Bryan	Individuals	3

	Green Century Capital Management, Inc.	Investment Advisers	3
	Firefighters' Pension System of the City of Kansas City, Missouri, Trust	Labor Unions	3
	Province of St. Joseph of the Capuchin Order	Religious Groups	3
	National Legal and Policy Center	Other Stakeholders	3
	William M. Hamada Revocable Trust	Other Stakeholders	3
8	David Brook	Individuals	2
	Norman W. Davis	Individuals	2
	John C. Harrington	Individuals	2
	NorthStar Asset Management, Inc.	Investment Advisers	2
	Sisters of St. Francis of Philadelphia	Religious Groups	2
	The Mercy Investment Program	Religious Groups	2
	The Sisters of St. Francis of Philadelphia	Religious Groups	2
	Trinity Health	Religious Groups	2
	The Community Reinvestment Association of North Carolina	Other Stakeholders	2
	The Humane Society of the United States	Other Stakeholders	2
	National Center for Public Policy Research	Other Stakeholders	2
9	<i>(omissis)</i>	Various	1

**Other**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Ramius LLC	Hedge Funds	14
2	FrontFour Capital Group LLC	Hedge Funds	4
	MMI Investments, LP	Hedge Funds	4
3	Carl C. Icahn	Hedge Funds	3
	Kovpak II, LLC	Other Stakeholders	3
4	Bel Fuse Inc.	Corporations	2
	Peter W. Lindner	Individuals	2



		Investment	
	GAMCO Investors	Advisers	2
5	Barington Capital Group, LP	Hedge Funds	1
	Pentwater Capital Management LP	Hedge Funds	1
	National Center for Public Policy Research	Public Pension	
		Funds	1
	Walden Asset Management	Other	
		Institutions	1
	National Legal and Policy Center	Other	
	<i>(omissis)</i>	Stakeholders	1
		Individuals	1

Source: The Conference Board/FactSet, 2012.

Table 3

**Shareholder Proposal Voting Results, by Index (2011)**

	<b>Voted Proposals</b>	<b>As a Percent of Votes Cast</b>			<b>As a Percent of Shares Outstanding</b>			
		<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Non Vote</b>
<b>Russell 3000</b>	426	33.8%	59.9%	6.4%	25.4%	44.3%	4.6%	11.9%
<b>S&amp;P 500</b>	347	31.8%	61.4%	6.9%	23.5%	44.8%	4.9%	12.1%

Source: The Conference Board/FactSet, 2012.

Table 4  
**Shareholder Proposal Voting Results, by Industry (2011)**

Industry	Voted Proposals	As a Percent of Votes Cast			As a Percent of Shares Outstanding			
		For	Against	Abstain	For	Against	Abstain	Non Vote
Commercial Services	9	48.4%	46.7%	5.0%	40.3%	38.9%	4.1%	6.4%
Communications	16	39.1%	55.1%	5.8%	25.9%	35.4%	3.8%	19.0%
Consumer Durables	18	27.2%	66.0%	7.2%	21.6%	51.3%	5.8%	11.4%
Consumer Non-Durables	21	32.1%	62.5%	5.4%	24.1%	45.8%	3.9%	10.6%
Consumer Services	18	27.8%	66.7%	5.5%	22.1%	52.7%	3.8%	9.1%
Distribution Services	4	35.7%	63.9%	0.4%	25.4%	48.0%	0.3%	7.6%
Electronic Technology	34	39.4%	56.9%	3.7%	30.2%	43.0%	2.8%	10.8%
Energy Minerals	48	26.9%	60.0%	13.1%	19.9%	42.8%	9.4%	12.7%
Finance	78	35.0%	58.4%	6.7%	26.0%	43.0%	4.7%	12.0%
Health Services	8	37.9%	59.1%	3.0%	31.2%	46.8%	2.4%	5.3%
Health Technology	23	31.9%	61.3%	7.5%	23.4%	42.8%	5.1%	14.5%
Industrial Services	11	44.1%	49.1%	6.8%	34.8%	40.3%	5.0%	6.6%
Non-Energy Minerals	9	50.8%	47.4%	1.8%	34.6%	33.6%	1.4%	13.2%
Process Industries	15	34.2%	58.9%	7.4%	26.6%	43.9%	5.6%	10.0%
Producer Manufacturing	24	36.2%	58.1%	5.7%	27.6%	41.0%	4.1%	13.6%
Retail Trade	40	26.7%	68.6%	4.9%	20.4%	54.2%	3.8%	10.7%
Technology Services	4	22.6%	75.5%	1.9%	19.0%	65.1%	1.6%	4.3%
Transportation	7	42.4%	57.1%	0.5%	32.7%	42.9%	0.3%	13.5%
Utilities	39	32.3%	61.2%	6.5%	23.1%	42.2%	4.5%	15.0%

Source: The Conference Board/FactSet, 2012.

Table 5  
**Shareholder Proposal Voting Results, by Sponsor (2011)**

Sponsor Type	Voted Proposals	As a Percent of Votes Cast			As a Percent of Shares Outstanding			
		For	Against	Abstain	For	Against	Abstain	Non Vote
Individual Investor	152	34.2%	61.5%	4.3%	25.6%	45.7%	3.1%	11.5%
Adviser	28	27.6%	63.9%	9.2%	20.7%	47%	6.6%	12.2%
Labor Union	83	39%	56.7%	4.4%	28.9%	42.2%	3.1%	12.2%
Other								
Institutions	10	35.1%	55.9%	11.2%	27.3%	39.8%	8.5%	13.5%
Other								
Stakeholders	23	32%	58.9%	9.2%	23.1%	44%	7.1%	13.1%
Public								
Pension								
Fund	63	41%	53.7%	5.3%	31.7%	40.6%	3.9%	10.9%
Religious								
Groups	31	17.7%	67.2%	15.1%	13.1%	48.6%	10.7%	12.6%
Unknown	36	24.7%	65.9%	9.6%	18.9%	47.2%	6.9%	12.2%

Source: The Conference Board/FactSet, 2012.

Table 6  
**Shareholder Proposal Voting Results, by Subject  
 (2011)**

Subject	Voted Proposals	As a Percent of Votes Cast			As a Percent of Shares Outstanding			
		For	Against	Abstain	For	Against	Abstain	Non Vote
Corporate Governance	223	46.7%	52.1%	1.2%	35.3%	39.6%	0.8%	11.3%
Executive Compensation	47	25.2%	72.7%	2.2%	18.4%	52.6%	1.6%	12.6%
Social and Environmental Policy	156	17.4%	67.6%	15.4%	12.8%	49.0%	11.1%	12.5%
Other	36	76%	28%	8.6%	35.7%	19.9%	5.4%	11.3%

Source: The Conference Board/FactSet, 2012.

Table 7

**Shareholder Proposals on Executive Compensation—Most Frequent Sponsors, by Topic (2011)**

**Advisory vote on executive compensation (“say on pay”)**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Gerald R. Armstrong	Individuals	3
2	Robert L. Kurte	Individuals	1

**Cap (restrict) executive compensation**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Frank Hayer	Individuals	1

**Expand compensation-related disclosure**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Evelyn Y. Davis	Individuals	2
	Carol Mahar	Individuals	1
	Wendell R. Hunt	Individuals	1
	International Brotherhood of DuPont Workers	Labor Unions	1
		Public Pension Funds	
2	New York State Common Retirement Fund		1
		Other Stakeholders	
3	Nathan Cummings Foundation		1

**Limit tax “gross-ups”**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
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1	AFL-CIO Reserve Fund	Labor Unions	1
	Amalgamated Bank LongView		
	LargeCap 500 Index Fund	Labor Unions	1

**Limit (vote on) supplemental executive retirement plan ("SERP")**

Rank	Sponsor Name	Sponsor Type	No. of Proposals
1	AFL-CIO Reserve Fund	Labor Unions	1

**Limit (vote on) death benefit payments ("golden coffin")**

Rank	Sponsor Name	Sponsor Type	No. of Proposals
1	Amalgamated Bank LongView		
	LargeCap 500 Index Fund	Labor Unions	2
2	CWA Employees Pension Fund	Labor Unions	1
	International Brotherhood of Teamsters	Labor Unions	1

**Limit (vote on) severance agreements ("golden parachute")**

Rank	Sponsor Name	Sponsor Type	No. of Proposals
1	Amalgamated Bank LongView		
	LargeCap 500 Index Fund	Labor Unions	3
2	International Brotherhood of Teamsters	Labor Unions	2
3	AFL-CIO Reserve Fund	Labor Unions	1
	Trowel Trades S&P 500 Index Fund	Labor Unions	1

**Link compensation to performance ("pay for performance")**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Elton W. Shepherd	Individuals	1
	William J. Freeda	Individuals	1
	SEIU Master Trust	Individuals	1
	Trowel Trades S&P 500 Index Fund	Individuals	1
		Public	
	Massachusetts Laborers' Pension Fund	Pension Funds	1
		Public	
	The Laborers' District Council and Contractors' Pension Fund of Ohio	Pension Funds	1
		Other	
	Association of BellTel Retirees	Stakeholders	1

**Recoup incentive pay ("clawback")**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Gerald R. Armstrong	Individuals	1
	John Hepburn	Individuals	1
	Sally S. Thompson	Individuals	1
	SEIU Master Trust	Labor Unions	1

**Require equity retention period**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	John Chevedden	Individuals	3
	AFL-CIO Reserve Fund	Labor Unions	3
2	Kenneth Steiner	Individuals	2
3	Chris Rossi	Individuals	1



David Watt	Individuals	1
Rita Weisshaar	Individuals	1
Susan Freeda	Individuals	1
John C. Harrington	Investment Advisers	1
Nathan Cummings Foundation	Other Stakeholders	1

**Other executive compensation issues**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Central Laborers' Pension Fund	Labor Unions	2
2	Gimi Giustina	Individuals	1
	Joseph Dox	Individuals	1
	Morris Propp	Individuals	1
	AFSCME Employee Pension Fund	Labor Unions	1
	Amalgamated Bank LongView		
	LargeCap 500 Index Fund	Labor Unions	1
	CtW Investment Group	Labor Unions	1
	UNITE HERE	Labor Unions	1
	Massachusetts Laborers' Pension Fund	Public Pension Funds	1

Note: Total number of proposals does not include five proposals for which sponsors are unknown.

Source: The Conference Board/FactSet, 2012.

Table 8

**Shareholder Proposals on Executive Compensation—Voting Results, by Topic (2011)**

Topic	Voted Prop.	As a Percent of Votes Cast			As a Percent of Shares Outstanding			
		For	Against	Abstain	For	Against	Abstain	Non Vote
Advisory vote on executive compensation ("say on pay")	4	14.3%	81.5%	4.2%	10.2%	60.1%	3.1%	10.7%
Cap (restrict) executive compensation	1	22.6%	74.3%	3.0%	17.6%	57.8%	2.4%	n/a
Expand compensation-related disclosure	5	9.6%	86.0%	4.4%	6.2%	56.8%	3.0%	16.8%
Limit tax "gross-ups"	2	33.2%	66.2%	0.6%	22.4%	42.8%	0.4%	22.4%
Limit (vote on) supplemental executive retirement plan ("SERP")	3	29.5%	69.5%	0.9%	21.6%	50.4%	0.7%	12.2%
Limit (vote on) death benefit payments ("golden coffin")	3	27.6%	70.9%	1.5%	21.7%	53.0%	1.2%	9.1%
Limit (vote on) severance agreements ("golden parachute")	7	42.9%	55.9%	1.2%	33.6%	44.2%	0.9%	8.0%
Link compensation to performance ("pay for performance")	4	34.5%	64.2%	1.2%	23.0%	42.3%	0.8%	17.1%
Recoup incentive pay ("clawback")	3	26.0%	73.3%	0.9%	17.0%	46.0%	0.6%	19.9%
Require equity retention period	8	23.5%	75.6%	0.8%	17.9%	57.5%	0.6%	10.6%
Other executive compensation issues	7	16.2%	80.0%	3.9%	11.4%	59.6%	2.8%	12.0%

n=47

Source: The Conference Board/FactSet, 2012.

Table 9

**Shareholder Proposals on Corporate Governance—Most Frequent Sponsors, by Topic (2011)**

<b>Adopt director nominee qualifications</b>			
<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
		Public Pension	
1	New York State Common Retirement Fund	Funds	2
2	Frederick S. Leber	Individuals	1
	Trillium Asset Management Corp.	Investment Advisers	1
<b>Allow cumulative voting</b>			
<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Evelyn Y. Davis	Individuals	16
2	International Brotherhood of Electrical Workers	Labor Unions	5
3	Trowel Trades S&P 500 Index Fund	Labor Unions	3
4	Gerald R. Armstrong	Individuals	2
5	AFL-CIO	Labor Unions	1
<b>Allow for (or ease requirement to) act by written consent</b>			
<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	John Chevedden	Individuals	10
	William Steiner	Individuals	10
2	Kenneth Steiner	Individuals	7
3	James McRitchie	Individuals	2
	Ray T. Chevedden	Individuals	2
4	Ray T. Chevedden and Veronica G. Chevedden	Individuals	1
	Family Trust	Individuals	1
	Brian David Miller	Individuals	1
<b>Allow for (or ease requirement to) call special meetings</b>			
<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>

1	John Chevedden	Individuals	14
2	William Steiner	Individuals	8
3	Kenneth Steiner	Individuals	7
4	Ray T. Chevedden	Individuals	2
	Richard R. Treumann	Individuals	2
	James McRitchie	Individuals	2
	Emil Rossi	Individuals	2
5	Chris Rossi	Individuals	1
	Dana Chatfield Jones	Individuals	1
	Elizabeth Currier	Individuals	1
	Glyn A. Holton	Individuals	1
	Jesse D. Hoch	Individuals	1
	June Kreutzer	Individuals	1
	Nick Rossi	Individuals	1
	Ray T. Chevedden and Veronica G. Chevedden Family Trust	Individuals	1
	Vincent Cirulli	Individuals	1
	SEIU Master Trust	Labor Unions	1

**Change from plurality to majority voting**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	The United Brotherhood of Carpenters Pension Fund	Labor Unions	10
2	Sheet Metal Workers National Pension Fund	Labor Unions	6
3	United Brotherhood of Carpenters and Joiners of America	Labor Unions	3
		Public Pension	
	California State Teachers Retirement System	Funds	3
4	Gerald R. Armstrong	Individuals	2
	John Chevedden	Individuals	2
	International Brotherhood of Teamsters	Labor Unions	2
	The United Association S&P 500 Index Fund	Labor Unions	2
		Public Pension	
	New York City Pension Funds	Funds	2

	The California Public Employees Retirement System	Public Pension Funds	2
5	Calvert Social Index Fund	Investment Advisers	1
	Tides Foundation	Investment Advisers	1
	Amalgamated Bank of Longview Small Cap 600 Index Fund	Labor Unions	1
	The American Federation of State, County and Municipal Employees	Labor Unions	1
	UNITE HERE	Labor Unions	1
	The Christopher Reynolds Foundation	Other Stakeholders	1

**Declassify board**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Gerald Armstrong	Individuals	13
2	John Chevedden	Individuals	8
3	The Florida State Board of Administration	Public Pension Funds	7
	Nathan Cummings Foundation	Other Stakeholders	7
4	Kenneth Steiner	Individuals	2
	Tides Foundation	Investment Advisers	2
	AFSCME Employee Pension Fund	Labor Unions	2
	New York City Pension Funds	Public Pension Funds	2
5	Darlington Partners, L.P.	Investment Advisers	1
	International Association of Machinists and Aerospace Workers	Labor Unions	1
	International Brotherhood of Electrical Workers	Labor Unions	1
	Utility Workers Union of America General Fund	Labor Unions	1
	Connecticut Retirement Plans & Trust Funds	Public Pension	1

	Funds	
Firefighters' Pension System of the City of Kansas City, Missouri, Trust	Public Pension Funds	1
The California Public Employees Retirement System	Public Pension Funds	1
The Christopher Reynolds Foundation	Other Stakeholders	1

**Eliminate dual class structure (unequal voting)**

Rank	Sponsor Name	Sponsor Type	No. of Proposals
1	Kenneth Steiner	Individuals	4
2	Donald R. and Alexandria J. McIntyre Ray T. Chevedden and Veronica G. Chevedden Family Trust	Individuals	1
	Bricklayers & Trowel Trades International Pension Fund	Individuals Labor Unions	1

**Eliminate supermajority vote requirements**

Rank	Sponsor Name	Sponsor Type	No. of Proposals
1	John Chevedden	Individuals	17
2	Kenneth Steiner	Individuals	7
3	Gerald R. Armstrong	Individuals	4
4	James McRitchie	Individuals	1
	John Levin	Individuals	1
	Ray T. Chevedden	Individuals	1
	Richard R. Treumann	Individuals	1
	UNITE HERE	Labor Unions	1

**Redeem (or require shareholder vote on) "poison pill"**

Rank	Sponsor Name	Sponsor Type	No. of Proposals
1	California State Teachers Retirement System	Public Pension Fund	1
	Teamsters General Fund	Labor Unions	1

**Reduce difficulty to remove directors (with/without cause)**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Amalgamated Bank LongView LargeCap 500 Index Fund	Labor Unions	1

**Reincorporate in another state**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	AFSCME Employee Pension Fund	Labor Unions	1
	The American Federation of State, County and Municipal Employees	Labor Unions	1

**Report on management succession plans**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Central Laborers' Pension Fund	Labor Unions	1
	Laborers National Staff Pension Fund	Labor Unions	1
	Ohio Laborers' Pension Fund	Labor Unions	1
	Trowel Trades S&P 500 Index Fund	Labor Unions	1
	Massachusetts Laborers' Pension Fund	Public Pension Funds	1

**Require an independent lead director**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Ray T. Chevedden and Veronica G. Chevedden Family Trust	Individuals	1

**Require an independent director on board committee**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Firefighters' Pension System of the City of Kansas City, Missouri, Trust	Public Pension Funds	1

**Separate CEO/chairman positions**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	AFL-CIO Reserve Fund	Labor Unions	3
2	AFSCME Employee Pension Fund	Labor Unions	2

	SEIU Master Trust	Labor Unions	2
	Sheet Metal Workers National Pension Fund	Labor Unions	2
3	Elizabeth Currier	Individuals	1
	James McRitchie	Individuals	1
	John Chevedden	Individuals	1
		Investment	
	Ram Trust Services, Inc.	Advisers	1
	AFL-CIO	Labor Unions	1
	Central Laborers' Pension Fund	Labor Unions	1
	International Brotherhood of Teamsters	Labor Unions	1
	The American Federation of State, County and Municipal Employees	Labor Unions	1
	The United Association S&P 500 Index Fund	Labor Unions	1
	Trowel Trades S&P 500 Index Fund	Labor Unions	1
	Legal & General Assurance Pensions Management Limited	Public Pension Funds	1
		Public Pension	
	New York City Pension Funds	Funds	1
	The City of Philadelphia Public Employees Retirement System	Public Pension Funds	1
	The Laborers' District Council and Contractors' Pension Fund of Ohio	Public Pension Funds	1

**Other board structure-related**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Michael Brod	Individuals	1

**Other corporate governance issues**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	AFSCME Employee Pension Fund	Labor Unions	6
		Public Pension	
2	New York City Pension Funds	Funds	4
3	Missionary Oblates of Mary Immaculate	Religious Groups	3
		Investment	
	John C. Harrington	Advisers	3



4	Peter W. Lindner	Individuals	2
	Sisters of Charity of St. Elizabeth	Religious Groups	2
5	Adam Pritchard	Individuals	1
	Angelina Iannacone	Individuals	1
	Barbara S. Schwartz	Individuals	1
	Kenneth Steiner	Individuals	1
	Kenneth Wachtell	Individuals	1
	Marc Kyle	Individuals	1
	Michael J. Shea	Individuals	1
	Patrick Missud	Individuals	1
	Steven Krol	Individuals	1
		Investment	
	NorthStar Asset Management, Inc.	Advisers	1
	AFL-CIO Reserve Fund	Labor Unions	1
		Public Pension	
	National Center for Public Policy Research	Funds	1
	Board of Pensions of the Presbyterian Church USA	Religious Groups	1
	Sisters of St. Francis of Dubuque, Iowa	Religious Groups	1

Note: Total number of proposals does not include 12 proposals for which sponsors are unknown.

Source: The Conference Board/FactSet, 2012.

Table 10

**Shareholder Proposals on Corporate Governance—Voting Results, by Topic (2011)**

Topic	Voted Proposals	As a Percentage of Votes Cast			As a Percentage of Shares Outstanding			
		For	Against	Abstain	For	Against	Abstain	Non-vote
Adopt director nominee qualifications	3	19.5%	74.1%	6.4%	13.4%	53.7%	4.9%	10.8
Allow cumulative voting	26	29.7	69.6	0.7	21.8	52	0.5	12
Allow for (or ease requirement to) act by written consent	33	47.8	51.3	0.9	35.7	38.7	0.7	10.9
Allow for (or ease requirement to) call special meetings	29	40.4	58.7	0.9	29.1	43.5	0.6	12.2
Change from plurality to majority voting	34	57.9	41.5	0.6	45.6	31.9	0.5	10.7
Declassify board	38	73	26	1	55.4	19.5	0.7	13.2
Eliminate dual class structure (unequal voting)	7	18.5	80.9	0.6	15.3	71.1	0.4	7.6
Eliminate supermajority vote requirements	14	58.5	40.8	0.7	44.6	32.4	0.6	8.5
Redeem (or require shareholder vote on) "poison pill"	1	67.2	32.3	0.5	56.7	27.2	0.4	5
Reduce difficulty to remove directors (with/without cause)	1	47	48.1	4.8	36	36.8	3.7	11.8
Reincorporate in another state	2	38.7	60.7	0.6	30.9	47.9	0.5	5.5
Report on management succession plans	2	26.9	72.8	0.4	19.2	53.1	0.2	12.1
Require an independent lead director	1	11.9	86.7	1.4	8.9	64.8	1.1	9
Require an independent director on board committee	1	13.6	85.4	0.9	11.9	74.8	0.8	5.6
Separate CEO/chairman positions	22	33.6	65.9	0.6	25.5	49.2	0.4	10.9
Other corporate governance issues	9	15.5	76.8	7.7	10.1	55.8	4.9	12.6

n=223

Source: The Conference Board/FactSet, 2012.

Table 11

**Shareholder Proposals on Social and Environmental Policy—Most Frequent Sponsors, by Topic (2011)****Animal rights**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	People for the Ethical Treatment of Animals Inc.	Other Stakeholders	8
2	The Humane Society of the United States	Other Stakeholders	2
3	Andrew Rodriguez	Individuals	1
	Jill Maynard	Individuals	1
	Julia Randall	Individuals	1

**Board diversity**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Calvert Asset Management Co., Inc.	Investment Advisers	1
	Evangelical Lutheran Church In America Board of Pensions	Religious Groups	1

**Environmental issues**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	AFL-CIO Reserve Fund	Labor Unions	5
2	Trillium Asset Management Corp.	Investment Advisers	3
	Nathan Cummings Foundation	Other Stakeholders	3
	William M. Hamada Revocable Trust	Other Stakeholders	3
3	Calvert Asset Management Co., Inc.	Investment Advisers	2
	Green Century Capital Management, Inc.	Investment Advisers	2
	National Center for Public Policy Research	Public Pension Funds	2

	New York City Pension Funds	Public Pension Funds	2
	New York State Common Retirement Fund	Public Pension Funds	2
	National Legal and Policy Center	Other Stakeholders	2
4	As You Sow	Other Stakeholders	1
	Faye S. Rosenthal Living Trust	Other Stakeholders	1
	The Park Foundation	Other Stakeholders	1
	Alice de V. Perry	Individuals	1
	Bartlett Naylor	Individuals	1
	Conrad Gebhart	Individuals	1
	David Brook	Individuals	1
	Eleanore Despina	Individuals	1
	Emily S. Coward	Individuals	1
	John Capozzi	Individuals	1
	Margot Cheel	Individuals	1
	Pamela Morgan	Individuals	1
	Philip Klasky	Individuals	1
	Robert A. Vanderhye	Individuals	1
	Robert Dozor	Individuals	1
	Ruth Valere Adar	Individuals	1
	Thomas C. Valens	Individuals	1
	William R. Miller	Individuals	1
	First Affirmative Financial Network	Investment Advisers	1
	Office of the State Comptroller of the State of New York	Public Pension Funds	1
	Province of St. Joseph of the Capuchin Order	Religious Groups	1
	Sisters of St. Dominic of Caldwell New Jersey	Religious Groups	1
	Sisters of St. Francis of Philadelphia	Religious Groups	1

Unitarian Universalist Association of Congregations	Religious Groups	1
Walden Asset Management	Other Institutions	1

**Health issues**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Lawrence L. Bryan	Individuals	3
2	Norman W.Davis	Individuals	2
	Sisters of Charity of St. Elizabeth	Religious Groups	2
	Sisters of St. Francis of Philadelphia	Religious Groups	2
3	David Brook	Individuals	1
	Janet McAlpin	Individuals	1
	John C. Fila	Individuals	1
	Paul W. Cahan	Individuals	1
	Robert Stone	Individuals	1
	Domini Social Investments LLC	Investment Advisers	1
	Missionary Oblates of Mary Immaculate	Religious Groups	1
	Province of St. Joseph of the Capuchin Order	Religious Groups	1
	School Sisters of Notre Dame, Mankato Province	Religious Groups	1
	Sisters of the Humility of Mary	Religious Groups	1
	Trinity Health	Religious Groups	1
	June A. Wright Family Trust	Other Stakeholders	1

**Human rights**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Jing Zhao	Individuals	3
2	NorthStar Asset Management, Inc.	Investment Advisers	2

3	Alice Rosenfeld	Individuals	1
	Henry Chalfant	Individuals	1
	Louise Rice	Individuals	1
	Stephen M. Jaeger	Individuals	1
	Benedictine Sisters of Virginia	Religious Groups	1
	Congregation of the Sisters of St. Agnes	Religious Groups	1
	Detroit Province of the Society of Jesus	Religious Groups	1
	Franciscan Sisters of Mary	Religious Groups	1
	Sisters of Charity of the Blessed Virgin Mary	Religious Groups	1
	The Domestic and Foreign Missionary Society of the Episcopal Church	Religious Groups	1
	The Mercy Investment Program	Religious Groups	1
	The Presbyterian Church USA	Religious Groups	1
	NorthStar Asset Management, Inc.	Investment Advisers	1
	John C. Harrington	Investment Advisers	1
	Jewish Voice for Peace	Other Institutions	1

**Labor issues**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	New York City Pension Funds	Public Pension Funds	5
2	New York State Common Retirement Fund	Public Pension Funds	3
3	Unitarian Universalist Association of Congregations	Religious Groups	2
4	Peter B. Kaiser	Individuals	1

Peter W. Lindner	Individuals	1
Trillium Asset Management Corp.	Investment Advisers	1
Human Life International	Religious Groups	1
Province of St. Joseph of the Capuchin Order	Religious Groups	1
The Sisters of St. Francis of Philadelphia	Religious Groups	1

**Political issues**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Evelyn Y. Davis	Individuals	6
2	New York State Common Retirement Fund	Public Pension Funds	5
3	James W. Mackie	Individuals	4
	AFSCME Employee Pension Fund	Labor Unions	4
	New York City Pension Funds	Public Pension Funds	4
	Walden Asset Management	Other Institutions	4
4	Domini Social Investments LLC	Investment Advisers	3
	Firefighters' Pension System of the City of Kansas City, Missouri, Trust	Public Pension Funds	3
5	Miami Firefighters' Relief and Pension Fund	Public Pension Funds	2
6	Alexandra Lorraine	Individuals	1
	Bryce Mathern	Individuals	1
	David A. Ridenour	Individuals	1
	Dyke R. Turner	Individuals	1
	John Sponcer	Individuals	1
	Joseph F. Granata	Individuals	1
	JS Weisfeld	Individuals	1
	Marie Bogda	Individuals	1

Michael Lazarus	Individuals	1
Green Century Capital Management, Inc.	Investment Advisers	1
Green Century Equity Fund	Investment Advisers	1
Tides Foundation	Investment Advisers	1
AFL-CIO Reserve Fund	Labor Unions	1
Amalgamated Bank LongView MidCap 400 Index Fund	Labor Unions	1
Communications Workers of America	Labor Unions	1
CWA General Fund	Labor Unions	1
Laborers National Staff Pension Fund	Labor Unions	1
The American Federation of State, County and Municipal Employees	Labor Unions	1
Connecticut Retirement Plans & Trust Funds	Public Pension Funds	1
Catholic Healthcare West	Religious Groups	1
Congregation of the Passion of the Holy Cross Province	Religious Groups	1
The Mercy Investment Program	Religious Groups	1
Unitarian Universalist Association of Congregations	Religious Groups	1
Agape Foundation	Other Institutions	1
Northstar Asset Management Inc.	Other Institutions	1
Nathan Cummings Foundation	Other Stakeholders	1
National Legal and Policy Center	Other Stakeholders	1

### **Sustainability reporting**



<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	New York City Pension Funds	Public Pension Funds	3
	Walden Asset Management	Other Institutions	3
2	Calvert Asset Management Co., Inc.	Investment Advisers	1
	Calvert Social Index Fund	Investment Advisers	1
	Domini Social Investments LLC	Investment Advisers	1
	Harrington Investments, Inc.	Investment Advisers	1
	John C. Harrington	Investment Advisers	1
	Miller/Howard Investments, Inc.	Investment Advisers	1
	Unitarian Universalist Association of Congregations	Religious Groups	1

**Other social issues**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	New York City Pension Funds	Public Pension Funds	4
2	Douglas S. Doremus	Individuals	3
	Sisters of Charity of St. Elizabeth	Religious Groups	3
3	The Community Reinvestment Association of North Carolina	Other Stakeholders	2
4	Dan Farcasiu	Individuals	1
	Dennis W. Dubro	Individuals	1
	John Malaspina	Individuals	1
	Louise M. Todd	Individuals	1
	Mike Bankston	Individuals	1
	Richard A. Dee	Individuals	1
	Shelton Ehrlich	Individuals	1
	Thomas Strobhar	Individuals	1

NorthStar Asset Management, Inc.	Investment Advisers	1
AFSCME Employee Pension Fund	Labor Unions	1
Trinity Health	Religious Groups	1

Note: Total number of proposals does not include 17 proposals for which sponsors are unknown.  
Source: The Conference Board/FactSet, 2012.

Table 12

**Shareholder Proposals on Social and Environmental Policy—Voting Results, by Topic  
(2011)**

Topic	Voted Proposals	As a Percent of Votes Cast			As a Percent of Shares Outstanding			
		For	Against	Abstain	For	Against	Abstain	Non Vote
Animal rights	7	3.8%	77.4%	18.8%	2.7%	57.7%	13.5%	11.5%
Board diversity	2	23.3%	70.7%	6%	20.3%	61.5%	5.1%	5.2%
Environmental issues	47	14.5%	70.2%	16.3%	10.5%	50.2%	11.8%	13.5%
Health issues	8	10.6%	76.5%	12.9%	7.2%	52.8%	8.8%	13.7%
Human rights	13	12.3%	71.3%	16.4%	9.2%	52.7%	12.3%	11%
Labor issues	14	20%	67.3%	12.7%	14.8%	48.3%	9%	13.2%
Political issues	50	23.1%	61%	16%	16.9%	43.9%	11.4%	12.5%
Sustainability reporting	10	26.3%	62.1%	12.9%	21.3%	48.6%	10.5%	8.4%
Other social issues	5	2.5%	83.4%	14%	1.8%	59.6%	9.7%	13%

n=156

Source: The Conference Board/FactSet,  
2012.

Table 13

**Other Shareholder Proposals—Most Frequent Sponsors, by Topic (2011)**

<b>Divest asset (division)</b>			
<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
1	Alexander R. Lehmann	Individuals	1
	Lloyd J. Spafford	Individuals	1
<b>Elect dissident's director nominee</b>			
<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
	Ramius LLC	Hedge Funds	6
	FrontFour Capital Group LLC	Hedge Funds	4
	MMI Investments, LP	Hedge Funds	4
	Kovpak II, LLC	Other Stakeholders	3
	Bel Fuse Inc.	Corporations	2
	Carl C. Icahn	Hedge Funds	2
	GAMCO Investors	Investment Advisers	2
	Barington Capital Group, L.P.	Hedge Funds	1
	Pentwater Capital Management LP	Hedge Funds	1
<b>Fill board vacancy (reduce defense)</b>			
<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
	Ramius LLC	Hedge Funds	1
<b>Remove director(s)</b>			
<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
	Ramius LLC	Hedge Funds	6
<b>Repeal bylaw amendments adopted during proxy fight</b>			
<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	<b>No. of Proposals</b>
	Ramius LLC	Hedge Funds	1

**Return capital to shareholders (dividends/buyback)**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	
	Alfred Wagner	Individuals	1
	Angelina Iannacone	Individuals	1
	Linda Bush	Individuals	1
	Steven Towns	Individuals	1

**Miscellaneous**

<b>Rank</b>	<b>Sponsor Name</b>	<b>Sponsor Type</b>	
	Allan S. Cohen	Individuals	1
	Elio Greco	Individuals	1
	Harold Bitler	Individuals	1
	Jeffrey L. Doppelt	Individuals	1
	Kenneth Wachtell	Individuals	1
	Laszlo R. Treiber	Individuals	1
	Peter W. Lindner	Individuals	1
	Robert Granzow	Individuals	1
	Yehudah Rubenstein	Individuals	1
	National Center for Public Policy Research	Public Pension Funds	1
	Walden Asset Management	Other Institutions	1
	National Legal and Policy Center	Other Stakeholders	1

Note: Total number of proposals does not include 4 proposals for which sponsors are unknown.

Source: The Conference Board/FactSet, 2012.

Table 14

**Other Shareholder Proposals—Voting Results, by Topic (2011)**

Topic	Voted Proposals	As a Percentage of Votes Cast			As a Percentage of Shares Outstanding			
		For	Against	Abstain	For	Against	Abstain	Non-votes
Elect dissident's director nominee	24	84.4	23.9%	10.5%	34.9	12.3%	6.7%	12.6%
Fill board vacancy (reduce defense)	1	90.8	8.4%	0.8%	59.7	5.5%	0.5%	n/a
Remove director(s)	6	62.4	27.2%	10.5%	42.5	18.2%	6.7%	n/a
Repeal bylaw amendments adopted during proxy fight	1	90.8	8.4%	0.8%	59.7	5.5%	0.5%	n/a
Return capital to shareholders (dividends/buyback)	1	1.9	97.5%	0.6%	1.4	73.4%	0.4%	10.2%
Miscellaneous	2	0	n/a	n/a	0	74.1%	n/a	10.5%

Source: The Conference Board/FactSet, 2012.