

2019 Proxy Season Update: Shareholder Proposal Trends

May 8, 2019 – Governance & Compliance Insider
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In the United States, the process by which shareholders submit proposals to be voted on at a company's annual meeting has long been a mechanism used to promote often obscure special interests and social issues. In recent years, however, as environmental, social and governance (ESG) topics have become more mainstream, the market has seen a surge in this type of proposal. In 2018, Russell 3000 companies received a record 144 proposals requesting action on social and environmental issues, making this category larger than any other. In [a recent article](#), The Wall Street Journal reported that the increase in support for ESG-related proposals has risen from "*middle single digits from 2000 until 2008 to 24% in 2018.*" Another record. As we draw closer to the end of the 2019 proxy season, it is clear that the momentum in this area continues.

New Fronts in Environmental Proposals

In the same article, the WSJ reported on a new front involving proposals focusing on plastic waste, a trend we previously noted in our [March chemical industry update](#). The WSJ further noted that most of the companies that had received the proposal about plastic waste agreed to implement the request in order to avoid including it in their proxy statements. Proposals are often withdrawn when companies and proponents reach a compromise approach. This is a tactic that has risen in popularity in recent years as ESG topics have garnered more support from the broader shareholder base. In [another article](#), the WSJ highlighted this trend, explaining that about 49% of environment-related shareholder proposals were withdrawn last year, compared with 33% two years prior and that "*roughly 45% of shareholder proposals related to social issues, including income inequality, political-spending disclosure and animal testing, were withdrawn last year, up from 34% two years earlier.*"

Another development involves proposals related to climate change. This category itself is not new, and in fact these proposals have dominated in recent years, even gaining majority approval in some cases. This year, however, some companies found a degree of success via the no-action letter process. At least two companies obtained permission

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from the SEC to exclude a proposal that (if passed) would have required them to disclose how their operations align with the greenhouse gas reduction targets under the Paris Climate Accord. The SEC explained in one of the no-action letters: “*the Proposal would micromanage the Company by seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors.*”

This success, however, is limited. The SEC declined to issue no-action letters on other types of climate change proposals, and more carefully crafted proposals are likely to survive review next year.

The Future of ESG-related Shareholder Proposals

The SEC announced last fall it was conducting a review of the proxy system. The shareholder proposal process was included as one of the areas due for an overhaul. While it remains unclear what form changes may take, it is possible the SEC will issue guidance after this proxy season. Proposed rulemaking could also follow. One anticipated rule change would be to raise the stock ownership threshold required for submitting a shareholder proposal (currently, a *de minimis* \$2,000 in shares). Another would be to increase resubmission thresholds.

Such steps will certainly make a dent in the number of overall proposals, particularly from shareholders who don't have a financially meaningful stake in a company. However, many ESG proposals—such as the new ones about plastic waste—are backed by non-governmental organizations who either have meaningful resources themselves or who partner with larger shareholders. As such, absent some broader change to the shareholder proposal process (such as expanding the bases on which companies can seek to exclude proposals), we don't expect the popularity of ESG-related shareholder proposals to diminish anytime soon.