

Topics for 10 Shareholder Proposals Evolve but Continue to Gain Shareholder Support

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Fifty-one shareholder resolutions asking that company boards be led by independent chair made it the most prevalent shareholder proposal topic in 2014, according to ISS. Four such proposals have passed so far (using ISS criteria, which disregard the effect of abstentions), some by very narrow margins. At Allergan, the proposal received just a little over 50% in favor, similar to Staples. However, more than 60% of shareholders supported the proposal at Health Care REIT and close to that percentage voted in favor of an independent chair at Vornado Realty.

Shareholder proposals receiving majority support will receive heightened scrutiny in light of ISS' policy to recommend against boards if they fail to take action to implement those resolutions. But the proposals remain advisory and companies are not legally bound to respond. In fact, two other proposals that passed at Vornado Realty have a long history of strong shareholder endorsement without being effected. This is the eighth consecutive year shareholders voted in favor of majority voting, the fifth consecutive year of majority support for annual elections of trustees, the fourth consecutive year that the directors up for election faced more "withhold" votes than votes to elect them and the third (though not consecutive) year that the independent chair proposal has passed. The lack of responsiveness is rare, however, notwithstanding the advisory nature of shareholder proposals. According to CII, only six companies in the Russell 3000 have ignored majority shareholder votes in at least two consecutive years.

In addition to an independent chair, other governance proposals rounding out the top 10 list include majority voting, the right for shareholders to call special meetings or act by written consent, and proposals seeking to eliminate supermajority provisions in governance documents, which tend to receive the highest favorable votes compared to any of the other categories. Declassification proposals, or proposals seeking annual elections of directors, have fallen out, as companies now tend to negotiate for withdrawal in light of expectations that the proposals will pass.

ISS separates proposals asking for reports on lobbying and political contributions, but a combined 82 of those proposals were filed at companies, with three passing at Dean Foods, Lorillard and Valero Energy. Although this is only a small number relative to the proposals submitted (and even then by thin margins), those few wins for the proponents are still remarkable for social proposals.

Valero Energy and Dean Foods, along with Boston Properties and Gannett, also saw majority-supported proposals for resolutions that asked companies to prohibit accelerated vesting upon a change of control. This represents a major development, as it is the first time that these proposals have received such high levels of support. Interestingly, it is the only one of four shareholder proposals that did not pass at Vornado Realty. Prohibition of accelerated vesting upon a change of control, along with resolutions asking executives to hold stock past retirement, are the two compensation-related topics that broke into the top 10 this year.

The only topic in the top 10 that has not yet garnered a single majority support resolution is a proposal asking companies to provide sustainability reports, with the highest vote reported at Clarcor at 40%, which is still a solid showing for a social proposal and one to watch.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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