

A New Type of ESG Shareholder Proposal Targets How Investors Vote

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A new form of shareholder proposal focused on environmental and social issues does not ask the company to, for example, report on reducing emissions. Instead, the proposal is focused on how institutional investors vote on those kinds of proposals.

The proposal from Walden Asset Management to Bank of New York (BONY) asks the bank's board to review BONY's proxy voting policies, given BONY's corporate responsibility and environmental positions. The proposal notes that BONY publishes an annual Corporate Social Responsibility (CSR) Report describing a broad spectrum of policies, including reporting on its own greenhouse gas emissions and its role in addressing climate change. BONY is also a signatory to the Principles for Responsible Investing (PRI).

The proposal then criticizes the proxy voting record of the bank. According to the proposal, BONY "uniformly votes against most if not all shareholder resolutions on social, environmental and climate change issues." The proposal argues that BONY takes this view "even when major proxy advisory services, such as ISS, support such resolutions with a clear, economic rationale." It appears that the proponents believe that BONY, by following its own reasoning and not in line with ISS, has raised an additional cause for concern.

The proposal states that BONY voted against the approximately 150 shareholder proposals that were filed in 2013 regarding the Carbon Disclosure Project, which asked companies to disclose their greenhouse gas emissions and reduction plans, and argues that BONY's proxy voting record is not reflective of the company's own statements regarding climate change.

Franklin Resources is trying to exclude a similar proposal in a [no-action letter](#) to the SEC, citing multiple grounds: the company itself is a holding company that does not vote proxies; the investment advisers that do vote proxies must act in a fiduciary capacity for their clients that cannot take into account the perspectives of the parent holding company; deciding how to vote proxies is the ordinary business operations of those investment advisers, which is not subject to shareholder oversight; the company has substantially implemented the proposal and in any case, the proposal should be thrown out for containing false and misleading statements.

These and other environmental-related proposals can be found on Ceres' [site](#).

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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