

# Shareholder Proposal Developments During the 2020 Proxy Season

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This client alert provides an overview of shareholder proposals submitted to public companies during the 2020 proxy season, including statistics and notable decisions from the staff (the “Staff”) of the Securities and Exchange Commission (the “SEC”) on no-action requests.

## Top Shareholder Proposal Takeaways from the 2020 Proxy Season

As discussed in further detail below, based on the results of the 2020 proxy season, there are several key takeaways to consider for the coming year:

- **Shareholder proposal submissions continue to decline.** The number of proposals submitted decreased by 9% from the prior year to 720, which was 11% lower than the five-year average of 809.
- **The number of social and environmental proposals significantly decreased, leading to governance proposals being the most common.** Social and environmental proposals declined notably, down 21% and 10%, respectively, from 2019. The number of governance proposals remained steady in 2020 compared to 2019 and represented 40% of proposals submitted, the single largest category during 2020. The five most popular proposal topics, representing 37% of all shareholder proposal submissions, were (i) written consent, (ii) climate change, (iii) anti-discrimination and diversity (although board diversity proposals were down more than 51% from 2019 levels), (iv) independent chair, and (v) lobbying spending.
- **Overall no-action request success rates held steady, but Staff response letters declined significantly.** The overall success rate for no-action requests held steady at 70%, driven primarily by substantial implementation, procedural, and ordinary business arguments. However, recent changes in the Staff’s practices for responding to no-action requests resulted in significantly fewer written explanations, with the Staff providing response letters only 18% of the time. Almost three-fourths of those Staff response letters were issued when the Staff concurred that a proposal was excludable or denied reconsideration.
- **Company success rates using board analysis during this proxy season show promise.** Although fewer companies included a board analysis during this proxy season (down 24% from 25 in 2019 to 19 this year), companies that included a board analysis had greater success, with the Staff concurring with the exclusion of four proposals during this year based on the company’s use of a board analysis, compared to just one proposal during the 2019 proxy season.
- **Negotiated withdrawals decreased significantly.** The overall percentage of proposals withdrawn decreased significantly to its lowest number since 2017. Only 14% of shareholder proposals were withdrawn this season, compared to 20% in 2019, due in part to declining withdrawal rates for social and environmental proposals (dropping to 25% from 38% in 2019).

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- **Overall voting support dipped slightly, including average support for social proposals, although support for environmental proposals continued to gain momentum.** Average support for all shareholder proposals voted on was 31.3% of votes cast, down slightly from the 32.8% average in 2019 and 32.5% in 2018. In 2020, support for social (non-environmental) proposals was about 21.5%, down from 23.6% in 2019, whereas support for environmental proposals increased to 30.2% from 23.9% in 2019. Governance proposals continued to receive the highest average support at 35.3%. This year also saw a decrease in the number of shareholder proposals that received majority support (50 in total, down from 62 in 2019), with an increasing number of such proposals focused on issues other than traditional governance topics.
- **Continued proliferation of new proponents and co-filers.** The number of shareholders using the Rule 14a-8 shareholder proposal process continues to grow, with more than 300 proponents in each of 2020 and 2019 (compared to approximately 200 proponents in 2018). Approximately two-thirds of proposals were submitted by individuals and religious-affiliated organizations. As in prior years, John Chevedden and his associates were the most frequent proponents (filing 31% of all proposals in 2020). This year also saw the continued trend of multiple co-filers submitting proposals—for example, the number of proposals submitted by at least five co-filers has tripled since 2018.
- **Proponents continue to use exempt solicitations and litigation.** Exempt solicitation filings continued to proliferate, with the number of filings reaching a record high again this year and increasing more than 40% over the last three years. This continues to be an area ripe for abuse—for example, nearly 20% of exempt solicitation filings in 2020 failed to comply with Staff guidance. In addition, for the second consecutive year, a proponent turned to the courts to fight the exclusion of an environmental proposal even before the Staff had issued its response to the related no-action request.
- **Shareholder proposal reform remains pending.** On November 5, 2019, the SEC proposed amending Rule 14a-8 to address certain eligibility requirements for submitting shareholder proposals and to raise resubmission thresholds. We anticipate that final rules will be adopted in the near term.

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