

## SHAREHOLDER PROPOSAL DEVELOPMENTS DURING THE 2024 PROXY SEASON

To Our Clients and Friends:

This update provides an overview of shareholder proposals submitted to public companies during the 2024 proxy season,<sup>1</sup> including statistics and notable decisions from the staff (the “Staff”) of the Securities and Exchange Commission (the “SEC”) on no-action requests.<sup>2</sup>

### I. SUMMARY OF TOP SHAREHOLDER PROPOSAL TAKEAWAYS FROM THE 2024 PROXY SEASON

As discussed in further detail below, based on the results of the 2024 proxy season, there are several key takeaways to consider for the coming year:

- ***Shareholder proposal submissions rose yet again.*** For the fourth year in a row, the number of proposals submitted increased. In 2024, the number of proposals increased by 4% to 929—the highest number of shareholder proposal submissions since 2015.
- ***The number of governance and social proposals increased, while civic engagement and environmental proposals decreased.*** Governance proposals increased notably, up 13% from 2023, with the increase largely attributable to proposals related to the adoption of prescriptive majority voting director resignation bylaws. The number of social proposals also increased, up 4% compared to 2023. In contrast, civic engagement and environmental proposals declined 10% and 4%, respectively. The five most popular proposal topics in 2024, representing 34% of all shareholder proposal submissions, were (i) climate change, (ii) nondiscrimination and diversity-related, (iii) simple majority vote, (iv) director resignation bylaws, and (v) independent chair. Of the five most popular topics in 2024, all but two were also in the top five in 2023 (simple majority vote and director resignation bylaws replaced shareholder approval of certain severance agreements and special meetings).

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<sup>1</sup> Analyses of shareholder proposals and no-action letters often varies depending on the time period covered, data sources, and other factors. Please see footnote 3 for additional information on our methodology.

<sup>2</sup> Gibson, Dunn & Crutcher LLP assisted companies in submitting the shareholder proposal no-action requests discussed in this update that are marked with an asterisk (\*).

- ***The no-action request volumes and outcomes appear to have reverted to pre-2022 norms, with the number of no-action requests increasing significantly and the percentage of proposals excluded pursuant to a no-action request continuing to rebound from 2022's historic low.*** There were 267 no-action requests submitted to the Staff in 2024, representing a submission rate of 29%, up significantly from a submission rate of 20% in 2023 and consistent with a submission rate of 29% in 2022. The overall success rate for no-action requests, after plummeting to only 38% in 2022, continued to rebound in 2024, with a success rate of 68%, compared to a success rate of 58% in 2023. Success rates in 2024 improved for resubmission, violation of law, ordinary business, and substantial implementation grounds, while success rates declined for procedural and duplicate proposal grounds.
- ***The number of proposals voted on increased yet again, but overall voting support remained at historically low levels, and only 4% of proposals submitted received majority support.*** In 2024, over 55% of all proposals submitted were voted on, compared with 54% of submitted proposals voted on in 2023. Average support across all shareholder proposals was 23.0%, roughly level with average support of 23.3% in 2023 and the lowest average support in over a decade. Average support for governance proposals increased from 2023, while overall support for both environmental and social proposals declined. In both cases, the decline appears to have been driven by the submission of proposals that are overly prescriptive or not particularly germane to a company's core operations and the low voting support for proposals that challenged companies' focus on certain ESG-related policies and practices. While the number of shareholder proposals that received majority support increased to 39 in 2024, up from 25 in 2023, majority-supported proposals still represented only 4% of proposals submitted, up slightly from 3% in 2023.
- ***Anti-ESG proposals proliferated in 2024, but shareholder support was low.*** The 2024 proxy season saw a continued rise in the use of the Rule 14a-8 process by proponents critical of corporate initiatives or corporate leadership that they view as inappropriately involved in environmental, social or political agenda (referred to as "anti-ESG" proposals). This year, 107 proposals were submitted by anti-ESG proponents, on topics ranging from traditional corporate governance matters to proposals challenging companies' diversity, equity and inclusion programs and opposing efforts to reduce greenhouse gas emissions. Of the proposals submitted by anti-ESG proponents, 78 were voted on, receiving average support of 2.4%. Notably, no anti-ESG proposal received more than 10% support.
- ***With SEC amendments to Rule 14a-8 and legislative reform efforts stalled, stakeholder challenges to the SEC's role in the shareholder proposal process foment uncertainty.*** In July 2022 the SEC proposed amendments to Rule 14a-8 to significantly narrow key substantive bases that companies use to exclude shareholder proposals on substantial implementation, duplication, and resubmission grounds remain stalled. At the same time, after a flurry of activity in July 2023, the Republican ESG Working Group formed by the Chair of the Financial Services Committee of the U.S. House of Representatives appears to have stalled in its

efforts to reform the Rule 14a-8 no-action request process. However, ongoing legal action by two stakeholder groups (the National Center for Public Policy Research (“NCPPr”) and the National Association of Manufacturers (“NAM”)), and Exxon Mobil Corp.’s legal challenge to a proposal, as well as recent Supreme Court decisions that could further invigorate challenges to the SEC’s authority to adopt Rule 14a-8, signal that uncertainty about the shareholder proposal process and the SEC staff’s role in adjudicating Rule 14a-8 no-action requests will persist.

- ***Proponents and third parties continue to use exempt solicitations to advance their agendas.*** Exempt solicitation filings remained at record levels, with the number of filings reaching a record high again this year—up over 69% compared to 2021. As in prior years, the vast majority of exempt solicitation filings in 2024 were filed by shareholder proponents on a voluntary basis—*i.e.*, outside of the intended scope of the SEC’s rules—in order to draw attention and publicity to pending shareholder proposals. Continuing a trend first noted last year, third parties are intervening in the shareholder proposal process by using exempt solicitation filings to provide their views on shareholder proposals submitted by unaffiliated shareholder proponents. In addition, some third parties have used exempt solicitation filings to disseminate their general views on social or governance topics beyond those raised by a specific shareholder proposal.

## II. OVERVIEW OF SHAREHOLDER PROPOSAL OUTCOMES<sup>3</sup>

### A. Overview of Shareholder Proposals Submitted

According to the available data, shareholders submitted 929 shareholder proposals during the 2024 proxy season, up 4% from 889 in 2023—marking the fourth consecutive year of increased submissions and the highest number of shareholder proposal submissions since 2015. The table below shows key year-over-year submission trends

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<sup>3</sup> **Data on No-Action Requests:** For purposes of reporting statistics regarding no-action requests, references to the 2024 proxy season refer to the period between October 1, 2023 and June 1, 2024. Data regarding no-action letter requests and responses was derived from the information available on the SEC’s website.

**Data on Shareholder Proposals:** Unless otherwise noted, all data on shareholder proposals submitted, withdrawn, and voted on (including proponent data) is derived from Institutional Shareholder Services (“ISS”) publications and the ISS shareholder proposals and voting analytics databases, with only limited additional research and supplementation from additional sources, and generally includes proposals submitted and reported in these databases for the calendar year from January 1 through June 1, 2024, for annual meetings of shareholders at Russell 3000 companies held on or before June 1, 2024. Consistent with last year, the data for proposals withdrawn and voted on includes information reported in these databases for annual meetings of shareholders held through June 1, 2024. References in this update to proposals “submitted” include shareholder proposals publicly disclosed or evidenced as having been delivered to a company, including those that have been voted on, excluded pursuant to a no-action request, or reported as having been withdrawn by the proponent, and do not include proposals that may have been delivered to a company and subsequently withdrawn without any public disclosure. All shareholder proposal data should be considered approximate. Voting results are reported on a votes-cast basis calculated under Rule 14a-8 (votes for or against) and without regard to whether the company’s voting standards take into account the impact of abstentions.

Where statistics are provided for 2023, the data is for a comparable period in 2023.

across five broad categories of shareholder proposals in 2024—governance, social, environmental, civic engagement, and executive compensation. As in 2023, social and environmental proposals combined represented over 50% of all proposals submitted (53% in 2024, down slightly from 55% in 2023), with social proposals representing 33% of all proposals submitted. This was followed by governance proposals (26%), environmental proposals (20%), civic engagement proposals (9%), executive compensation proposals (8%), and other proposals (4%). In reviewing these statistics, it should be noted that an increasing number of shareholder proposals could fall into more than one category. For example, proposals addressing political spending congruence or political contributions, as well as proposals addressing executive compensation, often serve as vehicles to raise social or environmental topics.<sup>4</sup>

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<sup>4</sup> Where a shareholder proposal addresses multiple topics, we have categorized the proposal based on the nature of the proposal's resolved clause, although the proposal's supporting statement or subsequently filed exempt soliciting materials may indicate a different focus. We categorize shareholder proposals based on subject matter as follows:

**Governance proposals** include proposals addressing: (i) independent board chair; (ii) shareholder special meeting rights; (iii) proxy access; (iv) majority voting for director elections; (v) board declassification; (vi) shareholder written consent; (vii) elimination/reduction of supermajority voting; (viii) director term limits; (ix) stock ownership guidelines; (x) shareholder approval of bylaw amendments; and (xi) director resignation bylaws.

**Social proposals** cover a wide range of issues and include proposals relating to: (i) discrimination and other diversity-related issues (including board diversity and racial equity audits); (ii) employment, employee compensation or workplace issues (including gender/ethnicity pay gap); (iii) board committees on social and environmental issues; (iv) social and environmental qualifications for director nominees; (v) disclosure of board matrices including director nominees' ideological perspectives; (vi) societal concerns, such as human rights, animal welfare, and reproductive health; (vii) employment or workplace policies, including the use of concealment clauses, mandatory arbitration, and other employment-related contractual obligations; and (viii) artificial intelligence.

**Environmental proposals** include proposals addressing: (i) climate change (including climate change reporting, climate lobbying, greenhouse gas emissions goals, and climate change risks); (ii) climate transition planning; (iii) plastics, recycling, or sustainable packaging; (iv) renewable energy; (v) environmental impact reports; and (vi) sustainability reporting.

**Civic engagement proposals** include proposals addressing: (i) political contributions disclosure; (ii) lobbying policies and practices disclosure; and (iii) charitable contributions disclosure.

**Executive compensation proposals** include proposals addressing: (i) severance and change of control payments; (ii) performance metrics, including the incorporation of sustainability-related goals; (iii) compensation clawback policies; (iv) equity award vesting; (v) executive compensation disclosure; (vi) limitations on executive compensation; and (vii) CEO compensation determinations.

## Overview of Shareholder Proposals Submitted

| Proposal Category      | 2024 | 2023 | 2024 vs 2023 <sup>5</sup> | Observations  |
|------------------------|------|------|---------------------------|---|
| Social                 | 308  | 297  | ↑4%                       | Social proposals addressed a wide range of topics in 2024, with the largest subcategory, nondiscrimination and diversity-related proposals, representing 15% of all social proposals, with 55 submitted in 2024 (down substantially from 76 in 2023 and 97 in 2022). Of note, the number of proposals related to reproductive healthcare fell from 22 in 2023 to 10 in 2024.                              |
| Governance             | 240  | 212  | ↑13%                      | Simple majority vote proposals were the most common governance proposal, representing 21% of these proposals with 51 submitted, up from 10 proposals in 2023. Proposals related to director resignation bylaws represented 19% of governance proposals with 46 submitted, up from six proposals in 2023.  |
| Environmental          | 182  | 188  | ↓3%                       | The largest subcategory of environmental proposals, representing 71% of these proposals, continued to be climate change proposals, with 127 submitted in 2024 (down from 150 in 2023 and 129 in 2022). Of note, there were 11 climate change proposals submitted in 2024 that specifically addressed “just transition” issues related to worker impacts caused by a transition to a low-carbon economy.   |
| Civic engagement       | 87   | 97   | ↓10%                      | The number of political spending congruence proposals fell to 13 from 21 in 2023. Lobbying spending proposals were roughly flat, with 35 in 2024 and 34 in 2023. Likewise, political contributions proposals were constant with 30 submissions in both 2024 and 2023.   |
| Executive compensation | 75   | 75   | =                         | The largest subcategory of executive compensation proposals continued to be those requesting that boards seek shareholder approval of certain severance agreements, representing 44% of these proposals, down from 63% in 2023. Proposals implementing a binding bylaw amendment requiring shareholder approval of director compensation jumped to 13 in 2024 from zero in 2023, and proposals requesting |

<sup>5</sup> Data in this column refers to the percentage increase or decrease in shareholder proposals submitted in 2023 as compared to the number of such proposals submitted in 2022.

amendments to clawback policies for incentive compensation jumped to 12 in 2024, up from three in 2023. There were six proposals requesting that companies include, or report on the possibility of including, social- or environmental-focused performance measures in executive compensation programs (such as greenhouse gas (“GHG”) emissions and maternal morbidity) down from seven such proposals in 2023.

The table below shows that three of the five most common proposal topics during the 2024 proxy season were the same as those in the 2023 proxy season. Once again, the concentration of the top five most popular topics fell sharply from 45% of proposals submitted in 2023 to 34% of proposals submitted in 2024, demonstrating that proponents continue to submit proposals across a broad spectrum of topics. Proposals related to independent board chairs and nondiscrimination and diversity both fell sharply, collectively representing only 10% of proposals in 2024, down from 19% in 2023. A new proposal, requesting a director resignation bylaw, jumped into the top five, while shareholder approval of severance agreements dropped out of the top five.

| <b>Top Shareholder Proposals Submitted to Public Companies</b> |   |
|--|---|
| <b>2024</b>  | <b>2023</b>                                       |
| Climate change (14%)   | Climate change (17%)                              |
| Nondiscrimination & diversity (6%)                             | Independent chair (10%)                           |
| Simple majority vote (5%)                                      | Nondiscrimination & diversity (9%)                |
| Director resignation bylaws (5%)                               | Shareholder approval of severance agreements (5%) |
| Independent chair (5%)   | Special meeting (5%)                              |

### ***B. Overview of Shareholder Proposal Outcomes***

As shown in the table below, the 2024 proxy season saw both new and continued trends in proposal outcomes that emerged in the 2023 proxy season: (i) the percentage of proposals voted on increased only slightly (55% in 2024 compared to 54% in 2023), and overall support was roughly level (23.0% in 2024 compared to 23.3% in 2023); (ii) the percentage of proposals excluded through a no-action request increased substantially (15% in 2024 compared to 9% in 2023); and (iii) the percentage of proposals withdrawn decreased slightly (15% in 2024 compared to 16% in 2023).

Social and environmental proposals both saw lower withdrawal rates for the second year in a row, with 12% of social proposals withdrawn in 2024 (compared to 20% in 2023 and 30% in 2022) and 29% of environmental proposals withdrawn in 2024 (compared to 32% in 2023 and 51% in 2022). Shareholder proponents may still be relying on the perception that Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”) signaled increased Staff skepticism of Rule 14a-8 no-action requests, therefore making proponents less willing to withdraw their proposals. However, as discussed below and

perhaps as a result of increasingly prescriptive shareholder proposals, the number of no-action requests granted reverted to the pre-SLB 14L norm in 2024, with the Staff granting approximately 68% of no-action requests. This represents a marked increase over the 58% success rate in 2023, a significant increase over the 38% success rate in 2022, and edges closer to the 71% success rate in 2021.

The percentage of withdrawn governance proposals increased to 12%, three times the 2023 withdrawal rate of 4%, and above both its 2022 and 2021 rates of 9% and 5%, respectively. Director resignation bylaw proposals made up a significant portion of withdrawn governance proposals, likely as a result of the Staff's concurrence with no-action requests arguing that implementation of the proposals would cause the companies to violate Delaware law.

| <b>Shareholder Proposal Outcomes<sup>6</sup></b> |             |             |
|--|-------------|-------------|
|  | <b>2024</b> | <b>2023</b> |
| Total number of proposals submitted              | 929         | 889         |
| Excluded pursuant to a no-action request         | 15% (141)   | 9% (82)     |
| Withdrawn by the proponent                       | 15% (135)   | 16% (143)   |
| Voted on   | 55% (514)   | 54% (483)   |

**Voting results.** Shareholder proposals voted on during the 2024 proxy season averaged support of 23.0%, roughly level with average support of 23.3% in 2023. Notably, average support was depressed in part due to the voting results for anti-ESG proposals, which received average support of just 2.4%. Excluding the 78 anti-ESG proposals that were voted on, average support was 26.8%. Looking at voting results across the environmental, social and governance categories:

- **Environmental proposals.** Average support decreased for the second year in a row to 18.7%, down from 21.3% in 2023 and 33.3% in 2022. That decreased support was driven primarily by the voting results for the 13 prescriptive anti-ESG proposals that were voted on in 2024, which averaged less than 2% support. Removing these proposals results in average support for environmental proposals of 21.7%. Consistent with the trend we saw in 2023 and 2022 and as discussed below, the continued lower support for climate change proposals appears to be driven by an increase in more prescriptive or non-germane proposals, which have received lower support from institutional investors.
- **Social proposals.** Average support decreased to 13.5% in 2024 down from 17.2% in 2023 and 23.2% in 2022. This decrease appears to be largely driven by the voting results on the 43 social proposals submitted by anti-ESG

<sup>6</sup> Statistics on proposal outcomes exclude proposals that were reported in the ISS database as having been submitted but that were not in the proxy or were not voted on for other reasons, including, for example, due to a proposal being withdrawn but not publicized as such or the failure of the proponent to present the proposal at the meeting. Outcomes also exclude proposals that were to be voted on after June 1. As a result, in each year, percentages may not add up to 100%. ISS reported that 91 proposals (representing 10% of the proposals submitted during the 2024 proxy season) remained pending as of June 1, 2024, and 118 proposals (representing 13% of the proposals submitted during the 2023 proxy season) remained pending as of June 1, 2023.

proponents that were voted on, which garnered average support of less than 2%. Excluding proposals submitted by these proponents, average support for social proposals was 17.4% on 134 voted proposals.

- Governance proposals. As in prior years, corporate governance proposals received generally high levels of support. Average support for governance proposals increased to 42% from 31% in 2023.

Of particular note, despite roughly level average support for proposals year-over-year, the percentage of proposals across all topics voted on in 2024 that received less than 5% support, the lowest resubmission threshold under Rule 14a-8(i)(12), increased markedly from 2023. In 2024, 100 of the 514 proposals voted on during the 2024 proxy season (almost 20%) received less than 5% support, compared with 62 proposals (12%) that received less than 5% support in 2023.

The table below shows the five shareholder proposal topics voted on at least three times that received the highest average support in 2024. Three of the top five shareholder proposals by average shareholder support in 2024 were different from those reported in 2023.<sup>7</sup>

| <b>Top Five Shareholder Proposals by Voting Results<sup>8</sup></b>          |             |             |
|--|-------------|-------------|
| <b>Proposal</b>  | <b>2024</b> | <b>2023</b> |
| Simple majority vote (eliminate supermajority voting)                        | 70.4% (38)  | 57.9% (16)  |
| Declassify board of directors  | 54.3% (3)   | N/A         |
| Shareholder special meeting rights   | 43.4% (22)  | 31.3% (35)  |
| Shareholder right to act by written consent                                  | 37.9% (7)   | 32.7% (6)   |
| Repeal any bylaw provision adopted by the board without shareholder approval | 34.1% (3)   | N/A         |

**Majority-supported proposals.** As of June 1, 2024, 39 proposals (4% of the proposals submitted and 8% of the proposals voted on) received majority support, as compared with 25 proposals (or less than 3% of the proposals submitted and 5% of the proposals voted on) that had received majority support as of June 1, 2023. As in 2023, after several consecutive years of growth in the number of majority-supported climate change proposals, only two climate change proposals received majority support in 2024. These proposals were both submitted by The Accountability Board to Jack in the Box Inc. and Wingstop Inc. requesting disclosure of GHG reduction targets. Of the remaining 37 proposals that received majority support, 36 were corporate governance-related (27 of which requested simple majority votes), and one requested a report on

<sup>7</sup> In 2023, the five shareholder proposals voted on at least three times that received the highest average support were simple majority vote (eliminate supermajority voting), reporting on climate lobbying, third-party assessments of companies' commitment to freedom of association, majority voting for director elections, and workplace health and safety audits. No proposals seeking to declassify the board of directors or repeal bylaw provisions adopted by the board without shareholder approval were voted on in 2023.

<sup>8</sup> The numbers in the parentheses indicate the number of times these proposals were voted on.



political contributions. ISS recommended votes “for” all proposals that received majority support.

Notably, the 39 majority-supported proposals related to only eight different topics. While governance proposals have consistently ranked among the highest number of majority-supported proposals, in 2024 they accounted for 92% of these proposals (up significantly from 64% in 2023). No social or executive compensation proposals received majority support in 2024, a significant change from 2023 when environmental and social proposals together represented 24% of majority-supported proposals, while 8% related to executive compensation. None of these proposals were related to human capital management, diversity, equity and inclusion (“DEI”), collective bargaining, or workplace harassment and discrimination. The table below shows the proposals that received majority support.

### Proposals that Received Majority Support

| Proposal   | 2024 | 2023 <sup>9</sup> |
|--|------|-------------------|
| Simple majority vote (eliminate supermajority voting)                        | 27   | 8                 |
| Shareholder special meeting rights   | 4    | 5                 |
| Climate change   | 2    | 2                 |
| Declassify board of directors  | 2    | 0                 |
| Adopt proxy access right   | 1    | 0                 |
| Report on political contributions  | 1    | 0                 |
| Repeal any bylaw provision adopted by the board without shareholder approval | 1    | 0                 |
| Submit poison pill to shareholder vote                                       | 1    | 0                 |

### III. SHAREHOLDER PROPOSAL NO-ACTION REQUESTS

#### A. Overview of No-Action Requests

**Submission and withdrawal rates.** The number of shareholder proposals challenged in no-action requests during the 2024 proxy season increased significantly, up 53% compared to 2023 and up 9% compared to 2022. The submission rate was up significantly from 2023 and consistent with the submission rate in 2022. Gibson Dunn remains a market leader for handling shareholder proposals and related no-action requests, having filed approximately 20-25% of all shareholder proposal no-action requests each proxy season for several years.

<sup>9</sup> Indicates the number of similar proposals that received majority support in 2023.

### No-Action Request Statistics

|  | 2024      | 2023     | 2022         |
|--|-----------|----------|--------------|
| No-action requests submitted                 | 267       | 175      | 244          |
| Submission rate <sup>10</sup>                | 29%       | 20%      | 29%          |
| No-action requests withdrawn                 | 57 (21%)  | 33 (19%) | 56 (23%)     |
| Pending no-action requests<br>(as of June 1) | 3         | 0        | 3            |
| Staff Responses <sup>11</sup>                | 207       | 142      | 185          |
| Exclusions granted                           | 141 (68%) | 82 (58%) | 71 (38%)     |
| Exclusions denied                            | 66 (32%)  | 60 (42%) | 114<br>(62%) |

**Most common arguments.** The table below, reflecting the number of no-action requests that contained each type of argument, shows a change in the most-argued grounds for exclusion from procedural in 2023 to ordinary business in 2024. As in recent years, ordinary business and substantial implementation continued to be the most argued substantive grounds for exclusion.

### Most Common Arguments for Exclusion

|                            | 2024      | 2023     | 2022      |
|----------------------------|-----------|----------|-----------|
| Ordinary Business          | 105 (39%) | 68 (39%) | 106 (43%) |
| Procedural                 | 88 (33%)  | 71 (41%) | 64 (26%)  |
| Substantial Implementation | 59 (22%)  | 38 (22%) | 91 (37%)  |
| False/Misleading           | 44 (16%)  | 17 (10%) | 42 (17%)  |

**Success rates.** This year, the Staff granted approximately 68% of no-action requests, a significant increase over the 58% success rate in 2023 and the 38% success rate in 2022, and edging closer to the 71% success rate in 2021 and the 70% success rate in 2020. The Staff most often granted no-action requests based on ordinary business (representing 40% of successful requests), procedural (representing 29% of successful requests), and violation of law (representing 16% of successful requests) grounds. However, it remains to be seen whether this was a one-year phenomena due to two new widely submitted proposals that were excluded on the grounds that the proposals would cause companies to violate state law. Notably, 85% of successful no-action requests in 2024 were based on one of these three grounds, reflecting a narrowing concentration of the grounds on which successful requests were granted in recent years.

<sup>10</sup> Submission rates are calculated by dividing the number of no-action requests submitted to the Staff by the total number of proposals reported to have been submitted to companies.

<sup>11</sup> Percentages of exclusions granted and denied are calculated by dividing the number of exclusions granted and the number denied, each by the number of Staff responses.

## Success Rates by Exclusion Ground<sup>12</sup>

|                            | 2024 | 2023 | 2022 |
|----------------------------|------|------|------|
| Resubmission               | 88%  | 43%  | 56%  |
| Violation of law           | 79%  | 33%  | 40%  |
| Procedural                 | 68%  | 80%  | 68%  |
| Ordinary business          | 67%  | 50%  | 26%  |
| Duplicate proposals        | 50%  | 100% | 31%  |
| Substantial implementation | 33%  | 26%  | 15%  |

**Top proposals challenged.** This year, the most common proposals for which companies submitted no-action requests (on both procedural and substantive grounds) were those requesting adoption of director resignation bylaws, reporting of registered holder share totals in quarterly and annual reports, simple majority vote (elimination of supermajority voting provisions), and a policy requiring an independent board chair.

The no-action requests related to director resignation bylaws proposals made the following arguments: violation of law (20), lack of authority (12), procedural (9), violation of proxy rules (2), improper subject under state law (1), director election, (1), and substantial implementation (1). Fourteen successful requests were granted on violation of law grounds, and the five remaining were granted on procedural grounds.

The no-action requests related to registered holder share total reporting proposals made the following arguments: procedural (15), ordinary business (2), violation of proxy rules (2), and substantial implementation (1). All seven successful requests were granted on procedural grounds.

The no-action requests related to simple majority vote proposals made the following arguments: substantial implementation (7), procedural (4), violation of proxy rules (2), and lack of authority (1). Four successful requests were granted on substantial implementation grounds, and the three remaining successful requests were granted on procedural grounds.

The no-action requests related to independent board chair proposals made the following arguments: duplicate proposal (3), resubmission (3), procedural (1), and director election (1). The successful requests were granted on the following grounds: resubmission (2), duplicate proposal (2), procedural (1), and director election (1).

### Top Proposals Challenged

|                                      | Submitted | Denied  | Granted  | Withdrawn |
|--------------------------------------|-----------|---------|----------|-----------|
| Director resignation bylaws          | 29        | 2 (7%)  | 19 (65%) | 8 (28%)   |
| Registered holder share total report | 15        | N/A     | 7 (47%)  | 8 (53%)   |
| Simple majority vote                 | 12        | 5 (42%) | 7 (58%)  | N/A       |
| Independent board chair              | 8         | N/A     | 6 (75%)  | 2 (25%)   |

<sup>12</sup> Success rates are calculated by dividing the number of no-action requests granted on a particular ground by the total number of no-action requests granted or denied on that ground, excluding no-action requests that are withdrawn or granted on an alternative ground.

## ***B. Key No-Action Request Developments***

There were a number of noteworthy procedural and substantive developments in no-action decisions this year.

### **1. Success Rates Edge Closer to Pre-SLB 14L Averages**

During the last three proxy seasons, companies have confronted steady increases in the number of shareholder proposals submitted and at the same time appeared to be reconsidering the extent to which they pursued the no-action request process. After submitting 272 no-action requests to the Staff in the 2021 proxy season, companies submitted only 175 no-action requests in the 2023 proxy season, with the sharp decline likely spurred by significantly lower success rates during 2022, which saw the Staff grant relief to only 38% of no-action requests (down from success rates of 71% and 70% in 2021 and 2020, respectively). Success rates in 2022 declined on every basis for exclusion, with the most drastic decline in procedural, substantial implementation, and ordinary business arguments. The lower success rates were driven by the Staff's issuance of SLB 14L, which rescinded certain Staff guidance and reversed long-standing no-action decisions by abandoning the economic nexus standard, upending the Staff's recent approach to economic relevance under Rule 14a-8(i)(5) and the ordinary business exclusion under Rule 14a-8(i)(7). However, while the number of no-action requests submitted in 2023 dropped significantly, the percentage of proposals excluded pursuant to a no-action request rebounded from the historic low in 2022. The overall success rate for no-action requests rose to 58% in 2023—still well below recent success rates and the second-lowest success rate since 2012.

The 2024 proxy season saw a continued rebound in the success rates of no-action requests, with the Staff granting relief to approximately 68% of no-action requests. Unlike the rise in success rates in 2023 (which could be attributed in part to the sharp decline in overall no-action requests submitted), the 2024 proxy season saw a continued rise in success rates even as submission rates increased with companies returning to the no-action request process following the significant improvement in success rates seen in 2023. Success rates in 2024 improved for ordinary business (67%, up from 50% in 2023), resubmission (88%, up from 43% in 2023), violation of law (79%, up from 33% in 2023) and substantial implementation grounds (33%, up from 26% in 2023), while success rates declined for procedural (68%, down from 80% in 2023) and duplicate proposals (50%, down from 100% in 2023).

### **2. Spotlight on Micromanagement and Greenhouse Gas Emissions Proposals**

After cratering in 2022 in the wake of SLB 14L, the submission rate and success rate for micromanagement no-action requests continued to recover in 2024: companies argued micromanagement in 62 no-action requests in 2024, up from 41 in 2023. To date, the Staff has granted 23 of those requests on that basis, representing a success rate of 66%, more than double the 2023 success rate of 31%. The marked rise in the success rate of micromanagement arguments is at least partially attributable to proponents

continuing to draft very prescriptive proposals. Proposals that the Staff concurred improperly micromanaged included those related to greenhouse gas (“GHG”) emissions and climate change,<sup>13</sup> disclosure of director political and charitable contributions,<sup>14</sup> disclosure of director time commitments,<sup>15</sup> reports on living wage policies and practices,<sup>16</sup> corporate charitable contributions,<sup>17</sup> anti-union expenditures<sup>18</sup> and the benefits and drawbacks of permanently committing not to sell paint products containing titanium dioxide sourced from the Okefenokee Swamp.<sup>19</sup>

The resurgence in successful micromanagement arguments is perhaps most clearly demonstrated in the number of climate change-related proposals that were successfully excluded in 2024. Of the 15 no-action requests challenging climate change-related proposals on substantive grounds, 12 argued for exclusion on the basis of micromanagement, with the Staff granting 10 of those requests on that basis<sup>20</sup> and denying only one request,<sup>21</sup> with one request being withdrawn.<sup>22</sup> Notably, each of the successful no-action requests challenged a proposal focused on the reduction of GHG emissions, including proposals requesting reports on GHG emissions of company clients, GHG emissions related to specific goods and services, the adoption of specific GHG emissions reduction targets, and reports on the divestiture of assets with “material climate impact.”

As the legal challenges to the SEC’s final climate disclosure rules continue to work their way through the U.S. Court of Appeals for the Eighth Circuit, climate change shareholder proposals (particularly those focused on GHG emissions) will undoubtedly remain a focus for shareholder proponents and companies, alike. The results in 2024 suggest that the no-action request process will continue to provide companies with a key means of challenging overly prescriptive climate change proposals, including those tied to GHG emissions.

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<sup>13</sup> See, e.g., *Wells Fargo & Co.* (avail. Mar. 6, 2024, *recon. denied* Apr. 5, 2024)\*; *Chevron Corp.* (avail. Mar. 29, 2024)\*; *Tractor Supply Co.* (avail. Mar. 18, 2024).

<sup>14</sup> *Comcast Corp.* (avail. Apr. 16, 2024)\*.

<sup>15</sup> See, e.g., *Lowe’s Companies, Inc.* (avail. Apr. 8, 2024)\*; *Johnson & Johnson* (avail. Mar. 1, 2024).

<sup>16</sup> See, e.g., *Amazon.com, Inc.* (avail. Apr. 1, 2024)\*; *Kohl’s Corp.* (avail. Mar. 6, 2024).

<sup>17</sup> *Paramount Global* (avail. Apr. 19, 2024).

<sup>18</sup> *Delta Airlines, Inc.* (avail. Apr. 24, 2024).

<sup>19</sup> See, e.g., *Home Depot, Inc.* (avail. Mar. 21, 2024)\*; *Chemours Co.* (avail. Feb. 22, 2024).

<sup>20</sup> See, e.g., *Walmart Inc.* (avail. Apr. 18, 2024)\*; *Bank of America Corp.* (avail. Feb. 29, 2024, *recon. denied* Apr. 15, 2024)\*; *The Goldman Sachs Group, Inc.* (avail. Mar. 4, 2024, *recon. denied* Apr. 15, 2024)\*; *Wells Fargo & Co.* (avail. Mar. 6, 2024, *recon. denied* Apr. 5, 2024)\*; *Morgan Stanley* (avail. Mar. 29, 2024); *Chevron Corp.* (avail. Mar. 29, 2024)\*; *JPMorgan Chase & Co.* (avail. Mar. 29, 2024); *Valero Energy Corp.* (avail. Mar. 22, 2024); *Exxon Mobil Corp.* (avail. Mar. 20, 2024); *Tractor Supply Co.* (avail. Mar. 18, 2024).

<sup>21</sup> *Chubb Ltd.* (avail. Mar. 25, 2024).

<sup>22</sup> *The TJX Companies, Inc.* (avail. Apr. 12, 2024)\*.

### 3. Violation of Law Arguments – Director Resignation and Director Compensation Bylaw Proposals

The 2024 proxy season saw a marked increase in both the submission and success of no-action requests seeking exclusion on violation of law grounds. This increase was driven primarily by a shareholder proposal campaign spearheaded by pension funds affiliated with the United Brotherhood of Carpenters and Joiners of America (the “Carpenters”). The proposal asked companies to amend their bylaws to require that directors tender an irrevocable resignation to the company, effective upon the director’s failure to receive majority support in an uncontested election, and that the board accept

the resignation offer unless it finds a “compelling reason or reasons” not to accept the resignation.

Of the 29 no-action requests submitted challenging the Carpenters’ proposals under Rule 14a-8(i)(2), 14 were granted on the grounds that the proposal would cause the company to violate state law,<sup>23</sup> five were granted on separate procedural grounds, and eight were withdrawn. Only two no-action requests were denied on violation of law grounds.<sup>24</sup> Notably, both of those requests were submitted to companies incorporated outside of Delaware and did not include a separate opinion letter from local counsel explaining how the proposal would cause the company to violate state law.

In addition to the director resignation bylaw proposals, a number of companies also challenged under Rule 14a-8(i)(2) proposals seeking to implement binding bylaw amendments imposing specific limitations and requirements on how director compensation is fixed. In all eight no-action requests, the companies included a separate opinion letter from local counsel.<sup>25</sup> As of June 1, the Staff had issued responses to six of the no-action requests—in each case, granting the request on violation of law grounds and citing the state law legal opinion submitted in support of the no-action request.

In light of the results in violation of law arguments during 2024, companies should strongly consider providing a separate opinion letter from local counsel in support of the no-action request consistent with prior Staff guidance.<sup>26</sup>

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<sup>23</sup> See, e.g., *MetLife, Inc.* (avail. Apr. 22, 2024); *Gartner, Inc.* (avail. Mar. 29, 2024)\*; *AT&T Inc.* (avail. Mar. 19, 2024)\*; *Verizon Communications, Inc.* (avail. Apr. 15, 2024).

<sup>24</sup> *Xerox Holdings Corp.* (avail. Apr. 8, 2024) (incorporated in Connecticut); *Altria Group, Inc.* (avail. Mar. 25, 2024) (incorporated in Virginia).

<sup>25</sup> See, e.g., *General Motors Co.* (avail. Apr. 18, 2024); *VeriSign, Inc.* (avail. Mar. 29, 2024)\*.

<sup>26</sup> See Staff Legal Bulletin No. 14B (Sep. 15, 2004) (noting that consistent with Rule 14a-8(j)(2)(iii), which requires a supporting opinion of counsel when the asserted reasons for exclusion are based on matters of state or foreign law, no-action requests arguing for exclusion under Rule 14a-8(i)(2) and/or Rule 14a-8(i)(6) should be accompanied with a supporting opinion of counsel).

#### 4. Substantial Implementation Holding on by a Thread

As discussed above, while the success rate for no-action requests seeking exclusion on substantial implementation grounds increased in 2024, it remained well below the success rate in 2021. In fact, the Staff granted only nine no-action requests in 2024 on the basis of substantial implementation, representing only 6% of no-action requests granted. While the low number of successful substantial implementation requests was due in part to the withdrawal of 16 no-action requests arguing that basis, most of which involved a proposal regarding advance notice bylaws submitted by James McRitchie, it is important to note that the Staff rejected 18 no-action requests that argued substantial implementation—double the number of no-action requests it granted on that basis.

Substantial implementation arguments were most successful in the context of corporate governance and executive compensation proposals, including proposals related to declassification of the board,<sup>27</sup> the adoption of simple majority vote,<sup>28</sup> clawback policy amendments,<sup>29</sup> and shareholder approval of executive severance packages.<sup>30</sup> Notably, no social or environmental proposals were successfully excluded on substantial implementation grounds in 2024—broadly consistent with results in 2023, when only one environmental proposal and no social proposals were excluded on that basis.

#### 5. Successful Exclusion of Resubmissions on the Rise

In recent years, an increasing percentage of shareholder proposals have been submitted and voted on annually, while at the same time, overall support for shareholder proposals has continued to decrease year-over-year as shareholders are faced with increasingly prescriptive proposals disfavored by institutional investors. In addition, some institutional investors have noted that at the same time there has been a decrease in the overall quality and accuracy of shareholder proposals, and an increase in the submission of proposals that are not well targeted to a specific company and that address topics unrelated to a company's core activities.<sup>31</sup>

Despite these overall trends, some shareholder proponents have continued to repeatedly resubmit unsuccessful proposals. Due in part to continued declines in shareholder support, the 2024 proxy season saw a marked increase in the number of proposals successfully excluded under the resubmission thresholds in Rule 14a-8(i)(12). Rule 14a-8(i)(12) permits exclusion of a proposal if a similar proposal was included in the proxy materials within the preceding three years, and if the last time a similar proposal was included it received: less than 5% support, if voted on once within the last five years; less than 15% support, if voted on twice within the last five years; or less than 25% support, if voted on three or more times within the last five years.

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<sup>27</sup> *Kyndryl Holdings, Inc.* (avail. Apr. 22, 2024).

<sup>28</sup> *PulteGroup, Inc.* (avail. Mar. 19, 2024); *Eli Lilly and Co.* (avail. Mar. 14, 2024); *West Pharmaceutical Services, Inc.* (avail. Mar. 13, 2024); *AECOM* (avail. Jan. 4, 2024).

<sup>29</sup> *Amgen Inc.* (avail. Apr. 3, 2024); *Exxon Mobil Corp.* (avail. Mar. 20, 2024).

<sup>30</sup> *Expeditors International of Washington, Inc.* (avail. Mar. 15, 2024).

<sup>31</sup> See, for example, T. Rowe Price, *For or against? The year in shareholder resolutions—2023* (April 2024), available [here](#).

In 2024, seven proposals were successfully excluded under Rule 14a-8(i)(12) for failure to receive a sufficient level of support,<sup>32</sup> more than double the three successful no-action requests in 2023 and representing a success rate of 88%. An additional six proposals arguing for exclusion on that basis were withdrawn before the Staff could issue its decision. The proposals challenged by the successful no-action requests addressed a wide range of topics, including reports on lobbying activities, independent board chairs, majority voting in uncontested director elections, GHG emissions reductions, and workplace civil liberties.

#### IV. KEY SHAREHOLDER PROPOSAL TOPICS DURING THE 2023 PROXY SEASON

##### A. Human Capital and Social Proposals

This year saw a marked decline in proposals focused on nondiscrimination and diversity. These proposals accounted for only about 18% of social proposals in 2024, after constituting over one-quarter of social proposals in 2023. Like last year, human capital and social proposals were largely focused on racial equity and civil rights, DEI efforts, and pay equity. There was also a significant decline in proposals focused on reproductive rights this year, while there were slightly more proposals related to human rights assessments. The 2024 proxy season also continued to see a significant rise in social proposals directly challenging traditional ESG themes. These anti-ESG social proposals included proposals requesting that companies, among other things, report on risks created by diversity, equity and inclusion efforts, conduct a civil rights and nondiscrimination audit, report on risks related to discrimination based on religious or political views, and report on gender-based compensation and benefits inequities related to transgender healthcare.

##### 1. Racial Equity/Civil Rights Audit and Nondiscrimination Proposals

In 2024, there were 22 shareholder proposals that addressed issues of racial equity and civil rights (including workplace discrimination, audits of workplace practices and policies, and related topics), compared to 55 similar proposals submitted in 2023 and 51 in 2022.

The most frequent type of these proposals were the 13 proposals calling for a racial equity or civil rights audit analyzing each company's impacts on the "civil rights of company stakeholders" or "civil rights, diversity, equity, and inclusion." Similar to prior years, these proposals often included the required or optional use of a third party to conduct the audit, with input to be solicited from employees, customers, civil rights organizations, and other stakeholders. These proposals were primarily submitted by the Service Employees International Union and the Nathan Cummings Foundation. Five of these proposals went to a vote and received average support of 12.9%, down from 14 such proposals that went to a vote in 2023, with average support of 22.4%. In both years, ISS generally recommended votes "against" the proposals. Two companies initially filed no-action requests to exclude a racial equity/civil rights audit proposal on

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<sup>32</sup> Kroger Co. (avail. May 3, 2024); AMC Networks, Inc. (avail. Apr. 22, 2024); Exxon Mobil Corp. (avail. Mar. 20, 2024); The Coca-Cola Co. (avail. Feb. 22, 2024); Baxter International Inc. (avail. Feb. 20, 2024); Applied Materials, Inc. (avail. Jan. 4, 2024); Ingles Markets, Inc. (avail. Nov. 6, 2023).



substantial implementation and procedural grounds but later withdrew the challenges after the proposals were withdrawn.<sup>33</sup>

In addition, in 2024 there were nine proposals related to workplace nondiscrimination, including requests to report on harassment and discrimination statistics, efforts to prevent workplace harassment and discrimination, and hiring practices related to formerly incarcerated people. These proposals were vastly outnumbered by 22 anti-ESG proposals related to viewpoint discrimination, calling for a civil rights and nondiscrimination audit, or expressing concern about discrimination on the basis of religious or political views, submitted by organizations such as the NCPPR, The Bahnsen Family Trust, Inspire Investing LLC, and the American Family Association. These proposals generally included supporting statements that focused on concerns about discrimination against “non-diverse” employees or discrimination based on religious and political views.

No companies sought to exclude workplace nondiscrimination proposals on substantive grounds. However, one company unsuccessfully sought to exclude an anti-ESG nondiscrimination proposal on substantive grounds, which was ultimately unsuccessful.<sup>34</sup> The eight nondiscrimination proposals that went to a vote (excluding anti-ESG nondiscrimination proposals) averaged 14.8% support, as compared to average support of 1.9% support for anti-ESG nondiscrimination proposals that went to a vote.

## **2. Diversity, Equity, and Inclusion Efforts and Metrics**

The number of proposals requesting disclosure of DEI data or metrics or reporting on the effectiveness of DEI efforts or programs decreased slightly, with 28 such proposals submitted in 2024 compared to 35 in 2023. Of the 2024 DEI proposals, 14 proposals were withdrawn or otherwise not included in the proxy statement and 10 were voted on with an average support of 25.0%. No proposals received majority support. Four companies filed no-action requests to exclude DEI proposals on procedural grounds, two of which were withdrawn and two of which were successful. As in 2023 and 2022, As You Sow was the main driver behind these proposals, submitting or co-filing 17 DEI proposals. Other filers included the New York State Comptroller on behalf of the New York State Common Retirement Fund (submitting three proposals), Trillium Asset Management (submitting three proposals) and Amalgamated Bank (submitting three proposals co-filed by As You Sow).

## **3. Gender/Racial Pay Gap**

The number of shareholder proposals calling for a report on the size of a company’s gender and racial pay gap and policies and goals to reduce that gap remained relatively flat, with 15 proposals submitted in 2024 versus 16 in 2023. Eight gender/racial pay gap proposals were submitted or co-filed by Arjuna Capital and five were submitted by James McRitchie and/or Myra Young. Fourteen of these proposals were voted on,

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<sup>33</sup> *Valero Energy Corp.* (avail Feb. 2, 2024); *Equifax, Inc.* (avail. Jan. 12, 2024).

<sup>34</sup> *AT&T Inc.* (avail. Feb. 29, 2024)\*.

garnering average support of 29.2% (with none receiving majority support). This represented a modest decrease from average support of 31.7% for the nine proposals voted on in 2023 (with none receiving majority support).

#### **4. Reproductive Rights**

In the second proxy season since the overturn of *Roe v. Wade*, the number of shareholder proposals requesting a report on the effect of reproductive healthcare legislation decreased significantly, with only 10 such proposals submitted in 2024, including two proposals submitted by anti-ESG proponents, down from 22 proposals in 2023. Six of these proposals were voted on, averaging 6.5% support, including the two anti-ESG proposals that averaged 1.3% support, a decrease from average support of 10.8% in 2023.

#### **5. Human Rights**

The number of shareholder proposals relating to human rights, including those calling for a report on or an impact assessment of risks of doing business in countries with significant human rights concerns or for an assessment of the human rights impacts of certain products or operations, decreased during the 2024 proxy season. In 2024, shareholders submitted 39 human rights proposals (down from 43 proposals in 2023). Eight proposals were submitted by anti-ESG proponents requesting reports on the risk of the company's operations in China and the congruency of human rights policies with company actions. The 28 human rights proposals voted on averaged support of 12.4%, with the proposals submitted by anti-ESG proponents averaging support of 2.9% and the remainder averaging support of 16.2%. Six companies sought to exclude these proposals via no-action requests, and two were successful on the grounds that the proposals related to ordinary business operations.<sup>35</sup>

#### **6. Animal Welfare**

There were 24 shareholder proposal submissions related to animal welfare in 2024, a notable increase from 14 in 2023. These proposals most commonly requested disclosures related to pig gestation crates or egg-laying hens. Fourteen of these proposals went to a vote, receiving average support of 16.4%. None of these proposals received majority support. Only one proposal was challenged with the SEC, but the challenge was ultimately withdrawn. All but one of the proposals were either filed or co-filed by The Humane Society of the United States, The Accountability Board, or the People for the Ethical Treatment of Animals (PETA).

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<sup>35</sup> *AT&T Inc.* (avail. Mar. 14, 2024)\*; *Verizon Communications Inc.* (avail. Mar. 14, 2024).

## **B. AI Proposals**

Issues related to the development and use of artificial intelligence (AI) were a growing focus for shareholder proposals in 2024. Fourteen AI proposals were submitted during 2024,<sup>36</sup> covering a variety of topics related to AI. Among the proposals submitted were proposals calling for a report on a company's current or future use of AI, requesting a report on risks from misinformation and disinformation related to AI, and requesting the board formalize oversight of AI. The SEC appeared to treat any proposal addressing AI as involving a significant policy issue, likely reflecting Chair Gensler's focus on the topic. ISS recommended votes "for" five proposals requesting AI-related reports. However, ISS recommended votes "against" two proposals requesting that the company take action to formalize board oversight of AI matters—one proposal requested the board create an AI committee, and the other proposal requested changes to the company's audit and compliance committee charter to address AI oversight. Despite ISS's general support for AI proposals, all ultimately failed to receive majority support. As of June 30, 2024, 10 such proposals had been voted on, receiving average support of 20.9%.<sup>37</sup> The Staff denied all three no-action requests challenging AI proposals on ordinary business and/or micromanagement grounds.

## **C. Continued Focus on Climate Change and Environmental Proposals**

As was the case in 2023, climate change-related proposals were the largest group of environmental shareholder proposals in 2024 by a large margin, representing 70% of all environmental proposals (and 14% of all proposals) submitted. There were 127 climate change-related proposals submitted in 2024, down from 150 proposals in 2023. There also was an increase in the number of environmental and climate change proposals excluded during 2024 via no-action requests, with 19 excluded (three on procedural grounds,<sup>38</sup> one on resubmission grounds,<sup>39</sup> and the rest on ordinary business or micromanagement grounds), as compared to 13 excluded during 2023 (five on procedural grounds, one on substantial implementation grounds, and seven on ordinary business or micromanagement grounds). These exclusions were consistent with the overall rise in the success of ordinary business arguments more generally (as described in Part III above).

Climate change proposals took various forms, including requesting adoption of GHG emissions reduction targets (usually in alignment with net zero scenarios), disclosure of climate transition plans, disclosures regarding single-use plastics, changes to investments in and underwriting policies relating to fossil fuel production projects, and

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<sup>36</sup> One additional AI proposal was submitted to a company with an annual meeting in December 2023 but is not included in the 14 proposals above because the submission occurred outside of the 2024 proxy season. Like the AI proposals voted on during the 2024 proxy season, this 2023 AI proposal also failed, receiving 21.2% support.

<sup>37</sup> Due to the number of AI proposals that were voted on after June 1, 2024, we have included the voting results for several proposals voted on at annual meetings on or before June 30, 2024.

<sup>38</sup> *Linde plc* (avail. Apr. 24, 2024); *Amazon.com, Inc.* (avail. Apr. 5, 2024)\*; *Bank of America Corp.* (avail. Feb. 20, 2024)\*.

<sup>39</sup> *Exxon Mobil Corp.* (avail. Mar. 20, 2024).

disclosures of risks related to climate change. Of these, the most common were proposals focusing on GHG disclosures (and, in particular, the scope of emissions covered by such disclosures), emissions reductions targets, and climate transition plans. Other popular climate change proposals included requests that companies disclose their Clean Energy Supply Financing Ratio and assess their biodiversity impacts. As with social proposals, there was also a rise in climate change proposals from anti-ESG activists, including proposals calling for a board committee to analyze the risks of committing to decarbonization.

Continuing the trend from 2023, average support for these proposals and the number receiving majority support are all equal to or at their lowest rates in at least three years. However, ISS support for climate change proposals increased in 2024, with ISS recommending votes “for” 56% of climate change proposals, up from 47% in 2023. Excluding anti-ESG climate change proposals, ISS recommended votes “for” 69% of climate change proposals. Two climate change proposals received majority support in 2024. Both proposals were submitted by The Accountability Board and requested that the company disclose its GHG emissions, as well as short-, medium- and long-term goals for reducing those emissions.

| <b>Climate Change Proposal Statistics: 2024 vs. 2023</b> |             |             |                      |
|--|-------------|-------------|----------------------|
|  | <b>2024</b> | <b>2023</b> | <b>2024 vs. 2023</b> |
| Submitted  | 127         | 150         | ↓15%                 |
| Voted on   | 68          | 70          | ↓3%                  |
| Average support  | 20.2%       | 22.0%       | ↓8%                  |
| Majority support   | 2           | 2           | -                    |
| Withdrawn (as percentage of submitted)                   | 24%         | 30%         | ↓20%                 |

## **1. Climate Transition Plans**

There were 51 shareholder proposals requesting a climate transition report, including proposals requesting disclosure of the company’s GHG emissions reduction targets as well as policies, strategies, and progress made toward achieving those targets. These proposals usually called for long-term GHG emissions targets covering Scopes 1, 2, and 3 emissions and in alignment with the Paris Agreement’s 1.5 degree Celsius net zero scenario and the Science Based Targets initiative (SBTi), including by asking companies to expand established emissions targets that do not meet these requirements. These proposals’ supporting statements frequently referenced concerns that disclosure of emissions reduction targets is not enough to address climate risk or provide sufficient accountability for achieving those targets and that investors would benefit from increased disclosure regarding the company’s strategies to achieve those targets, including relevant timelines and metrics against which to measure progress. In a dramatic increase from last year, 12 proposals in 2024 (versus four in 2023) asked financial institutions to adopt transition plans to align the company’s financing activities with its GHG emissions reduction targets. There was also a notable increase (11 proposals in 2024 versus five in 2023) in proposals focused on the impact of a company’s climate transition strategy on relevant stakeholders under the International Labour Organization’s “just transition” guidelines. The primary proponents of climate

transition proposals were As You Sow (submitting or co-filing 12 proposals), Green Century Capital Management (submitting or co-filing eight proposals), and Arjuna Capital (submitting or co-filing seven proposals). Twelve companies sought to exclude climate transition proposals, and seven were successful. Another 27 proposals were withdrawn or otherwise did not appear in the company's proxy statement. Of the remaining 17 proposals, 15 had been voted on as of June 1, 2024 and received average support of 23.6%, with none garnering majority support.

## **2. Continued Focus on GHG Emissions**

There were 36 proposals submitted related to measuring GHG emissions or adoption of GHG emissions reduction targets, typically in alignment with the Paris Agreement and often time-bound and covering all three scopes of emissions. Twenty-four of these proposals went to a vote, receiving average support of 28.0%, with two receiving majority support. Five companies sought to exclude GHG emissions proposals via no-action request. Four requests were successful, all under the argument that they improperly micromanaged the company, and the remaining request was withdrawn.

## **3. Recycling**

In 2024, there were 22 proposals submitted related to recycling, plastic waste, or sustainable packaging. The majority of these proposals (13 in total) were submitted or co-filed by As You Sow. Another frequent filer was Green Century Capital Management, submitting eight of these proposals but later withdrawing all but one. No company successfully excluded a recycling proposal in 2024, and 13 were included in companies' proxy statements. Ten recycling proposals had been voted on as of June 1, 2024, averaging 14.0% support with none having received majority support.

## **4. Other Environmental Proposals**

There were 31 "other" environmental proposals unrelated to climate change, recycling, or animal welfare. These proposals varied widely in subject matter, with notable subjects including biodiversity impacts (six proposals), water risks (four proposals) and deforestation in supply chains (four proposals). Five environmental proposals (two related to biodiversity impacts, one related to mining risks, and two anti-ESG proposals) were excluded via no-action requests, three on ordinary business grounds, one on procedural grounds, and one on resubmission grounds. Of the remaining 28 proposals, 15 were withdrawn or otherwise not included in the company's proxy statement and 13 were voted on. Of the eight proposals voted on as of June 1, 2024, two related to sustainable sourcing and supply chain risk; two related to biodiversity impacts; one related to deep-sea mining; one related to lead-sheathed cables; one related to an environmental justice report; and one related to deforestation. None of these proposals received majority support, with support averaging 11.9%.

#### ***D. Simple Majority Vote (Eliminate Supermajority Voting)***

One of the most frequent proposals submitted requested a simple majority vote (which includes eliminating supermajority vote requirements). Fifty-one proposals were submitted in 2024, a marked increase from 16 in 2023. Simple majority vote proposals generally received significant shareholder support, with 38 going to a vote, averaging support of 70.4%, and 27 receiving majority support. Twelve companies filed no-action requests to exclude these proposals, of which six were successful, five were unsuccessful, and one was withdrawn. While three of the successful no-action requests were based on procedural grounds, three were based on substantial implementation grounds given the specific wording of those proposals. The primary proponent of these proposals was John Chevedden, who filed or co-filed 47 of the 51 proposals.

#### ***E. A New Governance Topic: Majority Voting Director Resignation Bylaws***

Companies received 46 proposals focused on majority voting director election resignation bylaws in 2024. These proposals, which were a new proposal topic, requested that the company implement a director resignation bylaw that would require each director nominee to submit an irrevocable resignation in the event the director nominee fails to receive majority support and require the company's board of directors to accept the resignation unless it finds a "compelling reason or reasons" not to accept the resignation. In addition, if the resignation is not accepted and the director remains as a "holdover" director, the director resignation bylaw would require that the director's resignation become automatically effective if the "holder" director fails to be re-elected at the next annual meeting. Companies filed 31 no-action requests to exclude these proposals, of which 19 were successful, eight were withdrawn, and four were unsuccessful. The primary reason cited in successful challenges was that the proposal violated state law. Only 12 proposals were voted on, receiving average support of 17.2%, with ISS recommending votes "against" all 12 proposals. All but eight of these 46 proposals were submitted by one of four Carpenter's Pension Funds (New York City, North Atlantic States, Mid-America, or Eastern Atlantic).

#### ***F. Advance Notice Bylaws***

For the second year in a row, shareholder proponents focused on company advance notice bylaw requirements, expressing concern that bylaw requirements could be used to make it burdensome for shareholders to nominate directors. Whereas the proposals submitted in the 2023 proxy season sought to require shareholder approval of certain advance notice bylaw amendments, the 20 shareholder proposals submitted in 2024, primarily by James McRitchie and the Oregon State Treasury office, sought assurances that companies will treat shareholder nominees equitably. All but one of these proposals were withdrawn, with companies generally addressing the topic in their corporate governance guidelines or proxy statements. At the one company where the proposal was submitted for a vote, ISS recommended votes "against" the proposal and the proposal received only 1.4% of the vote.

## V. OTHER IMPORTANT TAKEAWAYS FROM THE 2024 PROXY SEASON

### A. *Legal Challenges to the Rule 14a-8 Process*

#### 1. ExxonMobil Litigation over Shareholder Proposal Dismissed, but Could Impact 2025 Proxy Season

In January 2024, Exxon Mobil Corp. (“ExxonMobil”) filed a complaint in federal court in Texas seeking a declaratory judgment that it could exclude a climate change shareholder proposal submitted by activist investor groups Arjuna Capital and Follow This under Rule 14a-8 for inclusion in its 2024 proxy materials.<sup>40</sup> The proposal asked ExxonMobil to go “beyond current plans, further accelerating the pace of emission reductions in the medium-term for its greenhouse gas (GHG) emissions across Scope 1, 2, and 3, and to summarize new plans, targets, and timetables.” In its complaint, the company accused the activists of being driven by an “extreme agenda,” stated that the proposal “does not seek to improve ExxonMobil’s economic performance or create shareholder value,” and argued that the proposal was excludable under both the SEC’s ordinary business exception and the resubmission exception, the latter of which applies where a substantially similar proposal previously received a low level of shareholder support.

Bringing suit to exclude a shareholder proposal is unusual, as companies typically rely on the no-action request process for relief. ExxonMobil’s complaint also focused on the Staff’s application of Rule 14a-8, noting that changes in Staff interpretations have likely caused a significant increase in the number of proposals submitted and voted on in the last two years, and that the costs of addressing a single shareholder proposal can be high.

The defendants, U.S.-based Arjuna Capital and Netherlands-based Follow This, responded by withdrawing the proposal and arguing that the litigation was moot because they had agreed not to propose it again in the future. ExxonMobil countered that the case should proceed as the proponents could introduce a similar proposal next year despite a history of investors rejecting their proposals. On May 22, 2024, the court ruled on jurisdictional grounds that Exxon could continue its case against Arjuna Capital because Arjuna Capital is a U.S.-based firm but held that it could not hear the claim against Netherlands-based climate activist group Follow This because it lacked jurisdiction over the group. On June 17, 2024, the court subsequently dismissed the remaining claims against Arjuna Capital because Arjuna Capital pledged not only that it would not submit the same proposal again, but that it would not submit similar proposals to ExxonMobil in the future.

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<sup>40</sup> Gibson Dunn was one of the law firms representing ExxonMobil in this matter.

ExxonMobil’s decision to challenge the proposal in court instead of through the typical no-action request process generated several “vote no” campaigns against ExxonMobil’s directors at its 2024 annual meeting, including opposition from large pension funds such as the California Public Employees Retirement System (CalPERS). Despite the organized campaigns launched in response to ExxonMobil’s litigation, all ExxonMobil directors were re-elected at the annual meeting, with support for the company’s slate of directors ranging from 87% to 98% of votes cast, compared with 91% to 98% support in 2023.

## **2. Impact of Ongoing Shareholder Proposal Litigation at Fifth Circuit Still Uncertain**

As discussed in detail in our 2023 update,<sup>41</sup> the 2023 proxy season saw a new challenge to the Staff’s role in the shareholder proposal process emerge in a lawsuit filed by NCPPR in the U.S. Court of Appeals for the Fifth Circuit arising from the Staff’s concurrence with the exclusion on ordinary business grounds of a proposal submitted to The Kroger Co. requesting that the company issue a report “detailing the potential risks associated with omitting ‘viewpoint’ and ‘ideology’ from its written equal employment opportunity (EEO) policy.”<sup>42</sup> Notably, the Fifth Circuit has, in recent decisions, signaled its willingness to entertain challenges to the SEC’s rulemaking authority.

In *National Center for Public Policy Research v. SEC*, the Fifth Circuit is being asked to address several important questions about the Rule 14a-8 process, including: (1) whether responses to no-action requests issued by the Staff to companies that concur that a company may properly exclude a proposal under Rule 14a-8 are subject to judicial review; (2) the scope of the ordinary business exception under Rule 14a-8(i)(7); and (3) whether Rule 14a-8’s requirement that, absent an exception, companies include shareholder proposals in their proxy statements exceeds the SEC’s authority under the Exchange Act or violates the First Amendment.<sup>43</sup>

After the Fifth Circuit referred the case to the merits panel (the judicial panel deciding the substantive merits of the complaint), Kroger filed its definitive proxy materials, which included NCPPR’s shareholder proposal.<sup>44</sup> Subsequently, the NAM intervened in the litigation and raised a far-reaching challenge to the existing Rule 14a-8 framework, arguing that the requirement under Rule 14a-8 that companies include shareholder proposals in their proxy statements (absent an exception) exceeds the SEC’s authority

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<sup>41</sup> Shareholder Proposal Developments During the 2023 Proxy Season (July 25, 2023) (“2023 Shareholder Proposals Update”), available [here](#).

<sup>42</sup> *The Kroger Co.* (avail. Apr. 12, 2023).

<sup>43</sup> The case arose out of a proposal submitted to The Kroger Co. requesting that the company issue a report “detailing the potential risks associated with omitting ‘viewpoint’ and ‘ideology’ from its written equal employment opportunity (EEO) policy.” The Staff concurred with Kroger’s no-action request, which argued that NCPPR’s proposal could be excluded on ordinary business grounds. In response, NCPPR filed a petition for review of the Staff’s no-action decision in the Fifth Circuit and asked the court to stay the no-action decision during the litigation.

<sup>44</sup> NCPPR initially also sued Kroger in federal district court but dropped its lawsuit once the company agreed to include the proposal in its proxy statement. NCPPR’s proposal was voted on at Kroger’s 2023 annual meeting and received only 1.9% support.



under the Exchange Act and asserting that the statutory provision only authorizes the SEC to target misleading or deceptive statements by a company in its proxy statement. NAM further argued that, if Rule 14a-8 is statutorily authorized, it violates the First Amendment because the rule requires companies to speak on controversial topics and alters the content of their speech in contravention of the Constitution's restrictions on compelled speech and content-based speech regulations.

Notably, contrary to concerns that the pending litigation could impact the Staff's willingness to entertain no-action requests on purportedly similar proposals or arguing for exclusion on the basis of ordinary business, the Staff did not decline to respond to ordinary business no-action requests.<sup>45</sup> Accordingly, the ultimate impact of NCPPR's litigation will likely turn on the Fifth Circuit's ruling.

Most recently, the Fifth Circuit merits panel heard arguments in the case in March 2024, but it is unclear when the Fifth Circuit will issue its decision.

### ***B. Novel Shareholder Proposal Tactic Building on Universal Proxy***

As part of the universal proxy rule amendments, the SEC amended Rule 14a-4(d) to allow anyone to solicit votes for or against a company's director candidates without the consent of those directors, which previously was not permissible. This amendment means that if a dissident solicits proxies to vote on shareholder proposals presented at a company's shareholders' meeting other than pursuant to Rule 14a-8 (referred to as "floor proposals"), that dissident can now include the election of directors on its own proxy card that includes its floor proposals.<sup>46</sup> Relying on this rule change, and foreshadowing a possible new tactic to avoid the limitations of Rule 14a-8, the AFL-CIO and United Mine Workers of America submitted five non-binding shareholder proposals under Warrior Met Coal, Inc.'s advance notice bylaws instead of under Rule 14a-8, and subsequently satisfied the conditions of Rule 14a-4(c)(2)<sup>47</sup> by filing their own proxy materials, including their own proxy card, and sending their proxy materials to shareholders owning at least 50% of the company's stock. The AFL-CIO and United Mine Workers indicated in their proxy materials that the total cost for their solicitation was estimated to be only \$15,000. The AFL-CIO and United Mine Workers included Warrior Met Coal's director slate on their proxy card (although they did not nominate any directors or make a voting recommendation as to the directors), along with management's proposals and the five non-binding shareholder proposals, and, because

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<sup>45</sup> The Staff took this approach, for example, in the early 1990s during litigation involving the application of the ordinary business exception to shareholder proposals requesting implementation of nondiscrimination policies, and more recently during the 2015 proxy season while the SEC was reconsidering the application of the conflicting proposals exception in Rule 14a-8(i)(9).

<sup>46</sup> The amendment to Rule 14a-4(d) also means that dissidents can actively solicit proxies to vote against company director nominees in a "vote no" campaign, which occurred at several companies during the 2024 proxy season.

<sup>47</sup> Under Rule 14a-4(c)(2), if a proponent who plans to introduce a floor proposal satisfies certain conditions, including filing and sending its own proxy statement and proxy card to shareholders owning sufficient shares to approve its proposal, the company needs to include that proposal as a separate voting item in its proxy statement and on its proxy card if it wishes to use proxies solicited from shareholders to vote on the floor proposal.

the AFL-CIO and United Mine Workers satisfied 14a-4(c)(2), Warrior Met Coal needed to include all five of the AFL-CIO and United Mine Workers proposals (but not a supporting statement by the shareholders) in its proxy statement and on its proxy card so that it could solicit votes against the proposals.

The proposals submitted by the AFL-CIO and the United Mine Workers, which had been in collective bargaining negotiations with Warrior Met Coal for the past three years, raised typical corporate governance issues usually addressed under Rule 14a-8 (four proposals covered various corporate governance matters, including shareholder approval of poison pills, blank-check preferred stock, golden parachutes, and proxy access, and a fifth proposal requested an assessment of Warrior Met Coal's respect for the human rights of freedom of association and collective bargaining).

Warrior Met Coal supported the proxy access shareholder proposal but opposed the other shareholder proposals. ISS recommended shareholders vote for all of Warrior Met Coal's proposals, including its director nominees, and for all but two of the shareholder proposals (the proposals related to shareholder approval blank-check preferred stock and golden parachutes). The proxy access and poison pill proposals received majority support, while the other three shareholder proposals failed (although the shareholder proposal requesting an assessment related to labor matters received support from 46% of votes cast).

### ***C. Stalemate at the SEC and Congress on Rule 14a-8 Regulatory Change***

#### **1. SEC Amendment of Rule 14a-8**

As discussed in our 2023 update,<sup>48</sup> the SEC proposed significant amendments to Rule 14a-8 in July 2022 (the "2022 Proposed Amendments"). If adopted, the 2022 Proposed Amendments would formally modify three substantive bases for exclusion of shareholder proposals—substantial implementation, duplication, and resubmission.<sup>49</sup> In keeping with the thrust of SLB 14L and the Staff's more restrictive interpretations of Rule 14a-8's exclusions since 2021, the 2022 Proposed Amendments would have the effect of further limiting the availability of these grounds for exclusion, likely leading to more shareholder proposals going to a vote.

After initially targeting adoption of the 2022 Proposed Amendments by October 2023, the SEC has once again postponed its target date. According to the SEC's Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions (the "Reg Flex Agenda") released on July 7, 2024,<sup>50</sup> the SEC is now targeting adoption of the 2022 Proposed Amendments by April 2025. With the 2024 U.S. elections looming, whether the 2022 Proposed Amendments are adopted and go into effect will likely turn on the outcome of the Presidential election. Moreover, in light of the Supreme Court's overruling *Chevron*

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<sup>48</sup> 2023 Shareholder Proposals Update.

<sup>49</sup> See Release No. 34-95267 (the "2022 Proposing Release"), available [here](#).

<sup>50</sup> *Agency Rule List – Spring 2024 Securities and Exchange Commission, Office of Information and Regulatory Affairs* (2024), available [here](#).

deference,<sup>51</sup> the SEC likely will face a challenge to its authority to use Rule 14a-8 to regulate shareholder proposals if it proceeds with amending the rule.

## 2. Congressional Efforts to Reform Rule 14-8 Appear to Have Stalled

Congressional efforts to reform Rule 14a-8 appear to have been put on the backburner in the run-up to the 2024 elections. As discussed in last year's update,<sup>52</sup> the House Financial Services Committee Chairman Patrick McHenry (R-NC) announced in 2023 the formation of a Republican ESG Working Group, comprised of nine members and led by Representative Bill Huizenga (R-MI), "to combat the threat to our capital markets posed by those on the far-left pushing environmental, social, and governance (ESG) proposals."<sup>53</sup> The Working Group was established to "[r]eign in the SEC's regulatory overreach; [r]einforce the materiality standard as a pillar of our disclosure regime; [a]nd hold to account market participants who misuse the proxy process or their outsized influence to impose ideological preferences in ways that circumvent democratic lawmaking." Among its key priorities is reforming the Rule 14a-8 no-action request process, which the Working Group argues is now "a mechanism for SEC staff to project its views about the 'significance' of non-securities issues, rather than a process for ensuring shareholder proponents' interests are aligned with those of their fellow shareholders."

In July 2023, Representative Bryan Steil (R-WI) introduced H.R. 4767, the Protecting Americans' Retirement Savings from Politics Act,<sup>54</sup> which would, among other things, (1) raise the resubmission thresholds for shareholder proposals under Rule 14a-8(i)(12), (2) nullify the 2022 Proposed Amendments, (3) permit companies to exclude a proposal if "the subject matter of the shareholder proposal is environmental, social, or political (or a similar subject matter)," and (4) permit companies to exclude proposals that implicate ordinary business matters under Rule 14a-8 regardless of whether they relate to a "significant social policy issue." H.R. 4767 was referred to the full House of Representatives but has yet to be brought to a vote. On September 27, 2023, the House Financial Services Committee held a hearing entitled "Oversight of the Securities and Exchange Commission," with Chair Gensler testifying. The hearing, which was held to "examine the regulatory developments, rulemakings, and activities that the SEC has undertaken in the period since October 5, 2021," covered the 2022 Proposed Amendments.<sup>55</sup> However, the Working Group's push to reform Rule 14a-8 appears to

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<sup>51</sup> See, *Loper Bright Enterprises v. Raimondo* (June 28, 2024), discussed in our update *Supreme Court Overrules Chevron, Sharply Limiting Judicial Deference To Agencies' Statutory Interpretation* (June 28, 2024), available [here](#). The Supreme Court's ruling in *Corner Post v. Board of Governors, Federal Reserve System* (July 1, 2024), holding that the Administrative Procedure Act's statute of limitations runs from when an agency rule injures the plaintiff, not when the agency issues the rule, may also support increased challenges to Rule 14a-8.

<sup>52</sup> Available [here](#).

<sup>53</sup> Press Release, *McHenry Announces Financial Services Committee Republican ESG Working Group* (Feb. 3, 2023), available [here](#).

<sup>54</sup> Available [here](#).

<sup>55</sup> *Memorandum re September 27, 2023, Full Committee Hearing* (September 22, 2023), available [here](#).

have stalled, and Rep. Huizenga has acknowledged in interviews that the anti-ESG bills advanced by the Working Group are unlikely to advance further.<sup>56</sup>

#### ***D. Shareholders Continue to Use Exempt Solicitations***

The use of exempt solicitation filings by shareholder proponents increased slightly in 2024, including as part of efforts to generate greater publicity for their proposals in advance of shareholder meetings or to address other topics. Under Rule 14a-6(g) under the Exchange Act, shareholders owning more than \$5 million of a company's securities generally must file a Notice of Exempt Solicitation (an "Exempt Notice") on EDGAR when soliciting other shareholders to vote on a proposal without seeking to act as a proxy. The rule is one of several exempting certain solicitations from the proxy filing requirements, and it was designed to address concerns that institutional investors and other large shareholders would conduct "secret" solicitations. However, in recent years, these filings have primarily been used by smaller shareholders and shareholder representatives to publicize their views on various proposals, as the Staff does not restrict their use of these filings. In this regard, approximately 68% of Exempt Notices filed in 2024 were identified as voluntary filings by shareholders who did not own more than \$5 million in company stock, down slightly from 71% from 2023. As a result, it seems that shareholders continue to use these filings outside of Rule 14a-6(g)'s intended scope, resulting in some compliance issues and potential confusion for other shareholders when evaluating the items to be voted on.

As of June 1, 2024, there were a record-high 357 Exempt Notices filed since the beginning of the calendar year, up slightly from 347 as of the same date in 2023 and 285 as of the same date in 2022. Frequent filers included As You Sow with 44 filings (down from 48 in 2023), Bowyer Research, Inc. with 41 filings (up from zero in 2023), John Chevedden with 28 filings (level with 2023), the National Legal and Policy Center ("NLPC") with 22 filings (down from 29 in 2023), and Inspire Investing, LLC with 22 filings (up from zero in 2023). These top five filers were responsible for almost 44% of all Exempt Notices during the calendar year. Several proponents who filed numerous Exempt Notices in 2023 significantly reduced the number of their filings in 2024, such as New York State Common Retirement Fund with seven filings (down from 18 in 2023) and Majority Action, LLC with three filings (down from 16 in 2023). All of the Exempt Notices filed by As You Sow, John Chevedden, and NLPC, were voluntary, while neither Bowyer Research, Inc. nor Inspire Investing, LLC (who were both new to Exempt Filings) designated their filings as either voluntary or mandatory.

In 2023, we first identified a trend by which intervening third parties filed Exempt Notices to publicly express their views on shareholder proposals submitted by shareholder proponents with whom they have no apparent relationship. That trend continued in 2024, particularly among anti-ESG advocates. For example, 17 of Inspire Investing, LLC's 22 Exempt Notices were filed in support of proposals submitted by other shareholder proponents, such as a proposal submitted by NCPPR at Salesforce, Inc. requesting a report on risks related to denying or restricting service to users or

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<sup>56</sup> See David Hood, *Anti-ESG House Bills Struggle to Clear Competing GOP Priorities*, Bloomberg, Nov. 17, 2023, available [here](#).

customers<sup>57</sup> and the proposal jointly submitted by Bowyer Research and The Bahnsen Family Trust at Walmart Inc. requesting a report on how the company’s policies and practices impact employees and prospective employees based on their religion or political views.<sup>58</sup> As in prior years, various anti-ESG organizations also submitted Exempt Notices to urge shareholders to vote against various proposals. For example, Bowyer Research filed an Exempt Notice urging shareholders to vote against a proposal requesting a report on the implementation of Tripadvisor, Inc.’s Global Human Rights Policy submitted by Mercy Investment Services, The Episcopal Church and Portico Benefit Services.<sup>59</sup> Bowyer Research also filed Exempt Notices to lobby against proposals submitted at a number of companies, including Lockheed Martin Corp., HP Inc., Starbucks Corp., and Intuit Inc. Notably, several of Bowyer Research’s Exempt Notices did not advocate for any particular vote by shareholders—instead they were general whitepapers on issues such as political activism and shareholder value.<sup>60</sup>

Despite the continued growth in the use of Exempt Solicitations, the Staff has continued to avoid addressing the potential for abuse. That potential abuse may be compounded if intervening third parties, who may or may not be shareholders, continue to use Exempt Notices to support or oppose shareholder proposals submitted by shareholder proponents or, as we saw this year, use Exempt Notices for general advocacy purposes not directly related to a specific shareholder proposal.<sup>61</sup> We continue to recommend that companies actively monitor their EDGAR file for these filings, review any Exempt Notices carefully, and inform the Staff to the extent they believe an exempt solicitation filing contains materially false or misleading information or may not have been filed by a shareholder.<sup>62</sup>

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<sup>57</sup> Available [here](#).

<sup>58</sup> Available [here](#).

<sup>59</sup> Available [here](#).

<sup>60</sup> For example, see the Exempt Notices filed at The Walt Disney Co. and Starbucks Corp., *available [here](#) and [here](#), respectively*.

<sup>61</sup> Unlike Exempt Notices filed by shareholder proponents, who were required to provide proof of their shareholder status when submitting their shareholder proposals, companies may be unable to confirm whether the intervening third parties are actually shareholders eligible to file Exempt Notices under Rule 14a-6(g).

<sup>62</sup> In 2018, the Staff published two new Compliance and Disclosure Interpretations (“C&DIs”) providing some guidance on the use of Exempt Notices. Question 126.06 confirms the Staff’s view that “voluntary” Notices of Exempt Solicitations can be filed, and Question 126.07 clarifies that each Notice of Exempt Solicitation, whether filed voluntarily or because it is required under Rule 14a-6(g), must include a notice page setting forth the information required under Rule 14a-103. Both C&DIs are available [here](#).

## ***E. Practice Pointers for the 2025 Proxy Season and Beyond***

While the 2024 proxy season is just now concluding, companies should begin preparations for the 2025 proxy season now.

- **Monitor the Legal, Regulatory and Investment Landscape.** While regulatory change is unlikely to come prior to the November 2024 election, as we saw following the 2020 election, changes in Presidential administration and leadership at the SEC can bring abrupt changes to the shareholder proposal process. Companies should continue to monitor legislative, judicial, and other legal developments that may impact shareholder proposals heading into the 2025 proxy season. In addition, companies should be mindful to familiarize themselves with the proxy voting and other governance policies released by proxy voting firms and major institutional investors, particularly as members of the investment community issue updated policies and guidance in the run up to the 2025 proxy season.
- **Don't Shy Away from the No-Action Request Process.** Given the success of no-action requests during the 2024 proxy season, companies should be sure to carefully consider whether there are substantive bases (in addition to procedural grounds) for challenging any proposals received for the 2025 proxy season.
- **When Submitting No-Action Requests, Be Mindful of Staff Review Times.** As part of its efforts to modernize the Rule 14a-8 no-action request submission process, the Staff introduced an online portal through which all no-action requests and related correspondence must be submitted. Although Rule 14a-8 requires a company to submit no-action requests at least 80 calendar days prior to the date it intends to file its definitive proxy materials, the portal requires companies to advise the Staff of its anticipated deadline to print its proxy materials in order to help facilitate timely responses. In 2024, the average Staff no-action request response time, excluding withdrawals, was 64 calendar days. Companies should factor this extended time period into proxy timelines and be sure to keep the Staff apprised of any changes to their printing and filing deadlines to help ensure Staff responses are timely received.
- **Mind the Ps and Qs of Procedural Challenges.** While the 2024 proxy season saw a decline in success rates for procedural no-action requests (68% in 2024, compared with 80% in 2023), they still represented 29% of successful requests. As such, companies should continue to carefully review shareholder proposals received and raise identified deficiencies in timely delivered deficiency notices that provide clear, plain English explanations of any identified procedural deficiencies.
- **Be Ready for Proposals Submitted Under Advance Notice Bylaws.** As the developments at Warrior Met Coal demonstrate, shareholders now have a more viable alternative to Rule 14a-8 that is supported by the recent amendments to Rule 14a-4. While it remains to be seen if more proponents incur the time and expense to take the Rule 14a-4 floor proposal route to avoid the requirements and limitations of Rule 14a-8, companies should be ready to respond

expeditiously to the submission of proposals under their advance notice bylaws going forward, including preparing a checklist of requirements under their advance notice bylaws.

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