ESG VIEWPOINT

The 2022 US Proxy Season: Emerging ESG-related matters in the US market and what it portends for 2023

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At a glance

- The 2022 US Proxy Season saw a record increase in ESG-related shareholder proposals at US-listed companies compared with 2021.
- The market saw a notable sum of resolutions receive majority shareholder support, and an unprecedented number of companies chose to recommend support (or offer no opinion) regarding how shareholders should vote on environmental-related proposals.
- A record number of ESG-related shareholder proposal were also withdrawn, with more than half settled in some form prior to the AGM vote, while we saw environmental and social-related activism via multiple channels beyond the shareholder proposal course of action.
- This Viewpoint highlights themes assessed in H1 2022 that we believe will gain prominence – or, in some cases, further prominence – during the 2023 proxy season.

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US Proxy Season 2022

This past proxy season was touted as one for the ages vis-à-vis volume of ESG-related proposals. It did not disappoint. According to **Georgeson**, over 900 ESG-related proposals were filed for proxy season 2022. Of those, over 600 were placed on annual general meeting (AGM) dockets, compared to roughly 400 in 2021.

A more recent review conducted by the Sustainable Investments Institute (Si2) narrowed their definition to environmental, social, and sustainable governance proposals. Si2 found that 282 of these proposals came to a vote during the 2022 proxy season, also a record (as defined).

Irrespective of how ESG may be defined, the market witnessed a 50-60% increase in ESG-related shareholder proposals at US-listed companies when compared to 2021. That's remarkable – but it wasn't completely unexpected. Setting aside the obvious steady inflows and increased appetite for ESG- or sustainability-linked investment and engagement strategies, the Division of Corporation Finance at the US Securities and Exchange Commission (SEC) released Staff Legal Bulletin (SLB) No. 14L in November of 2021. The result of SLB 14L was that a greater number of ESG-related proposals succeeded in making their way onto issuer ballots for 2022.[1]

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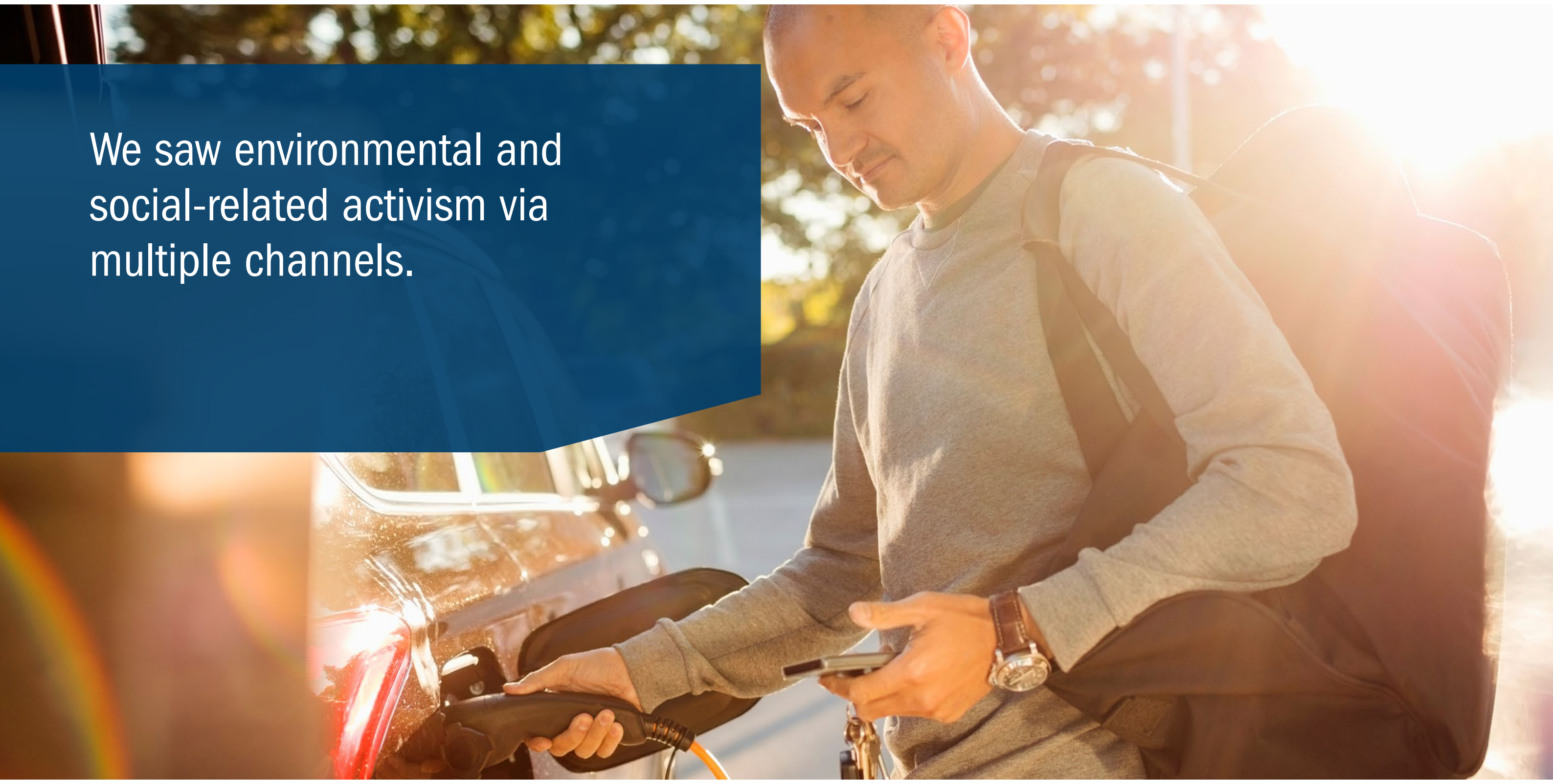
[1] SLB 14L was issued with the intent to "streamline and simplify [the SEC's] process for reviewing no-action requests, and to clarify the standards staff will apply when evaluating these requests." A no-action request is submitted to the SEC by an issuer to obtain acceptance (or rejection) concerning the company's wish to exclude a shareholder proposal from the AGM ballot. In effect, SLB 14L removed interpretive barriers from the now rescinded SLB Nos. 14I, 14J and 14K that had resulted in issuers prevailing on various ESG-related no-action proceedings via "ordinary business" and "economic relevance" exclusion rationales.

We saw environmental and social-related activism via multiple channels.



In addition to the record number of ESG-related proposals that were filed, the market saw a notable sum of resolutions receive majority shareholder support. Moreover, an unprecedented number of companies chose to recommend support (or offer no opinion) regarding how shareholders should vote on environmental-related proposals. 34 ESG-related proposals received majority vote totals. Although that compares to a roughly 13% year-over-year decrease, it's the second-highest number of majority votes ever recorded. Although environmental- and social-related proposals saw increased levels of majority support, this did not make up for the precipitous 67% year-over-year drop in majority-supported political expenditure and lobbying proposals.

A record number of ESG-related shareholder proposal were also withdrawn. More than half were settled in some form prior to the AGM vote, thus signalling its extraordinary effectiveness as a tool in moving companies forward on ESG matters.

Lastly, we saw E&S-related activism via multiple channels beyond the shareholder proposal course of action. For example, Carl Icahn filed proxy contests with E&S-related matters as the primary focus (McDonald's) and tertiary foci (Kroger and, to a lesser extent, Southwest Gas). To note, Mr. Icahn was able to extract a Cooperation Agreement at Southwest Gas but failed to garner support at McDonald's, likely triggering his withdrawal at Kroger. Furthermore, shareholder advocacy groups such as Majority Action, As You Sow, and SOC Investment Group continued to file a record number of ESG-related 'vote-no' campaigns and attendant solicitations in support of proposals.

Interested in learning more?

Keep on scrolling or click on the quick links to discover our thoughts for the 2023 proxy season

Fossil fuel financing
Equity audits
Reproductive rights
Concealment Clauses
Severance Ratification
Catch-all

Fossil fuel financing proposals are poised to eclipse 2022 levels of support by a multiple in proxy seasons to come.

2023 US Proxy Season Preview

Rather than submit a comprehensive review of proposals that dominated the 2022 proxy season, we instead highlight themes assessed in H1 2022 that we believe will gain prominence – or, in some cases, further prominence – during the 2023 proxy season.

Fossil Fuel Financing

We tracked over a dozen fossil fuel financing shareholder proposals that were filed at major financial institutions in 2022. Banks such as Bank of America, Citigroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley, and Wells Fargo all received proposals calling for either a cessation of new fossil fuel extraction lending by end of 2022 or a report on their alignment to the International Energy Agency's (IEA's) Net-Zero 2050 Scenario. Proponents argued that each of the companies' financing schemes were inconsistent with the IEA.

Although average support for the above-mentioned proposals mostly hovered around 11%, related (albeit less stringent) proposals at insurers' Chubb and Travelers received majority support.[2] Next year, expect proponents that targeted banks in 2022 to recalibrate and tailor their 2023 resolved clauses according to the above successes. Moreover, as investors become increasingly sophisticated on the topic of climate, fossil fuel financing proposals are poised to eclipse 2022 levels of support by a multiple in proxy seasons to come.

[2] Proponents asked for those respective boards to produce a report "addressing if and how [the company] intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities, in alignment with the Paris Agreement's 1.5 [degrees Celsius] goal, requiring net zero emissions." See Chubb Limited's proposal as an example here.

Commitments to enterprise-wide equity audits will continue to rise as the support for shareholder proposals increase in 2023.

Equity Audits

Following the murder of George Floyd and subsequent protests in 2020, the market saw a flurry of proposals during the 2021 season that asked companies to conduct enterprise-wide audits related to racial equity, racial justice, or civil rights. Given their relative novelty, not one equity audit proposal received majority support. In 2022, these proposals grew in number and support, including majority shareholder wins at Altria, Apple, Home Depot, Johnson & Johnson, Maximus, McDonald's, Stericycle, and Waste Management. Major intuitions have committed to conducting an equity audit leveraging outside expertise and subsequently disclosing a report to investors. Considering this increased rate of voluntary and involuntary adoption, peer companies will be under pressure to conduct their own audits or risk being targeted. We expect the number of proposals and support for this topic to exponentially increase in 2023.

Reproductive Rights

In 2022, there were four reproductive right proposals: one at Kroger (which was withdrawn), Lowe's, TJX, and Walmart. The Educational Foundation of America sought a "Report on Risks of State Policies Restricting Reproductive Health Care" at Lowe's; Trillium Asset Management asked for a "Report on Risk Due to Restrictions on Reproductive Rights" at TJX; and Clean Yield Asset Management requested a "Report on Impacts of Reproductive Healthcare Legislation" at Walmart. After the Supreme Court overturned Roe v. Wade in June – thus ending federal abortion rights – dozens of companies released public commitments on the topic. Companies that responded generally offered assistance (or full coverage) for an employee's cost to travel for an abortion. Although the aforementioned proposals each failed to receive more than 35% support, investors are likely to evolve on this topic and apply a more seasoned approach when evaluating in 2023.

Investors are likely to enhance their approaches to reproductive rights proposals in 2023, which could trigger higher levels of support.

We think proponents of concealment clause proposals will take note and target a wider array of companies in sectors beyond technology and finance.

Concealment Clauses

Having dropped to a mere few proposals in 2021, the number of concealment clause and arbitration-related proposals grew in 2022. The majority were filed at technology companies and financial institutions. This proxy season, four concealment clause proposals received majority support – at Apple, IBM, Sunrun, and Twitter. Moreover, notable support was observed at Digital Realty Trust and Meta. Considering the support observed, we think proponents will take note and target a wider array of companies in sectors beyond technology and finance.

Severance Ratification

More than a dozen companies saw severance-related proposals filed this season, all of which received noteworthy support. John Chevedden and Kenneth Steiner, a pair of historic US corporate activists, asked issuers for shareholder approval concerning "any senior manager's new or renewed pay package… exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus." Majority support was garnered at Abbvie, Alaska Air, Fiserv, and Spirit Aerosystems. Notably, those that did not pass also received significant levels of support (e.g., at Colgate, Southwest, and UnitedHealth, each receiving greater than 40% support). We expect simple, best-practice governance mechanisms like severance ratification to extend its adoption and successes into 2023. Although tangential, it is also worth noting the record number of failed say-on-pay (SOP) proposals. Thus far in calendar year 2022, 18 S&P 500 companies have failed to receive majority shareholder support, while 62 companies in the Russell 3000 have themselves been dealt a loss. Compare that with just five years ago, where a mere six S&P 500 companies received failed SOP proposals with only 25 in the Russell 3000.

We expect simple, best-practice governance mechanisms like severance ratification to extend its adoption and successes into 2023.

We also expect investors and issuers to focus their efforts on topics related to biodiversity, climate targets, and just transition plans.

Catch-all

Additional topics we believe investors and issuers are likely to address during off-season engagement and proxy season 2023 include:

Environmental:

- **Biodiversity loss**
  (risk management, supply chains, and financing)
- **GHG targets**
  (including proposals related to Scope 3 emissions, methane, and scenario analyses)
- **Plastic waste and recyclability**
  (environmental management and virgin plastic production)

Social:

- **Guns**
  (such as reports related to human rights, financing, or advertising)
- **Just transition plans**
  (specifically, reporting in carbon-intensive industries)
- **Lobbying congruency**
  (ensuring alignment of expenditures and values)
- **Pay gap disclosure**
  (by gender and, in particular, race)

This analysis will inform our Active Ownership engagements going forward, and, ultimately, prepare our team to effectively evaluate matters that may define the proxy season ahead.

Get to know the author

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Andrew is a Vice President on the Responsible Investment team covering North America, specializing in power and utilities and financial institutions. Andrew joined from the Carbon Tracker Initiative think tank where he was Head of Stewardship and responsible for engaging asset managers on energy transition pathways, including broader net-zero engagement and voting strategies. Prior to Carbon Tracker, Andrew consulted public and private C-suites and boards on material ESG matters at Russell Reynolds Associates after having worked on the stewardship and proxy voting teams at both BNY Mellon and Nuveen. Andrew has a Doctorate of Jurisprudence from Northeastern Law and a Bachelor's in Government from Suffolk University.

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