



Council of Institutional Investors®
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Governance Guide: Proxy Voting

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Disclaimer

This guide is designed to inform readers about the most important rules and procedures for proxy voting by U.S. institutional investors at public companies’ annual meetings of shareholders. While CII exercised due care in preparing this guide, it does not guarantee the accuracy of the information.

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Overview

Owning stock in a company gives an investor the right to vote on important matters concerning corporate policies and governance, including the election of corporate directors. Prior to its annual meeting, or at any other time that it solicits shareowner votes, a U.S. company must make available to its shareowners a proxy statement and a proxy card or ballot. The proxy statement discusses the company's management, governance practices and certain performance data, along with descriptions of the proposals on which shareowners are asked to vote. Proxy statements and proxy cards are filed with the Securities and Exchange Commission (SEC) and made publicly available to all market participants.

While shareholders can vote in person at shareholder meetings, the vast majority vote remotely by electronically sending voting instructions to a third party legally authorized to execute the instructions. The ability to vote by proxy is critical, given the seasonality of shareowner meetings. Most annual meetings at U.S. public companies take place in April, May or June; in 2023, 82% of meetings at U.S.-based Russell 3000 companies took place during those months.¹ In some overseas markets, proxy voting is even more concentrated. In Japan, for example, more than one-quarter of companies held their annual meetings on the same day in 2022 and 2023, and this figure increased to nearly 30% for 2024, according to Japan Exchange Group.²

Proxy voting is a communication tool that investors can use to influence corporate governance and operations at the companies they own. It offers shareowners a tangible way to signal to boards and managers whether the company is on the right track. In some cases, proxy voting also drives change directly. That is why voting rights are considered part of the underlying value of a stock.

Proxy voting is also an oversight mechanism by which a public company's management and board of directors are held accountable to the interests of their shareholders. By allowing shareholders to more effectively advocate for their interests, proxy voting can help mitigate the principal-agent problem, or the misalignment in interest that may arise between shareowners and the company they entrust with their savings.

The proper scope of proxy voting has been the subject of a vibrant discussion in recent years. While many investors increasingly see proxy voting as a vehicle for driving a broad range of corporate activity, including with

¹ Based on CII's analysis of shareholder meeting data from ISS as of May 7, 2024. Analysis covers all annual meetings at US-based Russell 3000 companies between Jan 1, 2019 and Dec 31, 2023.

² [Proxy voting in Japan: Concentration of AGMs and lack of English disclosure remain key challenges | IR Magazine](https://www.jpvc.com/press202404e.pdf); "The Change in Concentration Rates for the Most Concentrated Day Each Year, at <https://www.jpx.co.jp/english/listing/event-schedules/shareholders-mtg/tvdivq00000007jz-att/press202404e.pdf>, p. 4.

respect to environmental and social matters, other investors prefer to defer these issues to the directors they elect.

This paper will discuss the evolution of proxy voting as an institution, how investment funds determine how to vote their proxies, and the different guidelines and regulations that have established today's proxy voting norms.

Proxy Voting Over Time

Advancements in proxy voting over time have transformed it into a prominent part of share ownership and have helped create a new class of empowered shareholders. Shareholder voting—as a tool, a mechanism for investors to give feedback to the board and management—has been in place since as early as the Dutch East India Company.³ Proxy voting in particular—the ability to vote shares without being physically present—emerged in the late 1800s.⁴ This right is guaranteed to investors under corporate law; however, the manner in which proxy voting is practiced today has evolved from its origins.

Analyzing proxy-related issues and managing the execution of votes can be complex, time-consuming and costly for shareholders, particularly for institutions that own stock in thousands of companies. Historically many institutional investors were more inclined to “vote with their feet” in response to concerns over governance and other matters subject to proxy voting, rather than develop a program to flex their voting power across the portfolio. Historically, most institutional investors relied on the voting services of outside money managers. This began to change with the 1974 Employee Retirement Income Security Act (ERISA). The law—which legally covers corporate and union pension plans, but also serves as a guidepost for the practices of state and local pension plans—requires fund fiduciaries to act solely in the interests of plan participants and beneficiaries.

As merger and acquisition activity heated up in the 1980s, reports revealed that outside money managers were being pressured by corporate plan sponsors to cast votes for or against controversial ballot items, such as anti-takeover provisions and tender offers. In response, the Department of Labor (DOL), in a widely released 1988 letter to Avon Products (see Appendix B), asserted that proxy voting rights, because they had economic value, are pension plan assets and subject to the same ERISA fiduciary standards as other plan assets. That meant that pension funds had a duty to vote their proxies in the best interests of plan participants and beneficiaries.

A lead driver of this change in how proxy voting is practiced has been the evolution of invested capital from an

³ For an explanation of shareholder voting and rights in the 17th century at the Dutch East India Company, the first known publicly traded company, see “IV. Voting Restrictions in Comparative Perspective” in [The Evolution of Shareholder Voting Rights: Separation of Ownership and Consumption](#) | Yale Law Journal.

⁴ [Shareholder Meetings: Unearthing the history](#) | Directors & Boards

atomized, incongruous base of independent beneficial owners to a landscape where professionally managed funds invest pooled resources making engaged ownership more practical and economical, including the exercise of voting rights on behalf of those end investors. Institutional investors today own nearly 70% of public shares, and institutional and retail investors have different voting patterns.

Data supports the notion that pooled, professionally managed assets are more engaged in proxy voting. According to proxy service provider Broadridge, just over 80% of shares held by institutional investors were voted during the 2023 proxy season, while only about 30% of those held by retail investors were voted.⁵ And this percentage can fall even lower, with retail investors voting fewer than 10% of their shares at many companies, according to investor relations firm The Shareholder Service Optimizer.⁶

Shareholder voting by segment

% of shares voted, retail vs. institutional, 2019-2023

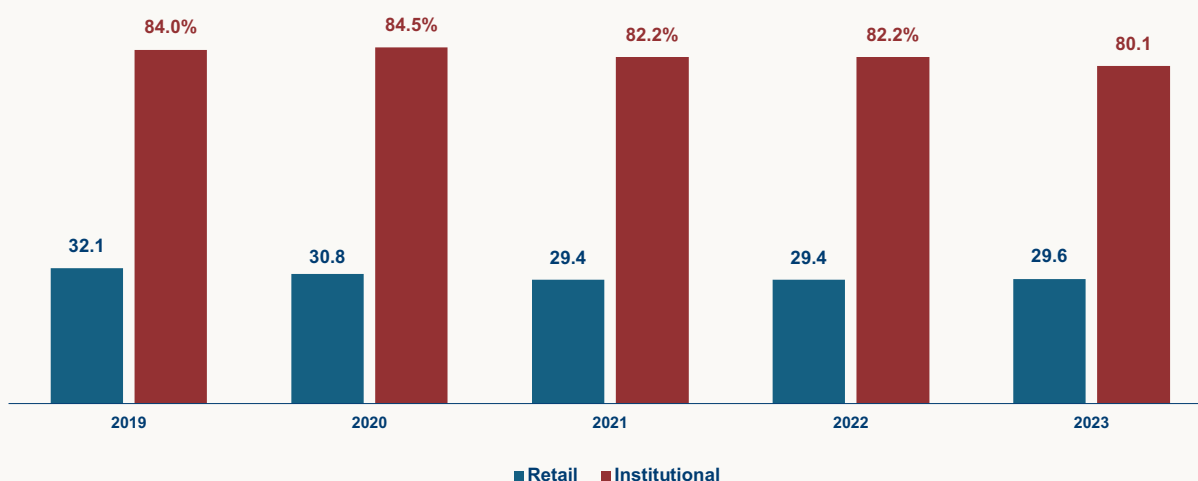


Figure 1. Percent of shares voted by retail and institutional shareholders from 2019 to 2023. Retail investors voted 29.6% of the shares they owned in 2023, a slight increase from 2022. However, this is lower than 32.1% in 2019 and represents a trend of lower retail shareholder voting over time.

Source: Broadridge

Fund managers have also built a new, sophisticated infrastructure to help end investors exercise their proxy voting rights. Most recently, end-to-end vote confirmation and pass-through voting have provided end investors with greater assurance and control over how their votes are cast.

⁵ Institutional investors have historically accounted for the vast majority of voting activity at public companies, but voting participation levels have tapered slightly in recent years. 29.6% of shares held by retail investors were voted during the 2023 proxy season, while 80.1% of shares held by institutional investors were voted during the same period, according to the firm's 2023 *ProxyPulse* report, available at <https://www.broadridge.com/assets/pdf/broadridge-proxypulse-2023-proxy-season-review.pdf>.

⁶ See "Drops In Retail Investor Voting Continue" in *The Shareholder Service Optimizer*, Volume 30, Issue 1, Q1 2024, https://optimizeronline.com/wp-content/uploads/VOLUME_30_NUMBER_1.pdf, p. 4.

Proxy voting has become a more prominent part of share ownership. Proxy voting has become influential in how companies behave since the 1990s, with shareholder proposals playing a significant role in the formation of annual meeting agendas.⁷ This trend has only continued. From 2018 to 2022 alone, the number of proposals voted on at Russell 3000 companies increased 26% from 442 to 555.⁸

As institutional investor clients increasingly direct their attention toward environmental and social factors in the investment decision-making processes, so too have they placed more attention on these topics when casting their votes. While “ordinary business” matters are not eligible for inclusion in the proxy statement, environmental and social proposals have a long history of being included.⁹ This is the primary mechanism by which institutional investors have elevated these issues. Average annual support levels for these proposals have grown for decades before reaching a peak level of 34% in 2021.¹⁰

In broad terms, shareholder proposals for environmental and social issues received quite limited support until recent decades, when they began to receive significant minority support and in some cases majority support.¹¹ Support for environmental and social shareholder proposals has declined notably since 2021. Many factors contribute to this decline, including more leniency from the SEC on no-action requests, an ESG backlash, the growth of “anti-ESG” proposals as mentioned earlier in this section, and the spread of proposals that many asset managers view as too prescriptive.

However, this decline shows signs of reversing in 2024. For the year through May 31, median support for environmental shareholder proposals tapered up to 21%, up 1.2 percentage points from 19.8% during the same period in 2023. Social proposals saw an even greater increase in median support from 18.5% in January-May

⁷ For a lookback on the rising influence of shareholder proposals and other governance advocacy, see “Antitakeover Measures and Corporate Scandals Prompt Calls for Governance Reform” in *The Long View: The Role of Shareholder Proposals in Shaping U.S. Corporate Governance (2000-2018)* by Kosmas Papadopoulos, ISS Analytics, February 6, 2019, <https://corpgov.law.harvard.edu/2019/02/06/the-long-view-the-role-of-shareholder-proposals-in-shaping-u-s-corporate-governance-2000-2018/>.

⁸ “Shareholder Proposal Pass Rate, by Index (2022-2018),” data by ESGAGUE, <https://corpgov.law.harvard.edu/2022/11/05/shareholder-voting-trends-2018-2022/>. Note: proposal count from ESGAGUE is for shareholder-sponsored proposals at Russell 3000 companies only.

⁹ For more about Rule 14a-8(i)(7), which was most recently amended in 2021 to limit the scope of what companies can exclude via the ordinary business exclusion, see [New SEC Staff Legal Bulletin Eases Path for Rule 14a-8 Shareholder Proposals on Environmental, Social, and Governance Issues | Foley & Lardner LLP](#). For an example of the historical use of shareholder proposals to address apartheid in South Africa, see also [The Impact of Shareholder Activism on Corporate Involvement in South Africa During the Reagan Era](#).

¹⁰ “Are There Too Many ESG Shareholder Proposals?” by Lindsey Stewart, CFA, Morningstar, Sep 13, 2023, <https://www.morningstar.com/sustainable-investing/are-there-too-many-esg-shareholder-proposals>.

¹¹ Median support for environmental and social shareholder proposals hovered around 6% from 2000-2008 but increased towards the end of the decade. Median support for such proposals reached about 10% in 2010, and by 2013, median support for such proposals exceeded 20%. See *External Pressures in the Aftermath of the Financial Crisis* in [The Long View: US Proxy Voting Trends on E&S Issues from 2000 to 2018 \(harvard.edu\)](#). Note: These figures are based on the older methodology of “For” versus “For + Against + Abstained” but are still valuable in understanding long-term trends.

2023 to 20.7% in January-May 2024.¹²

Authority and Control Over Proxy Voting

Plan Authority Over Voting

Funds do not necessarily retain full authority over their proxy votes; rather, proxy voting authority arrangements are set jointly between funds and their asset managers or service providers. A fund can retain voting authority over some or all ballot items by marking proxy cards itself or by specifically instructing its investment manager how to mark the plan's ballots. But an investment manager legally can refuse to include the instructions in its contract. An investment manager that has the authority to make proxy voting decisions over an ERISA fund's shares is responsible for making sure those shares are voted prudently in the best economic interests of the fund's participants and beneficiaries.

Pension funds that delegate voting authority over a ballot item may not lawfully vote or direct the investment manager's vote on that item unless such directions are agreed to by contract.

Pension funds that want to delegate voting authority but still wish to provide broad-based voting guidance to investment managers develop and furnish proxy voting guidelines. While investment managers must take the guidance into consideration, they retain the right to vote contrary to furnished guidelines if they believe doing so is in the best interests of the client plan's participants and beneficiaries. But in practice, investment manager votes rarely diverge from client guidelines.

Simply furnishing proxy voting guidelines will not do the trick, though, if a pension fund wants to tell its investment manager how to mark particular ballots. Plans that want to direct how investment managers vote on specific issues on specific proxies must have language to this effect in their investment management contracts. These negotiated clauses are binding since contracts between pension plans and investment managers are considered "plan documents" under ERISA.

Such a clause could say that the pension plan reserves the right to direct the investment manager's vote for any ballot item appearing on any proxy card issued by a portfolio company. A clause might also state that the investment manager will contact the pension fund for voting instructions if a ballot item is not covered by the

¹² "Reversal of Declining Support on ESG, Led by Governance and Compensation Proposals" in [Pro-ESG Shareholder Proposals Regaining Momentum in 2024 \(harvard.edu\)](#)

fund's guidelines.

Contractual language could also say the pension plan will tell the investment manager how to vote every ballot item (or certain securities or issues), so that the manager's only voting rule is to physically mark the ballots as instructed.

However, investment managers can refuse to include any curbs on their voting authority in their contracts, or may seek to include language that holds the client fund fully liable for any vote it directs.

Some investment managers even refuse to mark ballots under any voting guidelines except their own. In any case, unless a contract specifies otherwise, a pension plan would violate ERISA if it tried to direct or change an investment manager's vote.

Delegation of Proxy Voting

In deciding whether to vote in-house or delegate proxy voting decision-making to a third party, one problem funds may face is that the guidelines used by an outside money manager or a third-party voting service may differ from a fund's positions on certain issues. Another concern is that different managers or third-party voting agents may have different proxy voting guidelines; and, as a result, delegating to multiple agents or money managers may dilute a fund's vote, since agents may vote differently on a particular proposal.

Where possible, moving proxy voting duties in-house to be handled by fund staff ensures that the shares will be voted consistently the way the fund wants. Another option is to hire a third-party service to vote a fund's shares using the fund's proxy voting policies. As a failsafe, contractual language can specify that the fund can change any vote submitted by the third party on behalf of the fund.

Fiduciary Responsibilities with Third-Party Voting

Even if a plan fiduciary delegates proxy voting to an asset manager or advisory firm, the fiduciary still retains some oversight responsibilities. Plan fiduciaries have a duty to periodically monitor and review the investment manager's proxy voting procedures and the votes they cast. This makes accurate and thorough recordkeeping by the investment manager imperative. Electronic recordkeeping systems can be developed in-house or by a third-party.

ERISA funds are required to retain proxy voting records for six years, while public pension funds are subject to

local recordkeeping rules. Some public funds make their proxy voting records available to the general public through their website, while others do not publicly disclose their voting history.

Plan fiduciaries have no recourse if they delegate all voting authority to an investment manager that votes contrary to the fiduciary's preferences, so long as the votes do not violate ERISA or plan documents. However, a pension fund can write a clause into its contracts with investment managers requiring the manager to report and explain any vote that deviates from the manager's proxy voting guidelines.

For example, one CII member stipulates that each of the fund's investment managers "shall deliver a written proxy voting report to the plan on an annual basis. An 'exception' report shall also be delivered by each investment manager specifying any votes that were cast other than pursuant to the manager's voting guidelines." In cases where CII members furnish proxy voting guidelines to outside money managers, the managers almost always cast votes in accordance with such guidance. Contrary votes were rare enough that neither of the two surveyed member funds felt it necessary to have a written policy in place to handle such situations.

The Role of Proxy Advisors

Service providers such as ISS, Glass Lewis and Egan-Jones offer an array of solutions to help institutional investors manage their proxy voting responsibilities. These offerings are tailored to client needs and preferences, and they may include proposal-specific research, vote execution services (whether according to the client's voting guidelines or the recommendation of the proxy advisor), record-keeping services and voting platforms to help clients vote on a timely and consistent basis.

Many firms that provide vote execution services also advise institutional investors on how to vote for items presented at annual meetings, from director elections to say-on-pay, shareholder proposals and other ballot items. These voting recommendations are generally based on thorough research into the corporate governance structure of the company and the topic of the proposal, the extent to which the proposal has standing, the company that received the proposal, and whether the proposal concerns a legitimate problem at the company. In the case of a director election, a proxy advisor may base its recommendation on the director's past performance and the alignment of their skills and experience with the needs of the company and its board.

Voting Recommendations

Institutional investors often bypass their advisor's vote recommendations by incorporating fund-specific proxy voting guidelines into their vote process. Clients that do look to the advisor for recommendations have a range of

options rather than a single “house” recommendation. For example, in addition to its benchmark voting guidelines, ISS offers specialty voting policies for certain types of funds—such as Socially-Responsible Investment, Taft-Hartley, and Public Funds—and thematic policies including faith-based, climate, sustainability, and global board-aligned.¹³ More recently, in response to criticism that their recommendations are too supportive of environmental and social proposals, ISS began offering an “ESG skeptical” voting policy that votes against ESG-linked shareholder proposals.¹⁴

Scrutiny of Proxy Voting Service Providers

Critics have raised concerns about the lack of competition in the proxy advice market—dominated by ISS and Glass Lewis—and the potential conflicts of interest that arise when proxy advisors sell research tools and services to companies and then rate their governance. As a result, the proxy advice business has come under government scrutiny.

Similar to ERISA regulation, proxy advisor regulation has experienced volatility with changes in presidential administrations. Under the leadership of Chair Jay Clayton, a Trump appointee, the SEC adopted a rule requiring proxy advisory firms to simultaneously disclose their vote recommendations to clients and companies. The rule was part of a broader effort under Clayton’s SEC to reign in the perceived abuse of power by proxy advisory firms, given their significant influence in affecting the outcome of director elections and shareholder proposals.¹⁵

The Clayton SEC also enacted these rules in response to assertions of material omissions and misstatements of fact by proxy advisor firms that affected the credibility and reliability of their research reports. In addition, the 2020 rules classified proxy advice as a solicitation, which increased the legal exposure of proxy advisory firms in the event of such material omissions or misstatements.

CII has advocated against the proxy advisor rule, arguing that allowing companies to have greater influence over proxy advisor reports would harm CII members by adversely impacting the cost, quality, and timeliness of the proxy research they depend on.¹⁶

ISS also responded to the rule by filing a lawsuit against the SEC in 2019, claiming that the rule incorrectly

¹³ <https://www.issgovernance.com/policy-gateway/voting-policies/#tab-1642760604179-3-9>

¹⁴ [‘ESG skeptical’ proxy-voting platform from ISS adopted by Texas Permanent | Pensions & Investments](https://www.issgovernance.com/policy-gateway/voting-policies/#tab-1642760604179-3-9)

¹⁵ <https://news.bloomberglaw.com/esg/sec-rollback-of-proxy-firm-curbs-withstands-second-court-battle>;

<https://www.cooley.com/news/insight/2022/2022-07-22-sec-adopts-amendments-regarding-proxy-rules-applicability-to-proxy-advisory-firms>

¹⁶ https://www.cii.org/files/issues_and_advocacy/correspondence/2020/20200213%20PAF%20sign-on%20letter%20FINAL.pdf

classifies proxy advice as a solicitation. Proxy advice is given according to their clients' instructions with their best interests in mind, and proxy advisors are indifferent to the outcome of an election, ISS argued.¹⁷ In contrast, proponents in proxy solicitations have a stake in the outcome of the elections and wants to advance their own interests, which are not necessarily consistent with those of other investors.

In 2022, the SEC formally relaxed the Clayton-era proxy advisor rules, no longer requiring proxy advisors to provide reports to companies at the same time as their clients. This ruling left the solicitation rules in place, however. As of February 2024, in a win for ISS, the SEC's proxy advisor rule in its entirety was declared invalid by a federal judge.¹⁸

ERISA Guidance

ERISA guidance has changed over time, but the core principles around the rules have remained the same since its inception in 1974. For example, DOL staff have revised their interpretations on the permissibility of integrating non-pecuniary factors into the investment decision-making process. However, these changes in interpretation have not affected the statutory obligations of fiduciaries to act in the best interest of the fund and its beneficiaries. Administrative interpretation can evolve due to changes in presidential leadership and differences in regulatory agendas and priorities from one administration to the next; however, they do not have a significant legal impact and do not change ERISA's oversight of investment decisions by fiduciaries.

In another example, DOL rulemakings can redefine who is considered a "fiduciary" without changing the core responsibilities that fiduciaries are subject to under ERISA. Such a move would instead change who is subject to fiduciary provisions under the act.¹⁹

As fiduciaries under ERISA, plan sponsors are required to act in the best economic interest of the fund. Proxy voting is considered a plan asset and thus falls within the scope of this interest. As a result, proxy voting has also been affected by interpretive changes under each administration—issued through interpretive bulletins and administrative rulemaking—to what is considered part of the fund's best long-term interest. For instance, in its 2008 guidance under the Bush administration, the U.S. Department of Labor issued an interpretive bulletin stating that fiduciaries were only allowed to make investment decisions to advance "the economic interest of the plan."²⁰

¹⁷ [The Basis for ISS' Lawsuit Against the SEC \(harvard.edu\)](#)

¹⁸ [SEC Measure Regulating Proxy Advisory Firms Declared Invalid | Bloomberg Law](#)

¹⁹ [See Here We Go Again: DOL Proposes New Fiduciary Rule | HUB | K&L Gates \(klgates.com\)](#) [Nov 2023] as an example of this distinction. The proposed rule would broaden the scope of investment advisors that are considered "fiduciaries" under ERISA, which would have the effect of subjecting them to best-interest restrictions and other investor protection measures under the Act.

²⁰ <https://www.federalregister.gov/documents/2008/10/17/E8-24551/interpretive-bulletin-relating-to-investing-in-economically-targeted-investments>

Seven years later under the Obama administration, the DOL withdrew its more restrictive 2008 interpretation to revert to the 1994 interpretive bulletin, clarifying that an ESG or economically targeted investment—such as one with impact objective—is not necessarily misaligned with the economic interest of a plan.

In 2018 under the Trump administration, the DOL revised the previous bulletin, warning for ESG factors to be evaluated “appropriate to the relative level of risk and return involved compared to other relevant economic factors.”²¹ Then, in 2020, the DOL issued a formal rule that, in its original form, would have increased scrutiny on ESG funds and investment activity for potential fiduciary breaches, and would have had a chilling effect on the adoption of ESG funds. The final rule instead underscored the need for sponsors to focus on a “prudent assessment” of “pecuniary factors” in their investment decisions.²²

More recently, under the Biden administration, this rule was reversed and plan sponsors are now permitted to consider climate change and other ESG-related factors that can influence risk and return, as long as they exercise the same level of rigor in evaluating and integrating ESG information as they do with traditional pecuniary factors.²³

While each administration may have different views on the incorporation of certain ESG considerations, including proxy voting, a common theme is the importance of rigorous and well-documented decision making to ensure fiduciary obligations are being met.²⁴

Shareholder Activism

In a development several decades in the making, shareholder activists increasingly rely on shareholder proposals and proxy contests as some of the most important tools to exert influence over their portfolio companies. Many large-cap companies receive several shareholder proposals a year, and even if unsuccessful, these proposals can exert pressure on the board to meet a certain demand.

²¹ [fall2021paper_curtisquinn_11-11-21.pdf \(yale.edu\)](#), p. 23.

²² The proposed DOL rule stated: “*Environmental, social, corporate governance, or other similarly oriented considerations are pecuniary factors only if they present economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories.* The weight given to those factors should appropriately reflect a prudent assessment of their impact on risk and return.” From “Do ESG Mutual Funds Deliver on Their Promises?” by Quinn Curtis, Jill Fisch & Adriana Z. Robertson, [fall2021paper_curtisquinn_11-11-21.pdf \(yale.edu\)](#), p. 24.

²³ See *Summary of Final Rule* in [lw.com/admin/upload/SiteAttachments/Alert 3058.pdf](#), p. 3.

²⁴ From Covington: “Both the ERISA statute and Supreme Court precedent are clear that fiduciary investment management decisions should be made for the exclusive purpose of maximizing financial returns on a risk-adjusted basis in order to provide the benefits due under the plan and to defray the reasonable costs of administering the plan.” See: [DOL’s New Rule on ERISA Investment Duties and Its Relationship to ESG | Covington & Burling LLP](#) [Dec 2022].

Proxy contests are far less common, however, and are considered a blunter tool than shareholder proposals in corporate engagement. This is primarily because the results of a proxy contest are binding,²⁵ and they can lead to significant changes on a company’s board. In addition, a proxy contest is a much costlier battle to wage than a shareholder proposal and is likewise much costlier for a company to defend against. Many activists and companies reach a settlement well before contests become public, and fewer campaigns are making it through to annual meetings.²⁶

While shareholder proposals originally focused on core governance issues like classified boards and voting structures that can affect a company’s long-term value, today they encompass topics as disparate as environmental risk and workforce management. Shareholder advocacy touching social issues has a deep history in the U.S. In 1947, for example, two Freedom Riders sought to pressure Greyhound to desegregate their buses through the proxy ballot. While their campaign and the lawsuit that followed were not successful in reaching the desired outcome, the case contributed to the evolution of U.S. securities laws.²⁷

Any shareowner who meets certain ownership requirements, as set forth by the SEC in Rule 14a-8, can file a shareholder proposal.²⁸ However, this does not guarantee it will be brought to a vote. Proposals are non-binding and generally ask a board to adopt a policy or disclose certain information; however, a proposal can be excluded for a host of reasons. These objections may be procedural in nature—failure to provide proof of ownership, for example—or they may be substantive in nature. For example, if it interferes with “ordinary business” or has failed to receive minimal support in previous years.²⁹

When brought to a vote at an annual general meeting, shareholder proposals also give proponents the opportunity to expand the reach of their campaign to all investors at a company, who are then able to vote for or against the proposal based on their proxy voting guidelines.

²⁵ “Delaware law [...] vests the right to elect directors in the stockholders regardless of whether the board agrees with the nominee directors’ positions or outcomes.” See <https://www.morrisjames.com/newsroom-articles-Manwaring-Application-of-a-Voting-Limitation.html>. See also 8 Del. C. 1953, § 225, “Contested election of directors; proceedings to determine validity.” at <https://delcode.delaware.gov/title8/c001/sc07/index.html#225>.

²⁶ [Shareholder Activists Should Be Careful About Quick Settlements | Forbes](#) (May 2023); [More Activists Lay Down Arms in Battles for Boardroom Control | Wall Street Journal](#) (April 2023)

²⁷ [Shareholder Meetings and Freedom Rides: The Story of Peck v. Greyhound \(harvard.edu\)](#); [Shareholder Meetings and Freedom Rides: The Story of Peck v. Greyhound | The Temple 10-Q](#)

²⁸ “Eligibility for Initial Submissions of Shareholder Proposals” in [SEC Modernizes Shareholder Proposal Rules | Jones Day](#)

²⁹ Rule 14a-8(i)(12) governs resubmission exclusions while 14a-8(i)(7) governs ordinary business exclusions. See the following presentation from law firm Dorsey & Whitney LLP: https://www.dorsey.com/-/media/files/uploads/images/101617_dorsey_webinar_shareholder_proposals_ppt.pdf, p. 15.

Shareholder proposals are filed by a broad range of proponents, including individuals, asset owners, asset managers, and special-interest advocacy groups. However, activists who run their own board candidates tend to be hedge funds with highly concentrated portfolios.

“Anti-ESG” Proposals

In recent years, the proponent community has broadened to include sponsors with conservative public policy goals. They contrast with the objectives of many shareholder proponents who are focused on environmental and social issues. Some of these conservative proposals request reforms that are loosely tangential to the primary concern driving the submission of the proposal and detailed in their supporting statements.³⁰ This development has contributed to a lack of clarity for proxy voters.

As a result of the increasing divergence between proponents’ requested reforms and the concerns underlying those requests, institutional investors’ interest in disclosure of the sponsors of shareholder resolutions has increased.

Thus far, the investor community appears to be rejecting these types of proposals. Average support levels for proposals from ‘anti-ESG’ proponents have hovered around 3% of votes cast for environmental and social topics and around 15% for governance topics.³¹ However, despite the low support levels seen to date, the number of anti-ESG proposals filed increased in 2022 and 2023,³² a sign that conservative-leaning proponents are continuing to forge ahead.

Because the bulk of these proposals are filed by a small number of proponents, some institutional investors have discussed automatically voting against any proposal filed by these proponents. In order to do so, some institutional investors have called for companies to publicly disclose the identity of proposals’ proponents in their proxy filings. However, these calls have spun a debate on whether one should vote for a proposal based on the identity of the proponent or on the merits of the proposal.

Contested Elections

³⁰ In some cases, proponents of “anti-ESG” proposals adapt language from proposals previously passed by shareholders, but the text of the proposal does not remain internally consistent, leading to confusion for those voting proxies. For more on this filing strategy, see “Section 2: The Tactics Being Used” at <https://www.morningstar.com/sustainable-investing/rise-anti-esg-shareholder-proposals>.

³¹ According to a report by law firm Sullivan & Cromwell, shareholder support for anti-ESG social/political proposals in 1H 2023 was 3%; 15% for governance proposals; and 2% for environmental proposals. Anti-ESG social/political and governance proposals were a few percentage points lower than the same period in 2022, while support for anti-ESG environmental proposals remained the same. See <https://www.sullerom.com/SullivanCromwell/Assets/PDFs/Memos/sc-publication-2023-proxy-season-review-part-1.pdf>, p. 6.

³² Per [A brief review of the 2023 US proxy season and what to expect in 2024 \(harvard.edu\)](#) and [Anti-ESG Shareholder Proposals in 2023 \(harvard.edu\)](#), anti-ESG proposal volume increased over 60% from 45 in 2022 to 79 in 2023. However, support levels dipped further from 3.4% to 2.4% during this period.

Shareholder activists may also nominate their own candidates for board seats at portfolio companies.

Running a competing slate of directors against the company’s board is not an uncommon practice; however, these campaigns occur far less frequently than shareholder proposals. Their campaigns are further aided by the adoption of universal proxy card rules by the SEC in 2022. Under UPC, all validly nominated candidates must appear on all versions of the proxy card circulated for a shareholder meeting, regardless of who nominates the director or who is distributing the proxy card.

This practice was already in place in some non-U.S. markets and reduces barriers to activists getting their nominees elected. While few shareholder activists took advantage of UPC in its first year, board activism activity is beginning to increase in its second year. For instance, Trian Partners nominated two candidates in a bid for seats on Disney’s board.³³

Getting a candidate on the ballot is much easier than getting them elected, however. Despite winning the support of proxy advisor ISS, Trian’s candidates lost to Disney’s incumbent directors by a significant margin.³⁴

The full impact of the universal proxy card will likely manifest over time. Notably, while the UPC has helped some activists gain access to the ballot, it has not led to a surge in proxy contests or director nominations, as many market participants anticipated.³⁵ Law firm Mayer Brown identified few notable changes in the 2023 proxy season compared to 2022.³⁶ Dissidents largely nominated the same size slates and spent similar amounts of money on their campaigns, and the number of campaigns was almost unchanged at 61 campaigns in 2023, compared to 60 in 2022.³⁷ These slow changes notwithstanding, what the UPC has done is put a spotlight on directors as individuals instead of part of a competing slate.

The UPC can also help proponents seek resolutions beyond the scope of director elections. In March 2024, the AFL-CIO and the United Mine workers of America (UMWA) conducted a proxy solicitation at Alabama-based Warrior Met Coal, seeking support from shareholders for five shareholder proposals.³⁸ Two of the five proposals won majority support at the company’s April 25, 2024 annual meeting.³⁹

³³ <https://trianpartners.com/wp-content/uploads/2023/12/Trian-Nominates-Two-Candidates-To-The-Walt-Disney-Company-Board.pdf>

³⁴ [Proxy advisory firm ISS backs Nelson Peltz’s bid to join Disney’s board | MarketWatch](#); [Disney, Bob Iger Defeat Activist Nelson Peltz in Shareholder Vote | Wall Street Journal](#)

³⁵ [The Universal Proxy: An Early Look \(harvard.edu\)](#)

³⁶ Many investors expected to see a surge in activist activity shortly after the UPC mandate took effect in September 2022. However, this did not immediately materialize. See [More board seat battles expected as universal proxy card mandate takes effect | Roll Call](#) for coverage on the UPC mandate’s taking effect, with views from activist investors, proxy advisors, and other corporate governance experts.

³⁷ [2023 Activism Recap: Universal Proxy Rule Predictions Fell Flat; Director Nomination Rejections on the Rise | Mayer Brown](#)

³⁸ [After Warrior Met Coal strike, miners’ union, AFL-CIO urge reforms from stockholders | AL.com](#)

³⁹ Two of the five shareholder proposals filed at Warrior Met Coal (HCC) — Submit Shareholder Rights Plan (Poison Pill) to Shareholder Vote, and Adopt Proxy Access Right — passed at 51.3% and 99.2% respectively. Three other proposals — Amend Certificate of Incorporation to Prohibit the Issuance of Preferred Stock without Prior Shareholder Approval, Submit Severance Agreement (Change-in-

In some cases, activists can change the composition of the board without their candidates ever appearing on a proxy ballot. Some companies may choose to avoid an expensive, protracted battle for board seats, instead settling with activists by appointing some or all of their director nominees.

In other cases, a company may take steps to address an issue that an activist campaign seeks to address, thus negating the need for their nominees on the board. This took place during Strategic Organizing Group's 2024 campaign to seat three nominees with labor relations expertise on the Starbucks board. The group withdrew its nominees after Starbucks reached an agreement with its union on compensation and collective bargaining rights.⁴⁰

Transfer of Voting Rights

Some market participants have expressed concern over the prospect of services that could allow beneficial owners to easily monetize their voting rights by transferring them for specific shareholder meetings to the highest bidder in an auction-style marketplace.

While such products could allow beneficial owners to unlock greater economic value from their shares, especially in the case of retail owners whose disaggregated holdings are unlikely to influence the outcome of an election, they also raise concerns about the ability of certain actors with a stake in the vote to manipulate the outcome of an election.

For example, a company's management could purchase the votes for sale needed to support a management-sponsored proposal or to tip the scale against a shareholder proposal that is not aligned with their personal interests. These concerns are even greater during a contested election, where the stakes are much higher for the parties involved than an ordinary election.

The Shareholder Vote Exchange (SVE) helped facilitate such transactions from its nascence in 2023 to its closure in April 2024. SVE users bought or sold fewer than one million votes on the platform. Prices for each vote could vary from 1¢ to 20¢ per share depending on supply and demand, with votes for controversial meetings costing more than those for routine meetings. While SVE attracted a significant degree of attention given its size, it failed

Control) to Shareholder Vote, and Commission Third Party Assessment on Company's Commitment to Freedom of Association and Collective Bargaining Rights — failed to win majority support. See [UMWA and AFL-CIO Conclude Historic Proxy Contest at Warrior Met Coal, Inc. | United Mine Workers of America](#)

⁴⁰ [Labor group withdraws from Starbucks boardroom battle | Axios](#)

to build a sizable user base or attract institutional investors, which limited its ability to scale commercially.⁴¹

End-to-End Vote Confirmation

The proxy voting system in the U.S. is extremely complex, and many investors lack confidence that their votes have been accurately recorded.

However, new technologies and protocols are being implemented to help improve the traceability of votes cast at annual meetings. Since 2022, a working group—of which CII is a member—has made progress in making end-to-end vote confirmation available at nearly 2,500 meetings in the first six months of 2022. Nearly all U.S. companies had it available during the 2023 proxy season, according to Broadridge.⁴²

CII’s policy on [Effective and Efficient Voting](#) states that in order to best serve the public markets and its stakeholders, a proxy voting system should be characterized by accuracy and certainty, and should make the best use of available technologies. It specifically calls out end-to-end vote confirmation as way to enhance certainty and improve the proxy voting system for all stakeholders.⁴³

Pass-Through Voting

Pass-through voting allows investors in commingled funds to express their voting preferences for the underlying securities held within the fund. Pass-through voting arose in response to demands from investors, who previously did not have the ability to exercise voting preferences when invested in companies indirectly through commingled funds. Instead, as owners of record of the underlying securities, mutual fund managers retained the right to vote proxies as they saw fit.⁴⁴

Proponents of pass-through voting say that it increases transparency and allows for individual shareholders’ views to be represented in proportion to their economic interests. Furthermore, with the rise of index funds, it can serve as a counterweight to the perceived outsized power held by passive fund managers. However, the complex infrastructure required to support pass-through voting can increase administrative costs for funds and companies.

Major players in the implementation of pass-through voting include Broadridge and Tumelo. Large index

⁴¹ [Votes for Sale! A Startup Is Letting Shareholders Sell Their Proxies | Wall Street Journal](#); [How to Buy Votes | The Activist Investor](#) by Michael R. Levin

⁴² [2023 Proxy Season Key Stats and Performance Ratings | Broadridge](#); [2023 Canadian Proxy Statistics | Broadridge](#)

⁴³ CII Policies on Other Issues, Effective and Efficient Proxy Voting, adopted October 24, 2018, https://www.cii.org/policies_other_issues#effective_proxy_voting.

⁴⁴ [Pass-Through Voting | Broadridge](#)

providers—including BlackRock, State Street and Vanguard—have begun pilot-testing pass-through voting for certain funds and clients. However, investors in these funds do not have the option to vote on each individual security. BlackRock allows clients to choose from six different policies (such as socially responsible or board-aligned) developed by ISS and Glass Lewis, while State Street and Vanguard similarly provide thematic policy options to their fund holders.⁴⁵

Some legislators have also turned their attention to the perceived power and influence of the “Big Three” asset managers and their discretion to vote proxies without input from fund investors. In 2022, U.S. Senator Dan Sullivan (R-Alaska) introduced the *Investor Democracy is Expected (INDEX) Act*.⁴⁶ Similarly to how current pass-through voting trials are structured, the act would require managers of passive funds to solicit voting instructions from their fund investors and vote shares at company meetings according to those instructions.

Mechanics of Proxy Voting

How Funds Vote Their Proxies

A cornerstone of ERISA policy is that fund fiduciaries are required to vote all shares on matters that can potentially affect the economic value of the shares in its portfolio.

While the same standard applies for voting foreign proxies, the DOL says fiduciaries should consider: (1) whether the cost of voting the foreign shares outweighs the potential economic benefit to the plan of voting; and (2) whether the difficulty and expense in voting the shares is reflected in their market price. As a result, some ERISA funds have different approaches to voting domestic vs. international proxies.

The most recent version of the ERISA rule, which took effect in 2023, reaffirms this principle. It clarified that fiduciaries should vote their shares unless there is a compelling reason not to. The 2023 version removed certain language that appeared permissive of fiduciaries abstaining from voting and suggested that proxy voting deserves greater scrutiny than other plan activities.⁴⁷

Governance proposals remain popular ballot items, but environmental and social topics have also gained traction. The five shareowner proposals that appeared most often on company ballots in 2019 pertained to:

⁴⁵ [Institutional Pass-Through Voting | Morrow Sodali](#)

⁴⁶ [Sullivan Introduces INDEX Act to Empower Investors and Neutralize Wall Street’s Biggest Investment Firms \(senate.gov\)](#)

⁴⁷ [Final Rule on Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights | U.S. Department of Labor](#); “4. The Final Rule reaffirms the fiduciary duty to vote proxies and exercise shareholder rights.” in [DOL Reframes ESG Investing and Proxy Voting for ERISA Fiduciaries | Morgan Lewis](#)

- Political lobbying disclosure and action
- Independent board chair
- Board and workplace diversity and equity
- Environmental disclosure and action
- Right to act by written consent

In 2023, the most common proposal topics on company ballots concerned:⁴⁸

- Climate change
- Independent board chair
- Nondiscrimination and diversity
- Shareholder approval of severance agreements
- Special meetings

Average investor support for shareowner proposals has increased substantially since 1990, when support averaged 10%. As of May 31, 2024, average support stood at 20.6% and 22 proposals received majority support.⁴⁹ While the volume of shareholder proposals continues to increase year-over-year, support levels have eroded from a record-high of 34.3% in 2021, especially for environmental and social proposals.

More recently, investors have shown a renewed focus and interest toward governance and compensation proposals. These proposals are driving an annual increase in the overall volume of shareholder proposals, even as fewer environmental and social proposals have been filed since 2021. These proposals also receive greater support at the ballot, having scored 34.9% median support in 2024, while environmental and social proposals won 21% and 20.7% median support, respectively.⁵⁰

Vote Decisions

ERISA plan assets must be held in trust by one or more trustees. Plan trustees are solely responsible for voting proxies unless the trustees are subject to voting directions provided by a named fiduciary or the named fiduciary has delegated voting to investment managers.

⁴⁸ “The five most popular proposal topics in 2023, representing 43% of all shareholder proposal submissions, were (i) climate change, (ii) independent chair, (iii) nondiscrimination and diversity-related, (iv) shareholder approval of certain severance agreements, and (v) special meetings.” See [Shareholder Proposal Developments During the 2023 Proxy Season \(harvard.edu\)](#)

⁴⁹ Figures for 2024 YTD are for Jan 1 to May 31, at Russell 3000 companies. Of the 273 proposals voted in 2024, 8.1% (or 22 proposals) received majority support. See [Pro-ESG Shareholder Proposals Regaining Momentum in 2024 \(harvard.edu\)](#)

⁵⁰ Russell 3000 companies, Jan 1-May 31, 2024. See “Reversal of Declining Support on ESG, Led by Governance and Compensation Proposals” in [Pro-ESG Shareholder Proposals Regaining Momentum in 2024 \(harvard.edu\)](#)

A named fiduciary is a person or entity identified as a fiduciary in the plan, or who is named as a fiduciary by the plan sponsor. ERISA considers proxy voting services to be “investment managers” if they are registered with the SEC as investment advisors.

A trustee generally is not liable for voting decisions if the trustee has followed the instructions of the named fiduciary. But a plan trustee is supposed to analyze the instructions to determine whether they comply with the plan and with ERISA. A trustee who blindly follows voting directions that violate ERISA could be held liable for breach of fiduciary duty.

A named fiduciary can leave investment decisions to outside money managers but retain the right to direct plan trustees to vote proxies—with or without instructions on how to vote. But if the named fiduciary does not reserve the proxy voting right, then the investment manager has the exclusive right to make proxy voting decisions, and it can be held liable for those votes. A fund that uses several investment managers can authorize one of them to vote the proxies of all the plan’s investments.

Investment managers and investment advisors also have fiduciary duties to vote in their client’s best interest, if they are given voting authority. As emphasized in the 2019 SEC guidance, retaining a third-party proxy advisory firm does not relieve the investment advisor from its fiduciary duties.

Under ERISA, defined contribution plans—but not defined benefit plans—can give their participants the right to respond to tender offers or cast proxy votes. If voting authority is “passed through” in this way, the named fiduciary is not liable for the results of how participants voted.

Share Lending

Share lending is an arrangement whereby a fund can lend some of its shares in a company to a borrower in exchange for collateral and a fee. Share lending is an established practice in many different markets and can even benefit the fund economically by allowing them to generate additional revenue from their portfolio holdings. Share lending also benefits markets by increasing liquidity and facilitating short selling.

However, because legal ownership of the shares is transferred to the borrower for the duration of the loan, the fund loaning its shares loses many ownership rights during that period, including the right to vote those shares at an annual meeting.

If a fund loans out its shares, then it cannot vote the proxies of those shares unless it recalls them by the record date. The record date is the date a public company establishes for determining who its shareowners are for the purposes of voting at the annual meeting and receiving a dividend. Voting rights generally cannot be separated from shares. When funds lend shares, the borrower acquires the right to vote them. If a fund wants to vote the shares that it has loaned out, it must recall the shares before the record date. Many see share lending as a potential area where blockchain-based technology can help ensure shares are voted correctly and efficiently.

Funds may or may not be required to recall and vote shares that they have loaned to others, depending on their fiduciary responsibilities. In a Feb. 20, 1992, letter to ISS, the DOL said that corporate and union pension plans must consider their fiduciary responsibilities and judge whether to recall and vote loaned shares.⁵¹ Fiduciaries have to weigh the potential benefits of securities lending—such as additional revenue—against the value of the vote.

They must consider the possibility that the borrower may cast votes that clash with the fund’s policies and priorities. In cases where the value of the vote is greater than the gains of lending shares, the fund has a duty to recall the shares or prevent them from being loaned in the first place.

One study found that investors are more likely to recall shares to vote at companies with weaker corporate governance and a smaller market capitalization.⁵² Investors are also more likely to recall shares when they are voting against management proposals and for shareholder proposals, according to the study. In addition, the study found that funds recalled shares 40% more often when faced with a corporate control-related proposal.

⁵¹ See <https://www.sec.gov/comments/4-537/4537-25.pdf>, p. 20.

⁵² “The Role of Institutional Investors in Voting: Evidence from the Securities Lending Market” by Reena Aggarwal, Pedro A. C. Saffi, and Jason Sturgess, <https://www.unsw.edu.au/business/sites/default/files/seminars-conferences/seminar-pedro-saffi.pdf>

Appendix A

Proxy Voting Guidelines

Many funds use proxy voting guidelines not only to disclose how they generally vote on certain common proposals, but also to explain the basis for those inclinations. Here are examples of how different CII members (public funds, union funds and money managers) address proposals on corporate political spending in their proxy voting guidelines:

Public and Union Funds

State of Connecticut Office of the Treasurer:⁵³

Corporate Political Expenditures

Political contributions can benefit the strategic interests of a company. Shareholders understand that corporate participation in the political process including through political contributions can benefit companies strategically and contribute to value creation. However, shareholders are concerned that board level policies and processes need to exist to ensure that such giving is aligned with shareholders' long-term interests. Shareholders are concerned about the influence of corporate political giving. This activity has the potential to create risks to shareholder value, through reputational harm and through reactions by employees and/or customers.

Shareholders seek to understand who sets political giving policies, who makes the decisions on contributions, and what types of internal controls are in place at the board level to manage, monitor and disclose political contributions, and manage related risks. Shareholders are not interested in obtaining disclosure of the reason specific contributions are made, but instead seek data on contributions and an understanding of mechanisms, such as board-level policies and processes, through which the board exercises oversight over the process.

It is not an appropriate role for shareholders to vote on specific political expenditures--whether such vote is in the form of an advisory proposal or would be binding.

Corporate political expenditures can be direct in the form of campaign contributions or indirect in the form of advertising or publicity on politically related issues.

In the aftermath of the U.S. Supreme Court ruling in *Citizens United*, which ruled that corporations have a constitutional right to free speech – including political advertising – new forms of corporate political spending have emerged. New organizations have been created under sections 501(c) (4), 501 (c) (5) and 501 (c) (6) of the Internal Revenue Code that receive corporate contributions and engage in political advertising. These organizations are not required to disclose their donors.

The CRPTF will vote FOR shareholder resolutions that request companies to provide greater disclosure of corporate campaign financing.

The CRPTF will vote FOR shareholder resolutions that request companies to disclose any and all corporate expenditures for advertising in support of, or in opposition to, any political candidate, issue, and/or ballot referendum, including contributions to political candidates, political action committees, 501(c) (3, 4, and 5) organizations or any other expenditure which may be used to influence an election.

The CRPTF will vote FOR shareholder resolutions that call on the board to establish corporate political giving guidelines and internal reporting provisions or controls.

⁵³ <https://portal.ct.gov/-/media/OTT/Pension-Funds/Proxy-Voting/110122CRPTF-Proxy-Voting-Policies-2022.pdf>, p. 35-36, accessed Feb 12, 2024.

The CRPTF will vote AGAINST shareholder resolutions that seek shareholder input to corporate political giving policies or on the contributions themselves.

The CRPTF will vote AGAINST shareholder resolutions seeking an advisory vote on political contributions.

AFL-CIO Staff Retirement Plan:⁵⁴

Political Contributions and Lobbying

The voting fiduciary should support proposals that seek disclosure and board level oversight of corporate political contributions and lobbying expenditures. The expenditure of corporate assets for political contributions is expected to grow as a result of the U.S. Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission*. Absent a system of transparency and accountability, company assets may be used to pursue policy objectives that are inimical to the long-term interests of the company. Publicly available data on corporate political contributions and lobbying expenditures do not provide a complete picture of these activities. Investors need complete disclosure to be able to evaluate the use of corporate assets for political contributions and lobbying expenditures.

State Board of Administration of Florida:⁵⁵

Political contributions and expenditure—

Companies should disclose the amount and rationales for making donations to political campaigns, political action committees (PACs), and other trade groups or special interest organizations. SBA typically considers the following factors:

- Recent significant controversy or litigation related to the company's political contributions or governmental affairs;
- The public availability of a company policy on political contributions and trade association spending, including the types of organizations supported;
- The business rationale for supporting political organizations;
- The board oversight and compliance procedures related to such expenditures of corporate assets.

Asset Managers

T. Rowe Price:⁵⁶

Shareholder proposals related to political spending and lobbying

CASE-BY-CASE, if we believe the decision to engage in political or lobbying activities poses a unique risk for a particular company and it is unclear whether the board oversees and monitors such risk adequately, T. Rowe Price will generally support shareholder resolutions seeking additional disclosure. A company's level of disclosure on this issue relative to its peers is a consideration, as is the level of consistency between a company's public statements on ESG issues and the nature of its lobbying activity.

BlackRock:⁵⁷

Corporate political activities

Companies may engage in certain political activities, within legal and regulatory limits, in order to support public policy matters material to their long-term strategies. These activities can also create risks, including: the potential for allegations of corruption; certain reputational risks; and risks that arise from the complex legal, regulatory, and compliance considerations associated with corporate

⁵⁴ https://aflcio.org/sites/default/files/2017-03/proxy_voting_2012.pdf, accessed Feb. 12, 2024

⁵⁵ <https://www.sbafla.com/fsb/Portals/FSB/Content/CorporateGovernance/ProxyVoting/SBA%20Corporate%20Governance%20Principles%20and%20Proxy%20Voting%20Guidelines%20FY2023-2024.pdf?ver=2023-10-31-133554-670>, p. 19, accessed Feb. 12, 2024

⁵⁶ <https://www.troweprice.com/content/dam/trowecorp/Pdfs/proxy-voting-guidelines-TRPA.pdf>, p. 5, accessed Feb. 12, 2024.

⁵⁷ <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf>, p. 20, accessed Feb 12, 2024.

political spending and lobbying activity. Companies that engage in political activities should develop and maintain robust processes, including board oversight, to guide these activities and mitigate risks.

We depend on companies to provide accessible and clear disclosures so that investors can easily understand how their political activities support their long-term strategy, including on stated public policy priorities. When presented with shareholder proposals requesting increased disclosure on corporate political activities, BIS will evaluate publicly available information to consider how a company's lobbying and political activities may impact the company. We will also evaluate whether there is general consistency between a company's stated positions on policy matters material to their strategy and the material positions taken by significant industry groups of which they are a member. We may decide to support a shareholder proposal requesting additional disclosures if we identify a material inconsistency or determine that further transparency may clarify how the company's political activities support its longterm strategy.

Our publicly available [commentary](#) provides more information on our approach to corporate political activities.

Proxy Advisors

Proxy advisors similarly keep and annually update in-house voting policies. Here is an example of one proxy advisor's voting policies on corporate political spending:

ISS Stoxx:⁵⁸

Political Expenditures and Lobbying Congruency

General Recommendation: Generally vote case-by-case on proposals requesting greater disclosure of a company's alignment of political contributions, lobbying, and electioneering spending with a company's publicly stated values and policies, considering:

- The company's policies, management, board oversight, governance processes, and level of disclosure related to direct political contributions, lobbying activities, and payments to trade associations, political action committees, or other groups that may be used for political purposes;
- The company's disclosure regarding: the reasons for its support of candidates for public offices; the reasons for support of and participation in trade associations or other groups that may make political contributions; and other political activities;
- Any incongruencies identified between a company's direct and indirect political expenditures and its publicly stated values and priorities; and
- Recent significant controversies related to the company's direct and indirect lobbying, political contributions, or political activities.

Generally vote case-by-case on proposals requesting comparison of a company's political spending to objectives that can mitigate material risks for the company, such as limiting global warming.

⁵⁸ <https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf>, p. 79, accessed Feb 12, 2024. This version of the ISS voting guidelines was published in early January 2024 and is effective for meetings on or after Feb 1, 2024.

Appendix B

Department of Labor's "Avon Letter" on ERISA Fiduciary Standards

February 23, 1988
Board Avon Products, Inc.
9 West 57th Street
New York, NY 10019
Re: Avon Products, Inc. Employees' Retirement Plan

Dear Mr. Fandl:

The Pension and Welfare Benefits Administration (PWBA) of the Department of Labor is responsible for the administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Title I establishes standards governing the operation of employee benefit plans and includes fiduciary responsibility rules governing the conduct of plan officials and others who exercise discretionary authority or control with respect to the assets of employee benefit plans such as the Employees' Retirement Plan (the Plan) which are subject to ERISA.

PWBA has concluded its investigation of the Plan and of your activities as a fiduciary of the Plan, in connection with certain activities concerning the voting of proxies appurtenant to shares held in the accounts of the Plan's investment managers. The facts adduced during this investigation are not conclusive, however, because of the possibility that violations have occurred, and in view of the recurring nature of this aspect of plan asset management, we believe that it would be appropriate to apprise you of the Department's views concerning the general fiduciary obligations of a named fiduciary and an investment manager appointed pursuant to section 402(c)(3) of ERISA with respect to the voting of proxies on plan-owned stock. Since we expect that this information will be useful to the other members of the Plan's retirement board and to the investment-managers of the Plan, we are providing them with copies of this letter.

1. The Applicable Provisions of ERISA

Taken together, the provisions of ERISA sections 402, 403, 404 and 405 are intended to, among other things, provide a basis for certainty regarding the identity and responsibilities of those parties involved in managing and operating the plan as well as each party's liability for mismanagement.

Section 402(a) of ERISA provides that every employee benefit plan shall be established and maintained pursuant to a written instrument. This instrument must provide for one or more named fiduciaries who have authority to control and manage the operation and administration of the plan. The named fiduciaries may be either named in the plan instrument or chosen, through a procedure specified in the plan, by the plan sponsor.

Section 402(b)(2) of ERISA requires plans to describe any procedure for allocating responsibilities for operation and administration of the plan, including any procedure described in section 405(c)(1).

Section 405(c)(1) of ERISA provides, in part, that the named fiduciaries may designate persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan.

Section 405(c)(3) of ERISA defines "trustee responsibility to mean any responsibility provided in the plan's trust instrument to manage fiduciary to appoint an investment manager in accordance with section 402(c)(3).

Section 403(a) of ERISA provides, in part, that all assets of an employee benefit plan must be held in trust by one or more trustees. The trustees(s) must have exclusive authority and discretion to manage and control such assets, with two exceptions: (1) when the plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA, and (2) when the authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3).

Section 402(c)(3) of ERISA states that a plan may provide that with respect to control or management of plan assets a named fiduciary may appoint an investment manager or managers to manage (including the power to acquire and dispose of) plan assets.

Section 3(38) of ERISA defines "investment manager" as any fiduciary (other than a trustee or named fiduciary) (A) who has the power to manage, acquire, or dispose of any plan asset; (B) who is (i) a registered investment advisor under the Investment Advisers Act of 1940; (ii) a bank; or (iii) an insurance company; and (C) who has acknowledged in writing that he is a fiduciary with respect to the plan.

Section 405(c)(2) of ERISA provides, in part, that if a plan expressly provides for a procedure described in section 405(c)(1), and pursuant to such procedure a person is designated to carry out a fiduciary responsibility of a named fiduciary, then such named fiduciary shall not be liable for an act or omission of such person in carrying out such responsibility except to the extent that (A) the named fiduciary violated section 404(a)(1) -- (i) with respect to such designation, (ii) with respect to the establishment or implementation of the procedure under 405(c)(1), or (iii) in continuing the designations or (B) the named fiduciary would otherwise be liable under ERISA section 405(a).

Section 404(a)(1)(B) of ERISA requires a fiduciary to discharge his duties to a plan with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Section 404(a)(1)(D) of ERISA requires a fiduciary to discharge his duties in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of Titles I and IV of ERISA.

2. Proxy Voting by Plan Fiduciaries

In general, the fiduciary act of managing plan assets, which are shares of corporate stock, would include the voting of proxies appurtenant to those shares of stock. For example, it is the Department's position that the decision as to how proxies should be voted with regard to the issues presented by the fact pattern are fiduciary acts of plan asset management: a proposal to change the state of incorporation of a corporation in which a plan owned shares (thereby possibly affecting shareholders' rights to participate in the decision-making process of the corporation which, in turn, affects the value of their investment) and a proposal to rescind "poison pill" arrangements with regard to various corporations in which a plan is invested. Moreover, because voting such proxies involves plan asset management, section 403(a) requires that plan trustees have the exclusive authority and responsibility for voting these proxies, unless one of the two exceptions stated in section 403(a) applies.

To the extent that the documents governing the plan permit a named fiduciary to appoint an investment manager pursuant to sections 402(c)(3) and 403(a)(2) of ERISA to manage, acquire, and dispose of plan assets, there would be an ERISA violation if, during the duration of such delegation, either the trustee or the named fiduciary makes the decision how to vote any proxy appurtenant to shares owned by the plan with respect to which the investment manager has investment authority because under the plan documents neither the trustee nor the named fiduciary has authority to make that decision with regard to those shares. Indeed, under such plan provisions if any person other than the investment manager (or a person under the fiduciary supervision of the investment manager)ⁱ were to make the proxy voting decision, there would be a section 404(a)(1)(D) violation because that person does not have that fiduciary authority under the plan. Finally, with limited exceptionsⁱⁱ, the named fiduciary, having delegated such responsibility to the investment manager, no longer has the authority to decide how the investment manager votes proxies and would be engaging in a section 404(a)(1)(D) violation in doing so unless, in delegating such management responsibility to the investment manager, it reserves to itself the right to vote proxies.ⁱⁱⁱ

Moreover, ERISA contains no provision which would relieve an investment manager of fiduciary liability for any decision he made at the direction of another person under ERISA'S construct, only trustees are able to relieve themselves of fiduciary responsibility and related liabilities by accepting directions, if plan documents so provide, and then only if such directions are "proper directions" made in accordance with the terms of the plan and not contrary to ERISA. Furthermore, neither section 3(38) nor 405(e) of ERISA grants an investment manager the powers of a named fiduciary to allocate or designate its investment management function for plan assets to other persons so as to relieve itself of its fiduciary responsibilities and related liabilities. Therefore, to the extent that anyone purports to direct an investment manager as to the voting of proxies, or to the extent that an investment manager purports to delegate to another the responsibility for such voting decisions, the manager would not be relieved of his own responsibilities and related liabilities merely because he either follows the direction of some other person, or has delegated the responsibility to some other person. The manager would continue to have full responsibility (and liability) for the exercise of the proxy voting decision.

Finally, the Department notes that section 404(a)(1)(8) requires the named fiduciary appointing the investment manager to periodically monitor the activities of the investment manager with respect to the management of plan assets. In general, this duty would encompass the monitoring of decisions made and actions taken by investment managers with regard to proxy voting. In this regard, it is the opinion of the Department that section 404(a)(1)(B) requires proper documentation of the activities of the investment manager and of the named fiduciary of the plan in monitoring the activities of the investment manager. Specifically, with respect to proxy voting, this would require the investment manager or other responsible fiduciary to keep accurate records as to the voting of proxies.^{iv}

We trust you will find the above information useful in discharging your ERISA responsibilities during the 1988 proxy season and thereafter.

Sincerely,

Alan D. Lebowitz
Deputy Assistant Secretary