



Midyear Report: GCs See Record Votes On ESG Resolutions

<https://www.law360.com/pulse/articles/1398083/midyear-report-gcs-see-record-votes-on-esg-resolutions>

By Sue Reisinger | June 28, 2021, 4:36 PM EDT

Halfway through 2021, general counsel have seen shareholders set records with nearly three dozen majority votes on environmental, social and governance, or ESG, resolutions, led by a push for more disclosure on corporate political spending.

To date, there have been 34 majority votes for ESG proposals, shattering last year's record of 21, according to figures from the Proxy Preview report, a collaboration of shareholder advocacy groups. Proxy Preview includes the groups As You Sow, Proxy Impact and the Sustainable Investments Institute.

Last year, only two votes broke 70%, while this year 17 have, the coalition reported. More votes are likely by year's end.

Danielle Fugere, president and chief counsel at As You Sow, said, "Coming out of a calamitous year where the foundations of democracy, social systems, and a stable environment have been tested and found wanting, shareholders responded with an intense focus and support of ESG issues."

Fugere said that when even the most basic supply chains like food and medical care break down, "a rethinking of business as usual" occurs.

A key focus for shareholders was politics. Proposals about the ways companies influence the political system accounted for the largest group of majority votes — 14, according to Proxy Preview's count.

Another activist group, The Center for Political Accountability, said its investor partners filed 28 resolutions specifically seeking more disclosure of corporate political spending. Of those, 12 were voted on, with six winning majority votes.

The six included record 80% majority votes at Netflix Inc. and Chemed, a nearly 68% vote at United Airlines Holdings Inc., and votes in the low 50s at Royal Caribbean Cruises Ltd., Duke Energy Corp. and Omnicom Group Inc.

Thirteen more resolutions were withdrawn because investors reached agreements with 10 companies to adopt new policies, while three others vowed to make substantial improvements.

Bruce Freed, president of The Center, told Law360 Pulse on Monday that the vote "sends a very strong message" to the U.S. Securities and Exchange Commission that shareholders consider political disclosure a material element of investing. He noted that a petition to adopt a political disclosure rule has been before the SEC for years, with critics claiming such disclosure is not material to shareholders.

Heidi Welsh, executive director of the Sustainable Investments Institute and co-author of Proxy Preview, tend to agree. Walsh said in a statement, "The slew of majority votes suggests investors at large see ESG as material."

Other ESG proposals also scored well this year. Eight climate change proposals earned more than 50% and resulted in the two highest votes of the year. Investors gave 98.8% support for reporting on supply chain deforestation impacts at Bunge, and 98% for reporting on net-zero greenhouse gas goals at General Electric. In a rare occurrence, management supported both resolutions.

Also emerging this proxy season was the national debate over racial justice with proposals about diversity in the workplace, in the executive suite and on boards. Nine won majority votes.

At the top was a resolution asking IBM for details on the effectiveness of diversity, equity and inclusion programs (94.3% with management support), and one asking Paycom Software about executive diversity (93.7% after management did not take a position).

Although they did not receive majority support, two new proposals about conducting racial justice audits received unusually high support for first-year resolutions, with 44.2% at Amazon.com and 40.5% at JPMorgan Chase.

Despite falling short of a majority, Fugere said, anything above 40% is a strong showing. "In the end, when nearly half of a company's shareholders seek action on an issue, we expect that a company should and will pay attention," she added.

Concerns about the pandemic were at the heart of the third-highest vote this year. Although Wendy's initially tried to keep a proposal about reporting on pandemic worker safety off the proxy ballot with an SEC challenge, it failed, and in the end the company supported the proposal — prompting a 95.2% vote.

Another majority vote came on a resolution on mandatory arbitration, which can hide sexual harassment problems. It received 53.2% at Goldman Sachs and even more, 59.4%, at solar panel maker Sunrun.

There have been nearly 100 majority votes on ESG resolutions over the last decade, with half in the last two years, according to Proxy Preview. "We are clearly at an inflection point, with the high votes showing that the big mutual funds have joined other large institutional investors in recognizing the risks and opportunities posed by environmental and societal concerns," the report stated.

Looking ahead, the question now is how companies will implement changes to their policies in response to the high votes, and how investors respond if they don't, said a statement from Andrew Behar, CEO of As You Sow and Proxy Preview publisher.

"This year we saw three out of four dissident directors elected at ExxonMobil after shareholders lost patience with its inaction on climate change," Behar noted. "All boards have been put on notice this could happen to them."