With another proxy season in the books in the US, it’s helpful to look at the trends that dominated 2019 and are likely to continue into next year. As you gear up to meet with your investors, knowing what’s on their minds can help you better engage, set your strategy and prepare for any activism or challenges that may come your way.

My team at D.F. King examined the data and identified several prevailing themes – here’s what we found:

**Shareholder proposals:**

**Social issues were out in front**

Social issues took the lead. Approximately 60 per cent of shareholder proposals in 2019 were related to environmental and social requests. The number of social proposals submitted in 2019 increased by approximately 45 per cent over the previous year, buoyed by submissions including campaigns for lobbying and political contribution disclosures and human rights – likely due to the current political climate – as well as board diversity. Submissions regarding political contributions and lobbying requests have increased by 14 per cent, and more than half of proposals that went to a vote received more than 30 per cent support.

We also saw a significant increase in human capital management-related (HCM) proposals in 2019; for example, 82 per cent of all employment diversity-related shareholder proposals went to a vote this year, compared to just 30 per cent in 2018. Gender pay gap proposals that went to a vote increased by almost 250 per cent as well, and proposals related to sexual harassment were newly introduced this year, with almost all of them making it onto ballots. Notably, when it comes to E&S disclosure, the largest increases of disclosure provided by companies typically fall under HCM, covering topics including employee diversity and training, pay/benefits and employee feedback.

The topic of greater board diversity also continues to gain momentum, with large asset managers increasingly articulating their support for it. More than 80 per cent of the increase in the number of female directorships in the past decade occurred during the past five years, with annual growth of female directorships exceeding seven per cent in each of the past three years. This is likely to increase in light of the emerging regulation of board diversity, which certain states are in the process of implementing, as well as the updated voting guidelines that many institutional investors have published to emphasise their focus on board diversity (See Figures 1 and 2, below).

Only a quarter of environmental proposals actually made it onto ballots, likely driven by increased transparency and collaboration with shareholders.

**FIGURE 1: TOP SOCIAL PROPOSALS**

- **Political contributions:** 56 proposals, 35.6% support
- **Lobbying:** 33 proposals, 30.2% support
- **Board diversity:** 43 proposals, 13.3% support
- **Human rights:** 26 proposals, 31.1% support
- **Gender pay gap:** 36 proposals, 21.7% support
- **Link Exec pay to social:** 17 proposals, 22.9% support
- **EEO:** 14 proposals, 38.6% support

**FIGURE 2: POLITICAL CONTRIBUTIONS/ LOBBYING PROPOSALS**

- **Political contributions:** 59 proposals, 26.7% support
- **Lobbying:** 55 proposals, 28.7% support
- **Board diversity:** 58 proposals, 34.2% support
Issuers are increasingly willing to engage with investors, which has likely led to more of these proposals being absent from ballots – in addition to the fact that nearly 50 per cent of challenged environmental proposals were provided no-action relief by the Securities and Exchange Commission (SEC) this year, the highest percentage in more than three years.

Proposals with the highest support levels typically requested greenhouse gas goals or climate change reporting. There were fewer submissions and reduced levels of support, also likely due to increased disclosure across all industries as well as efforts to discuss environmental initiatives with investors. One hundred proposals were submitted (down 28 per cent from 2018), and average support for all environmental proposals decreased to approximately 26 per cent in 2019 from 31 per cent in 2018. The largest sub-category, representing 40 per cent of these proposals, continues to be climate change. Notably, no proposals passed this season, while four climate change proposals passed in 2018 (See Figure 3, below).

Governance and, specifically, board composition continue to capture attention

Governance-related shareholder proposals remained the most common type to be voted upon, though they were surpassed in submissions by proposals with social requests. Investors are keeping a close eye on boards, continuing to scrutinise them for issues such as a lack of diversity and overboarding – many of the largest asset managers have recently updated policies regarding these two topics, and this year we saw those policies impacting vote results for directors. In addition, board-related shareholder proposals on topics such as independent board chair, board declassification, majority voting for director elections, and seeking to adopt or amend proxy access constituted nearly half of all governance-related shareholder proposals.

There were significant increases in requests to adopt majority voting for the election of directors as well as requests to reduce supermajority voting; the submission levels for these proposals increased by 222 per cent and 50 per cent, respectively. Although average support for majority voting for directors dropped to approximately 42 per cent, average support for proposals requesting to reduce supermajority requirements remained high at approximately 65 per cent.

Although requests for independent chair took the lead in submissions, none passed. Shareholders are typically satisfied when a sufficiently empowered lead independent director is appointed as an alternative to mandatorily separating the CEO and chair roles.

When it comes to governance-related shareholder proposals, overall pass rate continues to decline. This is due in large part to a reduction in the relative number of proposals relating to proxy access, majority voting and board declassification, a result of these measures becoming market practice among larger companies. In 2019, 13.8 per cent passed, compared to 17 per cent in 2018 (See Figure 5: Spotlight on Board Diversity Initiatives by US State, on page 104).

Shareholder proposals regarding executive compensation increased over previous years, with proposals requesting to tie environmental and social proposals to executive compensation taking the lead. These kinds of proposals didn’t pass but did receive increased support, with proposals requesting to tie drug pricing to executive compensation at healthcare companies receiving the highest levels of support (approximately 27 per cent). The average vote result for companies that received an ISS ‘against’ recommendation is 30 per cent lower than those that received a ‘for’ (See Figure 4, below).

Fewer shareholder proposals, fewer votes

In 2019, 703 shareholder proposals were submitted, down five per cent from the previous year. Not only were fewer proposals put forward, but even fewer went to a vote. Only 52 per cent of proposals submitted went to a vote, compared to 70 per cent in 2017, due in part, again, to the withdrawal of environmental and social proposals following engagement with proponents. Half (52 per cent) of shareholder proposals in 2019 received more than 30 per cent of shareholder support, on par with what we saw in 2018. Moreover, shareholder proposal proponents continued to focus on large-cap companies, with almost 75 per cent of proposals being voted on at S&P 500 companies.

![FIGURE 3: TOP ENVIRONMENTAL PROPOSALS](image-url)

**Support remained high for say-on-pay and equity plan proposals**

Say-on-pay results remained in line with 2018 levels, with average support remaining high at approximately 90 per cent. Equity plan approvals remained uneventful, with only two failures recorded for 2019. The number of equity plans placed on ballots decreased from previous years, likely due to the elimination of the 162(m) provision that required shareholder approval of performance goals in incentive plans every five years.

![FIGURE 4: AVERAGE SUPPORT (SAY-ON-PAY & EQUITY PLANS)](image-url)
Requests to reduce supermajority thresholds typically have the highest levels of shareholder support. Although historically the top 10 has been dominated by governance proposals, over the past few years, the landscape has evolved to focus primarily on environmental and social initiatives.

Updates on SEC no-action relief
In 2019, companies challenged nearly 30 per cent of shareholder proposals through the SEC no-action process. The two most commonly challenged kinds of proposals were environment-related requests (15 per cent) and requests to eliminate supermajority voting (10 per cent). The most successful categories for exclusion were proposals to reduce special meeting thresholds as well as animal rights proposals, which both currently have a 100 per cent success rate. These were followed by human rights proposals and proposals to eliminate supermajority voting, which both had success rates near the 80 per cent mark.

Conflicting management proposals: Although the SEC has historically granted no-action relief under Rule 14a-8(i)(9) on the basis of a conflicting management proposal (for example, the exclusion of a proposal to reduce the ownership threshold for special meetings due to its conflict with a management proposal to ratify the existing threshold), there is a new approach by ISS and Glass Lewis when it comes to seeking these types of exclusions. (And we at D.F. King recommend considering this approach.) In their 2019 voting guidelines updates, both ISS and Glass Lewis have stated that they may recommend against board members at companies that have excluded shareholder proposals as a result of conflicting management proposals.

Ordinary business exemptions: In late 2018, the Division of Corporate Finance issued Staff Legal Bulletin No. 14J (SLB 14J), which provided guidance on the exclusion of shareholder proposals on the basis that they seek to ‘micromanage’ the company. SLB 14J detailed that, under the ordinary business exception, a company may exclude a proposal for micromanaging if it ‘involves intricate detail or seeks to impose specific timeframes or methods for implementing complex policies’. As a result, nearly two-thirds of climate/greenhouse gas proposals have been challenged and the SEC has provided no-action relief to more than 45 per cent of these proposals, which is the highest percentage we’ve seen over the last three years.

As you speak with shareholders this fall, expect to see a lot of attention on human capital management and board and management composition, as well as a continued focus on executive compensation. Keep in mind, for governance teams at today’s largest investors, value and values increasingly go hand in hand.

California made headlines in 2018 following the passage of its board diversity mandate. As a result, a number of other states have introduced legislation regarding board diversity targeting and reporting. Here’s a look at some notable updates.

**California**
SB 826 requires companies headquartered in California to have at least one woman on boards that have four members or fewer, two women on boards of five people, and three women on boards of six or more. California companies, 89 per cent of which fall under the law’s parameters, have until 2021 to implement these changes.

**Illinois**
HB 3394, not yet passed, would require an annual reporting component to collect information about board member diversity, which would be published online by the Secretary of State.

**Michigan**
SB 115, not yet passed, mirrors California’s SB 826. It would allow companies until 2023, however, to meet requirements.

**Maryland**
HB 1116 and cross-filed SB 0911, both approved in May 2019, institute new annual reporting requirements regarding the number of women serving on boards. Effective as of October 2019, domestic stock and nonstock corporations with sales and operating budgets exceeding $5 million must include the number of women serving on the board and the total number of members on their annual reports to the State Department of Assessments and Taxation. The comptroller will ultimately make female board representation data publicly available on its website.

**New Jersey**
NJ S2469, not yet passed, seeks to implement requirements for proportional female board membership. This would require all companies to have at least one female director by the end of 2019.

**New York**
S. 4728, not yet passed, proposes amending the state’s Business Corporation Law in order to conduct a Women On Corporate Boards Study, to be published by February 2022.

**Pennsylvania**
PA HR0114, not yet passed, would allow companies until 2021 to have a minimum of three women on boards with nine or more seats, a minimum of two women on boards with five to eight seats, and a minimum of one woman on boards with five or fewer seats.