

2021 Proxy Season ESG Lookback: Key Takeaways for Retail

RILA Retail ESG Initiative



**RETAIL INDUSTRY
LEADERS ASSOCIATION**

November 9th 2021

WELCOME



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HOW DOES ESG TOUCH RILA COMMITTEES?

[More about each of RILA's Committee/Councils](#)

ENVIRONMENTAL

- Sustainability Committee
- Responsible Sourcing Committee
- Zero Waste Committee
- Energy Management Committee
- Consumers Products Committee
- Environmental Compliance Committee

SOCIAL

- Retail Talent Council
- Diversity & Inclusion Leaders Council
- Asset Protection Leaders Council
- Workplace Safety Committee
- Consumers Products Committee
- Environmental Compliance Committee
- Responsible Sourcing Committee
- RTech Council
- Privacy Leaders Council
- Compliance Council
- Sustainability Committee

GOVERNANCE

- Compliance Council
- Internal Audit
- Chief Financial Officers Council
- Retail Talent Council
- Diversity & Inclusion Leaders Council
- General Counsel Committee
- Finance Leaders Council

REPORTING: VOLUNTARY & SEC

- Internal Audit
- Finance Leaders Council
- Sustainability Committee
- Chief Financial Officers Council
- Communications Committee

OTHER IMPLICATIONS

- Tax Committee
- Public Policy Steering Committee/Government Affairs Committee/State Government Affairs Committee
- Legal Team/Retail Litigation Center

ESG MARKET EDGE

Helping you stay up to date
with all things E, S and G



RILA has launched a monthly ESG newsletter!

- Each edition looks at a different topic in the evolving ESG landscape.
- Customized for a retail industry audience.
- Spotlights RILA committee lead topical experts and key external thought leadership.
- Sign up to be added to the distribution list [here!](#)

Antitrust Statement

RILA believes strongly in competition. Our antitrust laws are the rules under which our competitive system operates. It is RILA's policy to comply with both the letter and the spirit of antitrust laws. This Antitrust Statement has been adopted to avoid even the appearance of impropriety under the antitrust laws.

At any association meeting, participants must avoid any discussion of the following subjects in order to avoid even an appearance of impropriety:

- Do not discuss current or future prices, price quotations or bids, pricing policies, discounts, rebates, or credit terms.
- Do not discuss cost information such as production costs, operating costs, or wage and labor rates.
- Do not discuss profits or profit margins, including what is a "fair" profit margin.
- Do not discuss allocating markets, territories, or customers.
- Do not discuss current or future production or purchasing plans, including plans to take facility downtime, production quotas, or limits on output.
- Do not discuss refusing to deal with any suppliers, customers, or competitors (or any class or type of suppliers or customers).
- Do not require or pressure any supplier, customer, or competitor to adopt any particular actions or policies.
- Never agree on any aspect of future pricing or output.

Do not engage in prohibited discussions before a meeting or after a meeting is over. These antitrust guidelines apply not only in formal RILA meetings, but also in hallways, casual conversations, phone calls, emails, text messages, cocktail parties, golf outings, or any other setting that is related in any way to the RILA. If you have questions or concerns, or if you are uncertain about the propriety of any subject of discussion or proposed activity, you should stop the discussion immediately and bring the issue to the attention of RILA staff, or consult your company's general counsel.

REMINDERS

1. Recording and slides will be shared as follow up, along with relevant links/resources
2. Anonymous audience polls
3. How to ask a question or make a comment:
 1. Send question/comment via chat to all
 2. (*Anonymous option*) Send question/ comment to Erin Hiatt - Erin will read without attribution
 3. Use "Reactions" to raise your hand and Erin will call on you to unmute yourself

SPEAKER



Melissa Sawyer

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SULLIVAN & CROMWELL

Lessons from the 2021 Proxy Season and Corporate Governance Trends in the Retail Industry

*S&C Presentation to RILA
November 2021*

Melissa Sawyer

Overview

- Overview of Rule 14a-8 Shareholder Proposals at (1) the S&P 1500 (2) the Retail Companies
- The Rise of Social/Political and Environmental Proposals; Governance Proposals Most Likely to Be Voted
- Social/Political Proposals: Civil Rights, Human Rights & Racial Justice Proposals; Employee-Related DEI Proposals; DEI Trends at the Retail Companies; Political Spending & Lobbying Proposals
- Environmental Proposals
- No-Action Requests
- Exempt Solicitations
- Other Trends to Watch for 2022 Proxy Season

Appendix

- Governance Proposals
 - Structural Governance Proposals; Trends in Shareholder Rights at the Retail Companies
 - Board Composition Proposals; Board Composition and Committee Structure Trends at the Retail Companies
- Compensation Proposals
- ESG/CSR Disclosure Trends at the Retail Companies

Scope of Study

- We reviewed Rule 14a-8 shareholder proposals submitted to U.S. members of the S&P Composite 1500 (covering over 90% of U.S. market capitalization) (the “S&P 1500”) for 2021 annual meetings held on or before June 30, 2021.
- We also analyzed shareholder proposals submitted to, and the corporate governance practices of, 9 historically brick-and-mortar retail companies (the “Brick-and Mortar Retailers”) and 5 historically e-commerce retail companies (the “E-Commerce Retailers”) (collectively, the “Retail Companies”).

Brick-and-Mortar Retailers

- Walmart Inc.
- The Home Depot, Inc.
- Costco Wholesale Corporation
- Lowe’s Companies, Inc.
- Target Corporation
- The TJX Companies, Inc.
- The Kroger Co.
- Best Buy Co., Inc.
- Dollar Tree, Inc.

E-Commerce Retailers

- Amazon.com, Inc.
- eBay Inc.
- Wayfair Inc.
- Chewy, Inc.
- Etsy, Inc.

Overview of Rule 14a-8 Shareholder Proposals at the S&P 1500

- A total of 733 shareholder proposals were submitted to the S&P 1500 in H1 2021, the highest number in recent years, reversing the previous downward trend.
- Submissions on environmental and social/political (“ESP”) topics continued to increase and represented the majority of proposals submitted for the first time (56% of all submissions).
- Governance proposals continued to decline in prevalence, with nearly three quarters of governance proposals focusing on structural governance.
- The number of compensation proposals remained low.

Type of Proposal	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	H1 2021	2020	H1 2021	2020	H1 2021	2020	H1 2021	2020
Social/Political	293	231	114	133	30%	28%	18	12
Governance-related	277	328	199	231	40%	34%	36	29
Environmental	115	89	33	26	41%	32%	12	5
Compensation-related	48	58	24	29	20%	23%	-	1
Total	733	706	370	419	36%	31%	66	47

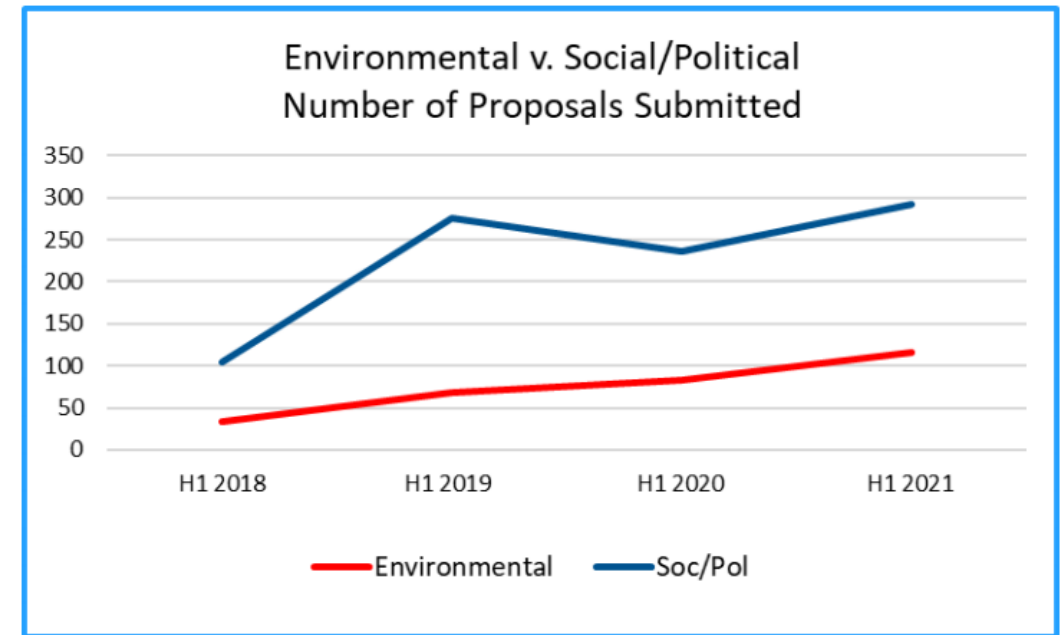
Overview of Rule 14a-8 Shareholder Proposals at the Retail Companies

- 60 shareholder proposals were submitted to the Retail Companies in the 2021 proxy season.
 - All of the Brick-and-Mortar Retailers disclosed they had received shareholder proposals.
 - Of the E-Commerce Retailers, only Amazon and eBay disclosed they had received shareholder proposals.
 - Amazon and Walmart accounted for 50% of all submissions, receiving 19 and 11, respectively.
- Proposals on ESP topics represented 80% of all proposals submitted to the Retail Companies.
- Only 17% of submitted proposals at the Retail Companies were on governance topics, compared to 38% at the S&P 1500.
- Two compensation proposals were submitted and voted on, but received low support.
- No shareholder proposals were passed at the Retail Companies in 2021.

	Shareholder Proposals Submitted	Shareholder Proposals Voted On	Average % of Votes Cast in Favor	Shareholder Proposals ISS Supported
Type of Proposal	2021	2021	2021	2021
Social/Political	39	14	24%	10
Governance-related	10	8	32%	7
Environmental	9	3	29%	2
Compensation-related	2	2	10%	-
Total	60	27	26%	19

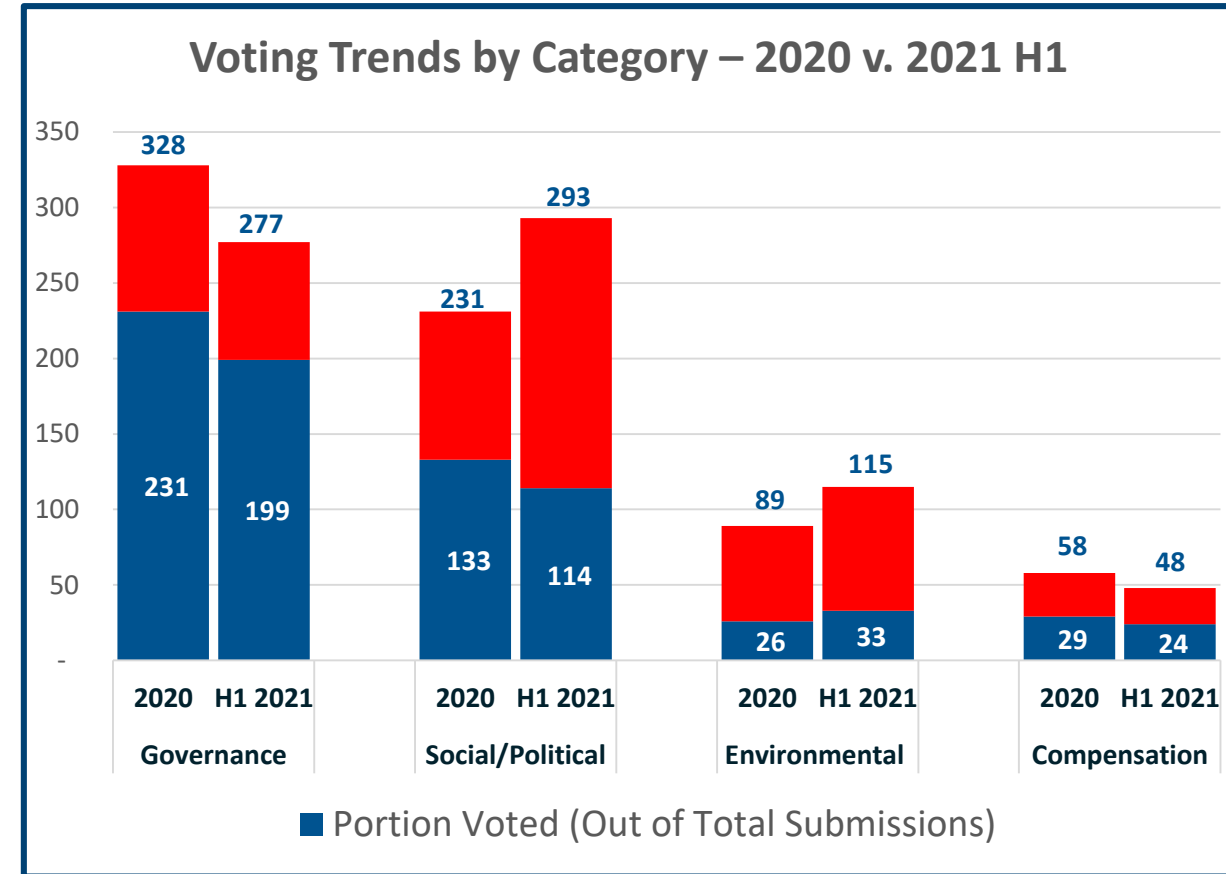
Social/Political vs. Environmental Proposals

- Social/political proposals became, for the first time, the largest category of submissions for the S&P 1500 (40% of total submissions), increasing by 27% over H1 2020.
 - Main drivers of growth were employee-related diversity, equity and inclusion (DEI) proposals (93% increase) and social capital management (SCM) proposals (43% increase).
 - Proposals on social/political topics represented 65% of all proposals submitted to the Retail Companies in 2021, notably more than 40% for the S&P 1500.
- Environmental proposals represented only 16% of total submissions at the S&P 1500, but increased more significantly than any other category in 2021 (by 40% over H1 2020).
 - The growth was driven by a dramatic 77% increase in proposals relating to climate, which comprised nearly three quarters of all environmental proposals submitted in H1 2021.
 - Environmental proposals comprised 15% of total submissions to the Retail Companies, a similar proportion as in the S&P 1500.



Governance Proposals Most Likely to Be Voted

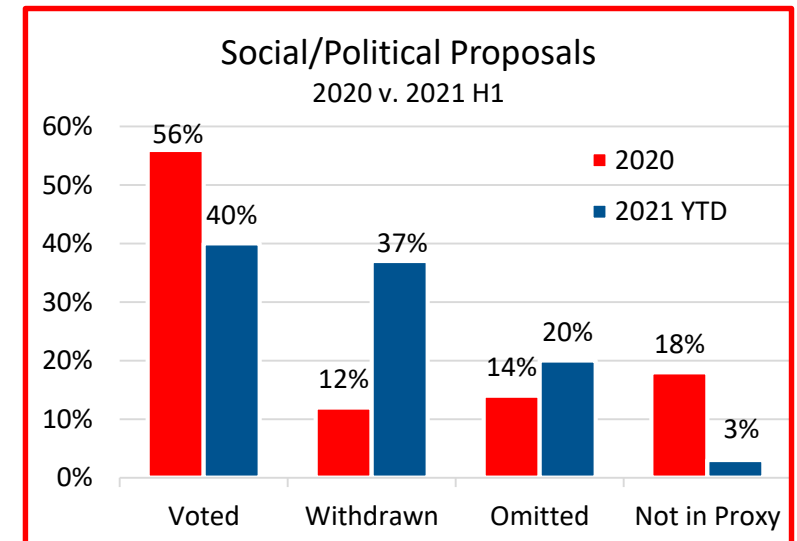
- Once again, a majority of governance proposals at the S&P 1500 went to a vote (72%) and voted proposals continued to receive high support.
 - Similarly, 8 out of 10 governance proposals submitted to the Retail Companies went to a vote, and governance proposals received the highest average support among voted proposals at the Retail Companies (32% vs. 26% for the S&P 1500).
- In contrast, environmental proposals were least likely to go to a vote at the S&P 1500 (29%). However, average support for voted proposals increased from 32% in 2020 to 41% in H1 2021.
 - Similarly, only 3 out of 9 environmental proposals submitted to the Retail Companies went to a vote, with an average 29% of votes cast in favor of the 3 voted proposals.
- The proportion of social/political submissions voted on at the S&P 1500 declined from 58% to 39%, while average support for voted proposals increased slightly from 28% to 30%.
 - 36% of social/political proposals submitted to the Retail Companies went to a vote, with only 24% of votes cast in favor of the voted proposals on average.



Social/Political Proposals

- Of the 293 social/political proposals submitted at the S&P 1500, 37% were withdrawn (compared to 12% in 2020).
 - Of the 39 social/political proposals submitted to the Retail Companies, 28% were withdrawn and 36% were omitted.
- The largest subcategory of proposals at the S&P 1500 this year was social capital management, which increased by 43% over FY 2020, driven by the emergence of new categories of civil rights, human rights and racial justice proposals.
 - Social capital management was also the largest subcategory of proposals to the Retail Companies.
- For the S&P 1500, most of the submitted social/political proposals related to EEO-1 reporting and political spending/lobbying.
 - At the Retail Companies, more submissions related to civil rights, human rights and racial justice issues than to EEO-1 reporting and political spending/lobbying combined.

Proposal Subcategory	Social/Political Proposals							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	H1 2021	2020	H1 2021	2020	H1 2021	2020	H1 2021	2020
Social Capital Management	123	86	55	38	17%	19%	1	1
Employee-Related DEI	89	46	17	25	47%	24%	6	3
Political Spending/Lobbying	64	76	36	60	41%	35%	9	6
Non-DEI HCM	17	23	6	10	27%	23%	2	2



Civil Rights, Human Rights & Racial Justice Proposals

- Racial equity audit proposals and requests for human rights due diligence procedures were submitted in meaningful numbers at the S&P 1500 for the first time this year, with such proposals submitted to 12 and 17 companies, respectively.
- Racial equity audit proposals asked companies to commission audits on their impacts on civil rights and DEI.
 - Shareholder support ranged from 17% to 44%.
 - Proposals at Morgan Stanley, Blackrock and CoreCivic were withdrawn after the companies agreed to conduct racial equity audits.
 - Amazon unsuccessfully sought no-action relief based on the proposal relating to the ordinary course of its business (Rule 14a-8(i)(7)); the proposal was supported by ISS and received shareholder support of 44%.
- Human rights due diligence proposals asked companies to report on human rights due diligence processes.
 - ISS recommended voting for 5 of 6 management-opposed proposals, which received moderate shareholder support (18% to 35%).
 - A management-supported proposal at Wendy's received 95% of votes cast.
 - A proposal at Kroger was withdrawn, while a proposal at Amazon focused on human rights due diligence of customers' use of its cloud products or offerings with surveillance or computer vision was supported by ISS and received shareholder support of 35%.
- 3 of the Retail Companies received proposals relating to criminal justice aspects of civil and human rights and racism.
 - Northstar Asset Management submitted proposals to Home Depot and TJX requesting reports on the respective company's role in systemic racism through suppliers using incarcerated workers. TJX's no-action request based on Rule 14a-8(i)(7) was granted while Home Depot's was not. The Home Depot proposal was not supported by ISS and received low shareholder support (13%).
 - The Nathan Cummings Foundation submitted a proposal for Target to prohibit partnerships with local police unless the board concludes such partnerships do not increase the likelihood of civil and human rights violations. The proposal and Target's no-action request were withdrawn after Target agreed the proponent could make a 3 minute statement at the shareholder meeting.

Employee-Related DEI Proposals

- Proposals on employee-related DEI matters nearly doubled at the S&P 1500.
- 47% of these proposals focused on disclosure of EEO-1 reports:
 - Most were withdrawn after companies agreed to release the report, which was the case for proposals by the NYC Comptroller to Walmart, Home Depot and Lowe's.
 - 3 were voted and 2 passed with overwhelming support (84% and 86%), with the other still receiving 41% support.
- Almost all other employee-related DEI proposals requested disclosure of DEI efforts and/or resulting statistics through one-time or annual workforce diversity reports:
 - These proposals also received high support: of the eight that went to a vote at the S&P 1500, three passed.
 - In many cases, the proponent focused on the company's stated commitment to DEI and requested that the company provide evidence to demonstrate concrete and measurable DEI progress.
 - Although many companies settled before a vote, this year some companies made the decision to let these proposals go to a vote with management support.
 - TJX and Dollar Tree were granted no-action relief for such proposals by As You Sow Foundation based on the proponent failing to demonstrate requisite ownership (Rule 14a-8(b), (f)(1)).
 - 3 employee-related DEI proposals went to a vote at Walmart (1) and Amazon (2) without management support. The proposal at Walmart was supported by ISS but received only 13% shareholder support. One of the proposals at Amazon was supported by ISS and received 26% shareholder support; the other received 18% shareholder vote.

DEI Trends at the Retail Companies

- Two of the Brick-and-Mortar Retailers and one of the E-Commerce Retailers has released EEO-1 data, and one additional Brick-and-Mortar Retailer has committed to releasing EEO-1 data going forward.
- Two E-Commerce Retailers and one Brick-and-Mortar Retailer currently disclose data on pay equity, revealing that women on average earn at least 99.9% of what men are paid in the U.S. and 99.7% of what men are paid globally in those companies.
- One Brick-and-Mortar Retailer has adopted the Rooney Rule for all salaried leadership positions.

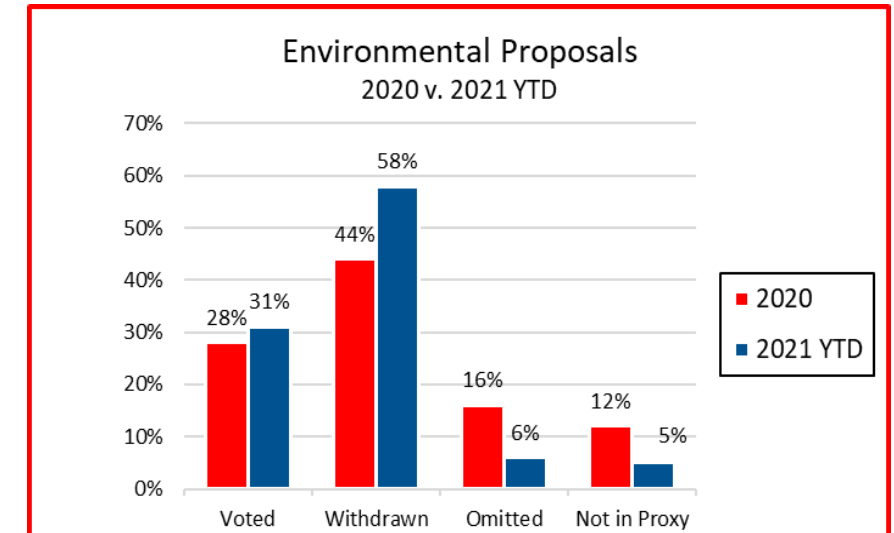
Political Spending & Lobbying Proposals

- Political spending/lobbying proposals declined by 16% at the S&P 1500, continuing a downward trend.
- 63 of 64 proposals requested that companies disclose political spending (e.g., contributions to candidates, lobbying expenditures and related policies).
 - The one other proposal asked Best Buy to evaluate and report on how its lobbying efforts align with racial equity goals but was withdrawn.
- Consistent with prior years, many of the companies that received a political proposal this year were high-profile American brands or companies in sectors that attract public attention (such as the healthcare, pharmaceutical, technology, banking and energy sectors).
 - Retail companies also attract attention—4 of the Retail Companies received a proposal for the 2021 proxy season.
- In response to the armed insurrection at the U.S. Capitol, NYC's Comptroller called on certain public companies to reassess political spending practices and suspend contributions.
- ISS supported 83% of the proposals that were voted at the S&P 1500, and all three voted proposals at the Retail Companies.
- Average shareholder support at the S&P 1500 rose from 35% in 2020 to 41% in 2021.
 - Shareholder support for political proposals voted on at Walmart, Home Depot and Amazon were slightly below average in spite of positive ISS recommendations, with support of 22%, 38% and 35%, respectively.

Environmental Proposals

- Companies seemed to have preferred engaging with a proponent rather than taking the proposal to a vote, as over half of environmental submissions to the S&P 1500 were withdrawn, representing a meaningfully high withdrawal rate.
 - This was the case for environmental proposals submitted to the Retail Companies as well, with 6 out of 9 withdrawn.
- Environmental proponents (e.g., As You Sow) rarely settled with a company unless the company committed to take actions towards the specified environmental goals or disclose future plans to curtail environmental damage.
- Voted proposals received 41% average support, up from 32% in 2020, and a record 12 proposals passed this year, 11 of which were climate related (receiving between 57% and 98% shareholder support).
 - The environmental proposals that went to a vote at the Retail Companies received between 6% and 46% shareholder support.

Proposal Subcategory	Environmental Proposals							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	H1 2021	2020	H1 2021	2020	H1 2021	2020	H1 2021	2020
Climate	85	48	28	14	41%	33%	11	3
Actions/Demands	52	16	8	3	62%	23%	6	-
Climate-Related Reporting	27	32	17	11	35%	36%	5	3
Say-On-Climate	6	-	3	-	25%	-	-	-
Sustainability (Reporting and Other Efforts)	30	41	5	12	36%	31%	1	2



Environmental Proposals

Continued

- Say-on-climate at the S&P 1500:
 - 6 proposals requested companies adopt an annual shareholder vote on climate transition plans.
 - 3 of these “say-on-climate” proposals went to a vote where they received between 7% and 37% support.
 - Institutional investors’ attitudes may dictate whether annual say-on-climate votes become the norm.
 - Vanguard, for instance, currently evaluates these proposals by observing whether climate change is a material risk for the company and considers a number of factors, including (i) the reasonableness of the request, (ii) whether the proposal addresses a gap in disclosure and (iii) the proposal’s alignment with industry standards.
- Standardized environmental/ESG reporting:
 - Despite the increasing attention from key stakeholders (e.g., ISS, institutional investors, U.S. federal and state legislators/regulators), only one 2021 shareholder proposal requested standardized disclosure based on the SASB framework and none requested standardized disclosure based on the TCFD framework. The SASB-linked proposal received only 11% shareholder support.
- Most environmental proposals focused more generally on companies’ commitment to publishing sustainability disclosures and adopting sustainability policies rather than demanding a specific reporting framework.
 - For example, the two voted proposals that received moderate shareholder support at Kroger (46%) and Amazon (36%) were each submitted by As You Sow and requested reports related to the use of plastic packaging.

No-Action Requests

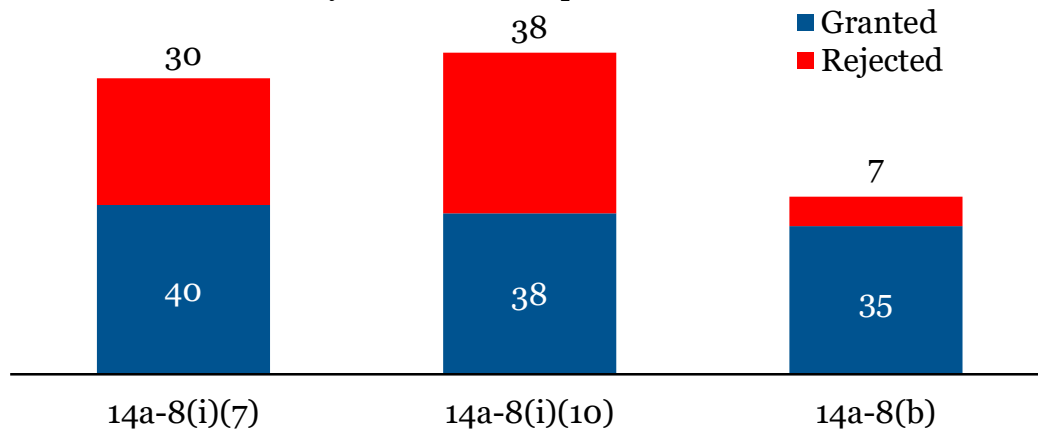
- The SEC announced in September 2019 that for the 2020 proxy season, it would begin to provide only verbal responses unless a written response would provide value, such as guidance on compliance with Rule 14a-8. In 2021, SEC staff provided over 96% of its responses verbally, up from 79% in 2020.
 - For the Retail Companies, responses were provided verbally for 92% of proposals for which requests were considered.
- From September 1, 2020 through June 30, 2021, 263 requests were submitted for no-action relief to exclude shareholder proposals from proxy materials for meetings scheduled to be held in 2021, slightly up from 244 for 2020.
 - The Retail Companies appeared to submit no-action requests at a greater rate than the S&P 1500, on average, with no-action relief being sought by the Retail Companies for 32 proposals, or 53% of all proposals submitted to the Retail Companies.
- Of the requests that received a response, the SEC granted relief to 74% of requests related to governance proposals, 69% of requests related to ESP proposals and 61% of requests related to compensation proposals, compared to 69%, 73% and 71%, respectively, in 2020.
 - For the Retail Companies, the SEC granted relief for 14 out of 21 social proposals for which no-action requests were considered (67%) and 1 out of 3 governance proposals for which no-action requests were considered (33%). For the S&P 1500, no-action requests were granted for 63% of the proposals for which requests were considered.

No-Action Requests

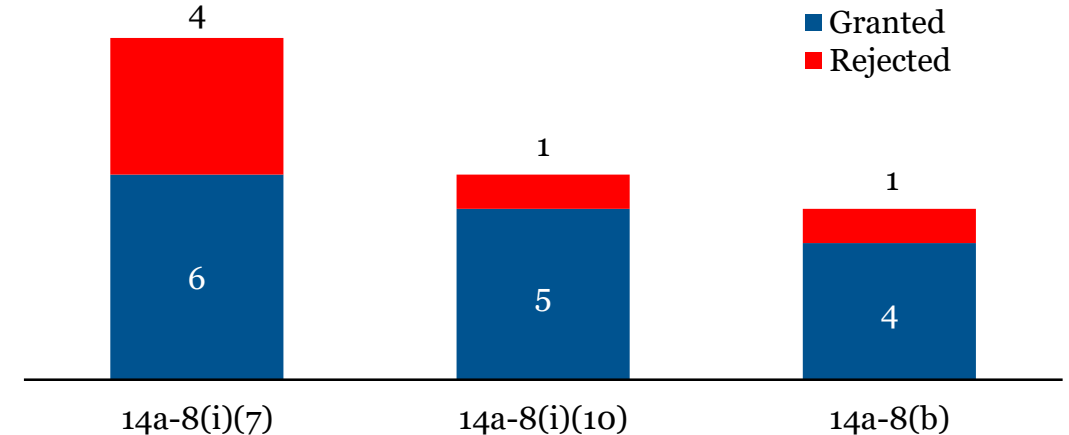
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- Of the 263 no-action requests submitted in the 2021 proxy season, 198 received a response from the SEC as of June 30, representing a withdrawal rate of approximately 25%.
 - For the Retail Companies, requests were withdrawn with regard to 8 of 32 proposals for which no-action relief was sought.
- For the S&P 1500, Rule 14a-8(i)(10) (substantial implementation) was the most common basis for requesting relief.
 - Rule 14a-8(i)(7) (ordinary business) was the most common basis on which the Retail Companies sought exclusion of proposals.
- For the S&P 1500, relief was most likely to be granted based on Rule 14a-8(b) (failure to demonstrate sufficient ownership) and somewhat more likely to be granted on the basis of Rule 14a-8(i)(7) compared with Rule 14a-8(i)(10).
 - For the Retail Companies, requests were most likely to be granted based on Rule 14a-8(i)(10), and least likely based on (i)(7).

No-Action Determinations by Rule in S&P 1500
(by Number of Requests)



No-Action Determinations by Rule for the Retail Companies
(by Number of Proposals Effected)



Exempt Solicitations

- Under Rule 14a-6(g), a person who conducts a solicitation of shareholders without seeking to have proxies granted and owns over \$5 million of a company's securities must file with the SEC a notice and all written soliciting materials.
- In 2021 through June 30, 221 notices of exempt solicitation were filed with the SEC, of which over 80% were self-identified as voluntary or not required pursuant to Rule 14a-6(g).
- Shareholders voluntarily file notices of exempt solicitation with the SEC under Rule 14a-6(g) to encourage votes on shareholder proposals and say-on-pay proposals and in "vote no" campaigns.
- Top filers of exempt solicitation notices included John Chevedden, As You Sow, CtW, and CalPERS, overlapping with the top proponents of shareholder proposals either individually or by type (including social investors, public pension funds and religious organizations).
- Focusing on the Retail Companies, 15 notices of exempt solicitation were filed with respect to 12 proposals in 2021.
 - 11 of the notices, with respect to 11 of the proposals, were identified as voluntary.
 - Voluntary filers included nonprofits (e.g., As You Sow, Oxfam, United for Respect), social investors (e.g., Zevin Asset Management, Arjuna Capital) and religious organizations.
 - The filings not identified as voluntary were made by the New York State Comptroller for the NYS Common Retirement Fund and the Rhode Island Office of the General Treasurer.

Other Trends to Watch for 2022 Proxy Season

- Status of 14a-8 amendments
- Status of proxy advisor rules
- Universal proxy/ballot rule-making
- BlackRock's "pass-through voting" announcement
- Fund voting disclosure requirements
- Relationship between 2022 AGM 14a-8 proposals and climate, HCM, cyber and claw-back rule-making
- 13D rule-making



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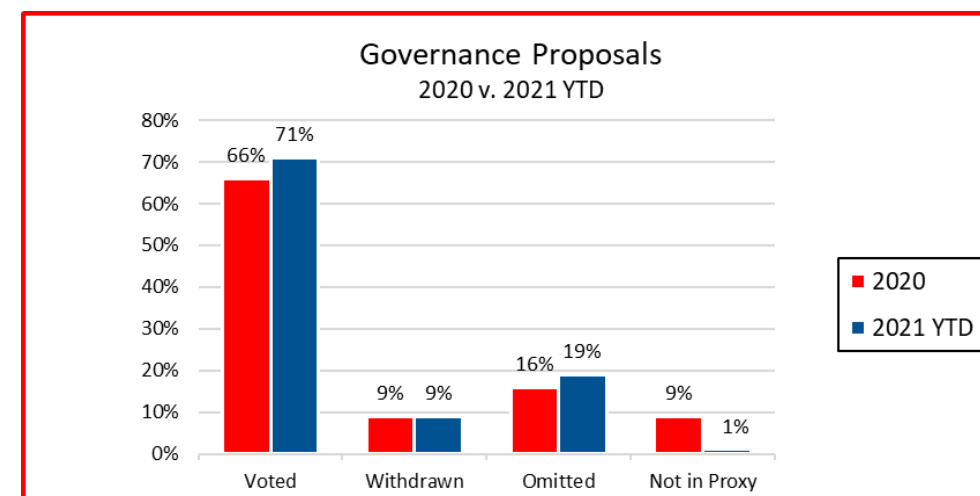
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Appendix

Governance Proposals

- As in 2020, nearly three quarters of all governance proposals at the S&P 1500 went to a vote (80% at the Retail Companies).
- Reversing a downward trend since 2015, average shareholder support at the S&P 1500 increased to 40% this year.
 - Voted governance proposals received 32% average shareholder support at the Retail Companies.
- Structural governance proposals represented approximately 73% of submitted governance proposals at the S&P 1500 and 78% of those that were voted. In contrast, board composition proposals decreased in prevalence, representing only 26% of submitted governance proposals, and 22% of those that were voted.
- Similarly, 6 structural governance proposals were submitted to the Retail Companies (all voted on) compared with 3 board composition proposals (2 voted on, 1 withdrawn).

Proposal Subcategory	Governance Proposals							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	H1 2021	2020	H1 2021	2020	H1 2021	2020	H1 2021	2020
Structural Governance	201	195	155	157	44%	37%	34	25
Written Consent	72	65	65	60	40%	36%	7	4
Special Meetings	36	44	30	40	38%	41%	5	5
Proxy Access	31	19	24	14	32%	33%	-	1
Other Structural	62	67	36	43	62%	37%	22	15
Board Composition	72	103	44	67	28%	25%	2	3
Misc. Governance	4	30	-	7	-	31%	-	1



Structural Governance Proposals

- Certain “shareholder-friendly” structural governance measures have become widely adopted among the S&P 500 (e.g., majority voting, annual election of directors, elimination of supermajority voting).
- Recently, governance-focused proponents have shifted their attention to:
 - Shareholder right to act by written consent (adopted by 31% of S&P 500)
 - Largest category of governance submissions at the S&P 1500 (26%) this year, with the vast majority of proposals being “adopt” proposals (79%); average support remained high at 40%.
 - Best Buy and eBay both received “adopt written consent” proposals from John Chevedden. Both were supported by ISS and received 26% and 47% shareholder support, respectively.
 - However, this year saw a three-fold increase in the number of “amend” written consent proposals (15 compared to five in 2020); average support increased from 17% to 41%.
 - Home Depot received an “amend” proposal which was supported by ISS and received 46% shareholder support.
 - Shareholder right to call special meetings (adopted by 81% of S&P 500)
 - Proposals to adopt or amend special meeting rights continued to receive relatively high levels of shareholder support (57% for “adopt,” 33% for “amend”), but were down slightly y/y (36 submitted and 30 voted vs. 44 and 40, respectively, in 2020).
 - A proposal at Amazon to reduce the ownership threshold for shareholders to call a special meeting from 25% to 20% was supported by ISS and received 34% shareholder support.
 - Proxy access (adopted by two thirds of S&P 500)
 - In 2021, 31 proxy access proposals were submitted, only two of which were “adopt” proposals (compared to four in 2020); “adopt” proposals only received 5% average support, whereas “amend” proposals received 33% support.
 - Proposals to amend proxy access rights at Lowe’s and Target received 33% and 38% shareholder support, respectively.

Trends in Shareholder Rights at the Retail Companies

- Only 2 of 9 of the Brick-and-Mortar Retailers and 2 of 5 of the E-Commerce Retailers grant shareholders the right to act by written consent.
- 78% of the Brick-and-Mortar Retailers and 60% of the E-Commerce Retailers grant shareholders special meeting rights. The E-Commerce Retailers generally take a more restrictive approach.
- All of the Brick-and-Mortar Retailers and only 40% of the E-Commerce Retailers grant shareholders proxy access, compared to 82% of S&P 500 companies.
- The Brick-and-Mortar Retailers averaged a 93% say-on-pay approval rate, which was higher than the 90% rate for S&P 500 companies and the 89% rate for the E-Commerce Retailers.

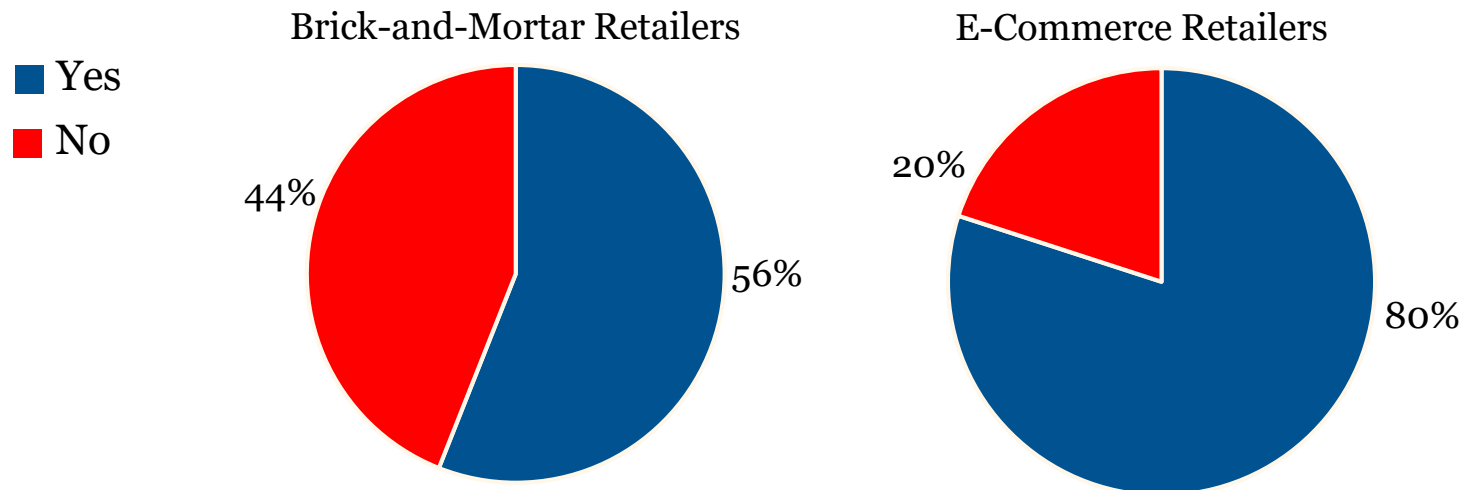
Board Composition Proposals

- The total number of board composition submissions fell significantly year-over-year.
- Independent chair:
 - Submissions on independent board chair proposals, which remained the largest subgroup of board composition proposals, fell from 51 in 2020 to 38 in 2021 for the S&P 1500.
 - Shareholder support on independent chair proposals remained relatively high (at 32% compared to 35% in 2020), although none passed (compared to two in 2020).
 - An independent chair proposal at Amazon was not supported by ISS and received only 15% shareholder support.
- Board diversity:
 - Submissions on board diversity dropped significantly from H1 2020, when many companies announced their commitment to board diversification efforts. The low number of submissions may be related to the attention that this topic has received from other stakeholders, including regulators, legislators, stock exchanges and public companies.
 - As in prior years, board diversity proposals rarely went to a vote (only three did in 2021 for the S&P 1500), but two of the three that went to a vote received very high support, with average support of 59% (compared to 15% in 2020).
- A proposal at Amazon to include hourly associates among the initial list of candidates from which board nominees are chosen was supported by ISS and received 18% shareholder support.

Board Composition Trends at the Retail Companies

- Retail or merchandise experience is a priority for boards across the Retail Companies, with over half reporting that five or more directors have retail experience.
 - E-commerce experience is also prevalent (at least three board members at 5 of 9 of the Brick-and-Mortar Retailers and 3 of 5 of the E-Commerce Retailers).
 - Three of the Retail Companies have directors with media experience.
- The Brick-and-Mortar Retailers are less likely than the E-Commerce Retailers to separate their CEO and board chair positions.

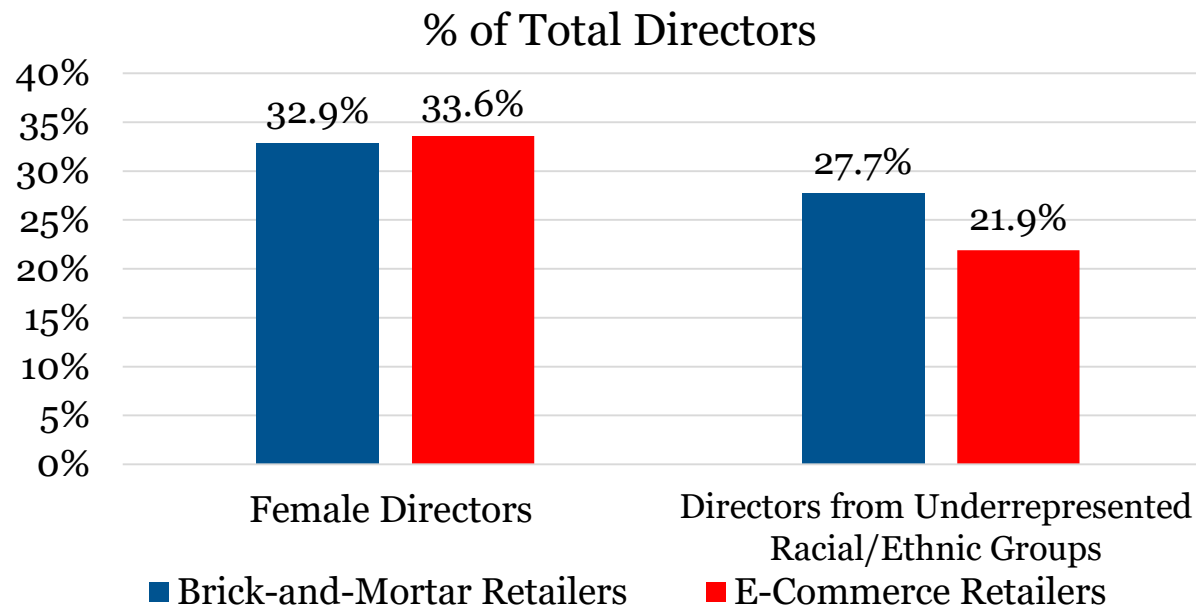
CEO/Chair Split (by end of 2021)



Board Composition Trends at the Retail Companies

Continued

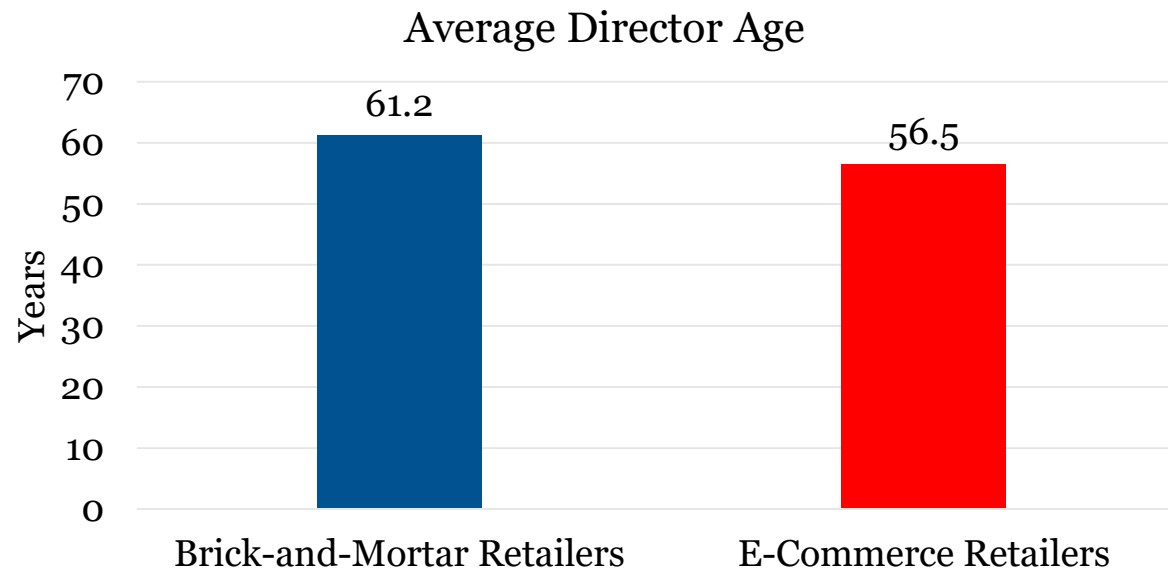
- On average, the Brick-and-Mortar Retailers and E-Commerce Retailers have a greater percentage of female directors than the average S&P 500 company (28%).
- Boards of the E-Commerce Retailers have proportionately fewer directors from underrepresented racial/ethnic groups than boards of the Brick-and-Mortar Retailers, though both have proportionately more than the average S&P 500 company board (20%).
- Two of the E-Commerce Retailers and one of the Brick-and-Mortar Retailers have adopted the Rooney Rule for director candidates.



Board Composition Trends at the Retail Companies

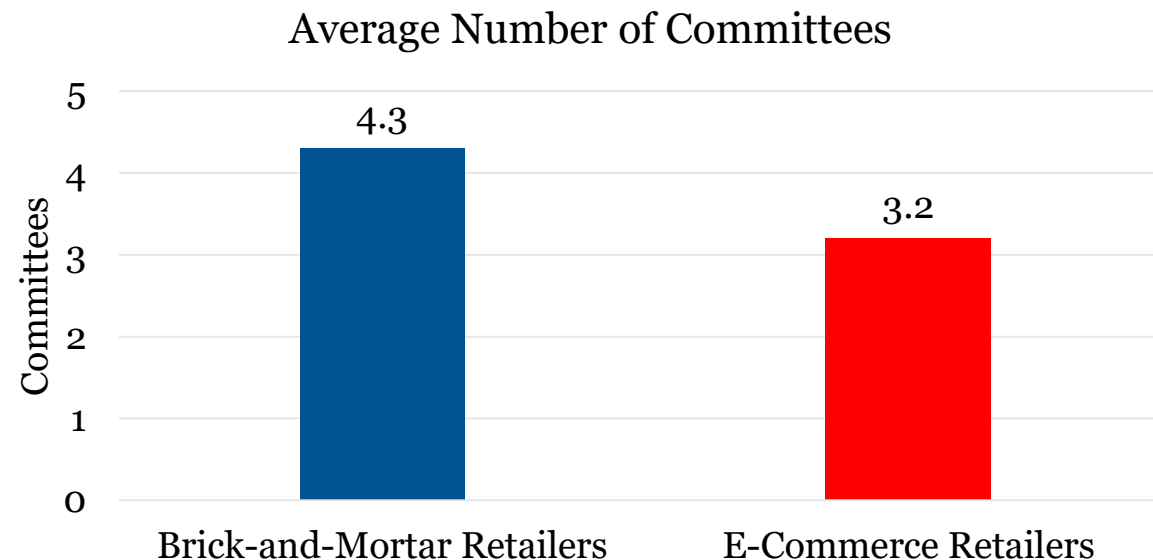
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- The institution of a specified retirement age is the most common board refreshment policy among the Retail Companies.
 - 67% of the Brick-and-Mortar Retailers have implemented a specified retirement age, while no E-Commerce Retailer has followed suit.
 - Two of the Brick-and-Mortar Retailers have also instituted term limits in conjunction with a mandatory retirement age of 72.
- Directors at the E-Commerce Retailers tend to be younger on average than directors at the Brick-and-Mortar Retailers.



Committee Structure Trends at the Retail Companies

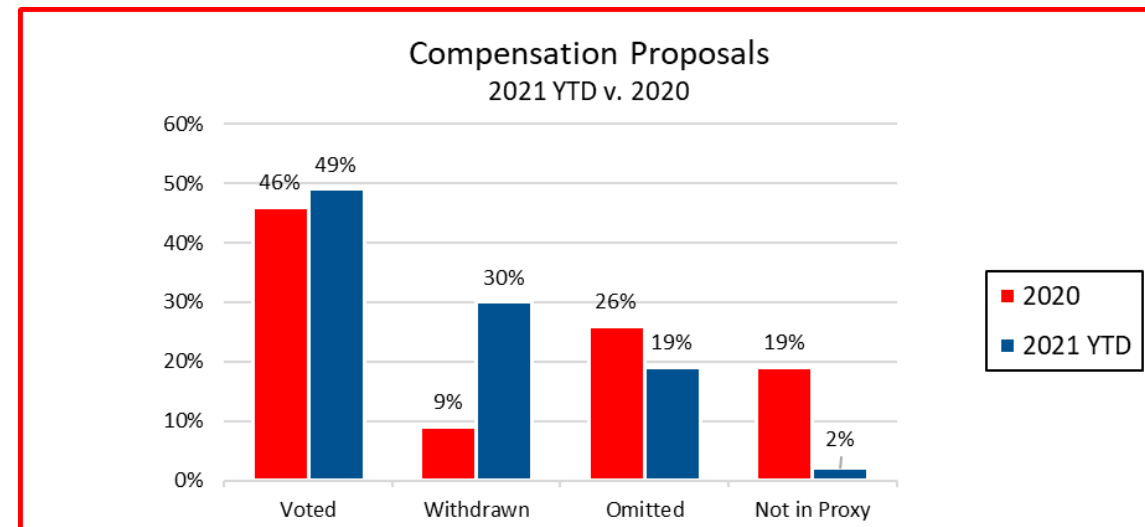
- The Brick-and-Mortar Retailers have more committees on average than the E-Commerce Retailers.
- The Brick-and-Mortar Retailers have additional committees for e-commerce or technology, sustainability, public responsibility, infrastructure and investment, and risk and compliance.
- Comparatively, the E-Commerce Retailers have only three standing committees, with the exception of one, which has an additional risk management committee.



Compensation Proposals

- Compensation proposals submitted dropped by ~20% from FY 2020. Consistent with 2019 and 2020, around half of these proposals reached a vote. Voted proposals received relatively low support (averaging 20%) and none passed.
 - Among the Retail Companies, two compensation proposals received low shareholder support of 10-11% at TJX and eBay.
- As was the case in both 2019 and 2020, the most common type of compensation-related proposals in 2021 were proposals to link exec comp to ESP issues, such as diversity, social inequality, sustainability and environmental impact.
 - For the S&P 1500, there were slightly fewer ESP compensation-related proposals in 2021 than in 2020, notwithstanding the media focus on executive compensation during the height of the COVID-19 pandemic and the racial justice protests.
 - Shareholder support for these proposals also continued to drop, falling to 9% this year, compared to 17% in 2020 and 24% in 2019.

Proposal Subcategory	Compensation Proposals					
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor	
	H1 2021	2020	H1 2021	2020	H1 2021	2020
Compensation – Social	13	16	8	7	9%	17%
Compensation – Environmental	9	7	3	4	11%	14%
Clawbacks	3	2	3	2	34%	45%
Stock Retention	2	5	-	5	-	22%
Compensation – Other	21	28	10	11	28%	26%

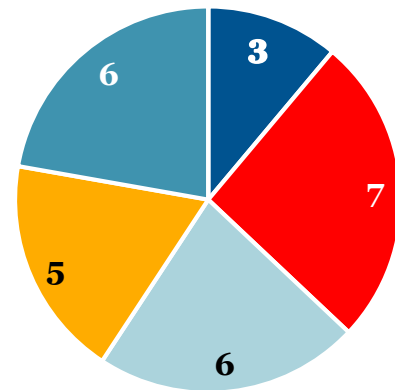


ESG/CSR Disclosure Trends at the Retail Companies

- The Brick-and-Mortar Retailers are more likely than the E-Commerce Retailers to publish ESG disclosures.
- Among the Brick-and-Mortar Retailers, GRI, SASB and TCFD are the most popular disclosure frameworks used.
- This aligns generally with the frameworks used by the E-Commerce Retailers, though the E-Commerce Retailers are slightly more likely to favor SASB metrics than the Brick-and-Mortar Retailers.

Corporate Responsibility Reports

Brick-and-Mortar Retailers



E-Commerce Retailers



■ CDP ■ GRI ■ SASB ■ SDGs ■ TCFD ■ UNGP

SULLIVAN & CROMWELL

Live Polls

*Note for live polls, the survey results represent a “snapshot in time” of some RILA member companies’ policies and activities related to the topics covered by this survey. Not all RILA member companies participated in the survey and more than one representative from a company may have responded. Therefore, the survey results do not represent a complete picture of the policies and activities of the whole RILA membership or the retail industry on these issues.

Poll 1: The SEC is expected to adopt mandatory climate and HCM reporting in the spring of 2022. Will this factor into your approach to negotiating withdrawals and/or opposing shareholder proposals on those topics at your 2022 AGM?

- Yes – 15%
- No - 24%
- Not Sure -72%
- N/A -9%

Poll 2: BlackRock has indicated that it intends to pass-through voting on shareholder proposals to its underlying investors. Is this likely to change how you conduct your shareholder engagement efforts or craft disclosures on social and environmental topics?

- Yes – 7%
- No - 19%
- Not Sure -67%
- N/A -7%

Poll 3: The recent 14a-8 amendments require proponents to offer up times to engage with issuers concerning their proposals. How will this impact your process, if at all? Select all that apply.

- Resulted in no changes to our process in practice – 17%
- Allowed us to exclude a proposal on procedural grounds - 0%
- Facilitated a productive meeting with a proponent -2%
- Other share in chat -0%
- Not sure – 73%
- N/A (e.g., not publicly traded) – 12%

Poll 4: Last week the SEC announced new guidance on 14a-8 proposals that will make it harder for companies to secure no action relief on ordinary business grounds. Are you changing your approach to 14a-8 proposals for your 2022 AGM as a result?

- Yes – 5%
- No - 16%
- Not Sure -71%
- N/A (e.g., not publicly traded)-8%

Join RILA for Part 2!

February 10, 2022 – 1-2pm ET

Melissa Sawyer will provide RILA members an exclusive look ahead into the 2022 proxy season's key ESG themes and considerations for the retail industry

[Register Here!](#)

Thank you!