Disputes proliferate in fractious vote season

Proxy contests and legal disputes characterised the 2024 vote season in North America and Europe as battle lines hardened between change-seeking shareholders and laggard companies. By Richard Adeniyi-Jones and Dana Barnes.

Setting the scene

Shareholders attempting to exercise their rights found themselves frustrated this vote season as recalcitrant companies pushed back on investor escalation. Meanwhile, proxy contests increased in the US following regulatory changes, allowing shareholders to consider dissident nominees alongside the company's preferred options, including a high-profile three-way battle at Disney.

Across Europe, more climate protests were seen at financial institutions and biodiversity-related resolutions were a growing trend with a focus on chemicals and pesticides, deforestation, deep-sea mining, plastics, AMR and animal welfare.

With voting season still underway in some Asian markets, this article focuses on the key themes of the 2024 AGM season in North America, Europe and Australia. We will spotlight some of the key trends from developed Asia and the emerging markets in our Q3 Public Engagement Report.

In the first half of 2024 we made voting recommendations for 10,810 meetings, versus 9,168 in H1 2023. We made at least one voting recommendation against management at 72% of meetings, versus 69% in H1 2023.

Overall, we recommended votes on 3,002 shareholder resolutions in the first half of 2024, versus 2,395 over the same period in 2023. Some 610 of these were in the US, where we recommended voting against management on 366 proposals or 60%.

Climate change

We consider recommending votes against directors at companies identified as laggards in managing climate-related risks, using region and sector-specific thresholds and various climate risk indicators. In the first half of 2024, we recommended voting against the re-election of directors or relevant proposals at 250 companies down from 269 in H1 2023, due to concerns about insufficient management of climate-related risks.

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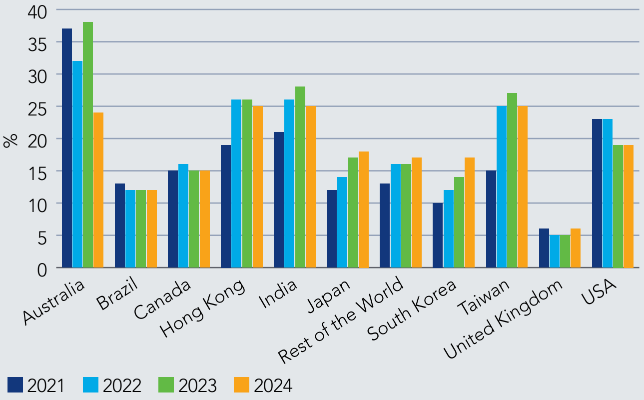
Percentage of proposals voted against management in H1 per key market



Source: EOS data; all statistics for H1.

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In Australia, we escalated our engagement with the oil and gas company Woodside Energy. We consider Woodside's emissions reduction targets, strategy, and capital allocation to be materially misaligned with a 1.5°C pathway, despite prior high levels of investor dissent, most notably the company's 'say-on-climate' vote receiving 49% of votes against in 2022. We recommended that clients vote against the climate transition action plan and the re-election of the chair, because he has overseen what is perceived as an inadequate response to shareholder concerns. A record 58% of shareholders voted down the plan this year.

In the European market, there was an advisory vote on Shell's energy transition strategy and a climate-related shareholder proposal from Dutch non-profit Follow This. Shell's recent scaling back of ambition in its medium-term transition targets, a lack of comprehensive indicators, and its relative loss of energy transition leadership led us to recommend voting against the energy transition report and for the Follow This shareholder proposal. This asked Shell to align its medium-term emissions reduction targets with the Paris Agreement.

At TotalEnergies, we noted the company's continued progress in reducing emissions and the evidence that it is delivering on its "low cost, low emissions" ambition. However, we could not fully ascertain the resilience of the company's projects under a 1.5°C scenario, as its disclosures of portfolio and pipeline economics were not sufficiently consistent and precise. Therefore, we recommended a vote against the Sustainability & Climate Progress Report.

Beyond the say-on-climate and transition plan votes at fossil fuel producers, we also saw a range of climate-related shareholder proposals at financial services companies, addressing their role in financing different carbon-intensive sectors. Climate activists made their presence felt, with a singing protest at Standard Chartered's AGM in London[1] and disruption at Abrdn's meeting over the asset manager's fossil fuel exposure.[2]

At Barclays, a shareholder proposal brought by NGO ShareAction asked the bank to undertake a review of the risk of it being exposed to stranded oil and gas assets, given that its policy allows for the continued financing of oil sands, Arctic oil and gas, fracking, and ultradeep projects. Prior to the AGM, however, the company released an updated energy policy which resulted in the proposal being withdrawn.[3] The updated policy was welcomed by the proposal's proponents, who had continued to engage with the company in order to achieve a positive outcome.

This year, EOS attended the annual shareholder meetings of Royal Bank of Canada, Bank of Montreal, Scotiabank, Toronto-Dominion Bank and the Bank of Montreal virtually. We wanted to highlight the fact that according to the Transition Pathway Initiative's latest Net Zero Assessment Framework, these Canadian banks had scored zero points on the alignment between their net-zero commitments and their lobbying or trade association activity.


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[1] https://www.banktrack.org/article/environmental_activists_and_shareholders_accuse_standard_chartered_of_being_complicit_in_environmental_destruction#:~:text=The%20Standard%20Chartered%20plc%20Annual,'Fossil%20Fuels%20are%20Trouble'.

[2] https://future.portfolio-adviser.com/abrdn-agm-disrupted-by-climate-change-protestors/.

[3] https://www.reuters.com/world/uk/barclays-adopt-fresh-curbs-oil-gas-financing-2024-02-09/#:~:text=Non%2Dprofit%20ShareAction%2C%20that%20had,stop%20funding%20new%20expansion%20projects.

VOTING CASE STUDY

ExxonMobil

Shareholder rights were under the spotlight in the run up to US oil and gas major ExxonMobil's annual shareholder meeting. Exxon's decision to proceed with a lawsuit against shareholders Follow This and Arjuna Capital over a climate-related shareholder proposal that they had withdrawn, was criticised by major institutional investors.[4] A judge subsequently ruled that the case against Netherlands-based Follow This could not proceed for jurisdictional reasons, while the case against Arjuna Capital was dismissed.[5]

The withdrawn shareholder proposal was related to Scope 3 emissions, and the co-filers committed not to refile it. However, Exxon decided to continue the suit, stating that it wanted to gain clarity on the SEC shareholder filing process.[6] In the run up to the shareholder meeting, several large institutional investors went public with their unease, which some perceived as an attack on shareholder democracy.

We took the view that while Exxon had a legal right to bypass the SEC, it could first have waited for the SEC to opine, and that its use of litigation at that time was not appropriate. We believe the company's action has had a dampening effect on the exercising of shareholder rights, whether intended or not. We also believe it is not appropriate for the company to assume the role of fixing the SEC shareholder proposal submission process via a Texas court on behalf of a system where other voices deserve to be heard.

For these reasons, we recommended a vote against the lead independent director to hold him accountable for these actions, as well as the company's insufficient management of climate-related risks. This is because of medium-term targets that do not include non-operated assets and the lack of evidence that the company is engaging domestically and internationally to support the climate transition.

However, the company has shown some progress on its climate strategy through its membership of the Oil and Gas Methane Partnership 2.0 (OGMP2.0), updated disclosures, including a Scope 3 emissions disclosure, and the announcement of the company's withdrawal from the Independent Petroleum Association of America (IPAA). This was due to the organisation's lack of alignment with the company's climate strategy, including on methane.

As a result, we recommended a vote in favour of the members of the Environmental, Safety, and Public Policy Committee, by exception to our policy. At the AGM, the re-election of the lead independent director was approved, but he received approximately 12% of votes against, the highest level of dissent against his re-election for several years.

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Themes: Climate Change, Wider Societal Impacts

We asked a question related to these activities, querying if the banks had conducted a review of their trade associations and lobbying activities to ensure alignment between their own commitments and Canada's net zero by 2050 goal. If they had not, we wanted to know if they would do so and publish the results.

No bank sufficiently addressed the question, relying on current disclosures as an answer. However, we see an opportunity to engage more deeply on this subject given our escalations during the 2024 proxy season and the importance of supportive public policies required for the banks to reach their ambitious climate goals.

Elsewhere, as a co-lead for Air Liquide as part of the collaborative engagement initiative Climate Action 100+, we drafted and co-signed an AGM statement. This recognised the company's productive engagement and the progress made over the last few years, while highlighting three key questions on how the company could extend its leadership in managing climate-related risks.

In the US and Canada, we continued to see climate-related anti-ESG shareholder proposals, in an attempt to support the expansion of the fossil fuel industry in North America. ConocoPhillips and ExxonMobil received shareholder proposals to revisit pay incentives for greenhouse gas emissions reductions, with claims that climate change risk

[4] NBIM to vote against Exxon board member over lawsuit (responsible-investor.com).
[5] US judge ends Exxon lawsuit against shareholder over climate activism (ft.com).
[6] https://www.reuters.com/sustainability/climate-energy/exxon-says-investors-withdrawing-climate-proposal-annual-shareholder-meeting-2024-02-02/.

was not based on science. This would have erroneously influenced strategy and pay. Chevron, Costco, and General Electric received similar proposals asking for reports on the risks of reducing carbon emissions, with the same argument. We recommended opposing these proposals.

Paris-aligned accounting

We continued to assess whether companies and their auditors had sufficiently considered climate change in preparing their financial statements and extended this to North American companies. Our expectations, at a minimum, are for the inclusion of an explanation of how the company has included climate and its impact on the accounts, and whether the auditor has been clear about how it has assessed the company's approach to climate in its audit.

> **In the US and Canada, we continued to see climate-related anti-ESG shareholder proposals, in an attempt to support the expansion of the fossil fuel industry in North America.**

For example, last year we recommended a vote against the financial reports and accounts at French food group Danone. This was primarily driven by a lack of information in the financial statements about how the risks associated with climate change had been assessed and integrated into financial scenarios.

The company had recently announced its Danone impact journey roadmap to combat emissions. We had expected to see more detailed explanations as to how Danone had concluded that climate would have no significant impact on its business plans, alongside more detailed disclosures on how the financial statements were aligned with its net-zero transition pathway.

Following communication on the vote, the company committed to working with us to understand our expectations on this topic. In March 2024, we met the chair, the senior vice president of the finance division, and investor relations to discuss how Danone integrates climate into its financial accounts.

The company acknowledged our feedback from the previous year, and pointed out that this time the auditor had included climate as a key audit matter, which is an improvement. It also walked us through some of the analyses undertaken, including materiality assessments. As a result, we were able to recommend support for all proposals at this year's meeting.

In the United States, some companies have begun to prepare for anticipated climate-aligned accounting regulation. Chevron, Valero, and Xcel Energy have undergone third-party verification and assurance of their greenhouse gas emissions disclosures. But some companies are reluctant to increase the current level of disclosure in their financial statements before it is legally required. However, during engagement companies have expressed their awareness and confirmed that they are preparing for this requirement.

Other environmental proposals

This year, biodiversity made a strong showing via resolutions on plastic pollution, deep sea mining, deforestation, pesticide use, microfibre pollution, antimicrobial resistance (AMR) and animal welfare. We contributed to an industry opinion piece on this topic entitled *Biodiversity is now on the ballot, are you ready?* through the Finance for Biodiversity Engagement Working Group.[7]

At PepsiCo, we recommended support for a shareholder resolution asking for a report on the risks related to biodiversity and nature loss. The company has not yet undertaken a systematic review of its dependencies and impacts on biodiversity and natural capital, so this report would be a good start. We also recommended support for a shareholder resolution asking Home Depot to conduct an impact and dependence assessment across its value chain to inform its biodiversity strategy.

There were shareholder resolutions on plastics and circular packaging at chemical company Dow and Tyson Foods. We recommended support for these on the grounds that pollution is one of the five drivers of biodiversity loss, and these are material risks for companies. We expect companies to increase circularity in their operations and reduce the production and use of plastics, which can end up in the environment or water sources and be detrimental to biodiversity.

[7] Opinion: Biodiversity is now on the ballot, are you ready? – Finance for Biodiversity Foundation.

VOTING CASE STUDY

Bank shareholder proposals on the clean energy financing ratio

This year, the New York City Comptroller and three of the city's pension funds filed a clean energy ratio shareholder proposal at the largest US banks and the Royal Bank of Canada.[8] The proposal asked each bank to disclose their ratios of clean energy to fossil fuel finance and to describe their methodology for calculation.

The supporting statement asked the banks to consider setting time-bound ratio targets, in line with their stated net-zero commitments. Currently, a version of this ratio is calculated by Bloomberg New Energy Finance, but this does not include direct lending as only the banks themselves have access to accurate data on this. The ratio proposed by the NYC Comptroller's office would rely on internal dollar-based data rather than emissions data, which has limitations due to data availability.

This proposal was withdrawn prior to the JPMorgan Chase, Citigroup and Royal Bank of Canada meetings as the banks engaged with the proponent and agreed to disclose this ratio. Morgan Stanley, Goldman Sachs and Bank of America did not agree to the proponent's requests, and we recommended a vote in favour of the proposal at each of those banks.

The proposal was non-binding in nature and allowed each board ample discretion over how to address the request. We encourage more robust metrics for investors to understand how banks plan to meet their own net-zero commitments and how their activities contribute to real economy impacts. This ratio would provide decision-useful disclosure on the relative financing of clean and fossil fuel energy.

We agreed with the proponents that banks that align their activities with their own climate goals are better prepared to manage the risks associated with the global energy transition, including legal, reputational and financial risks, and are thus better positioned to create long-term value for shareholders. This could also help banks to capitalise on the profitable opportunities in clean energy, positioning themselves as leaders in a rapidly changing market.

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Sector: Financial Services

This year, biodiversity made a strong showing via resolutions on plastic pollution, deep sea mining, deforestation, pesticide use, microfibre pollution, antimicrobial resistance (AMR) and animal welfare.

We also saw plastics proposals at Chevron, Exxon, and Phillips66 to test the companies' portfolios against the risk of reduced demand for plastic in the future, using the Pew/ Systemiq Breaking the Plastic Wave scenario.[9] This calls for a 55% reduction in virgin plastic demand by 2040, relative to business as usual. While the companies felt that the scenario was too aggressive, unrealistic, and premature, we recommended support for the proposals to urge oil and gas companies to demonstrate the resilience of their portfolios in a clean energy future.

At car manufacturers General Motors and Tesla, there were shareholder resolutions on sourcing minerals from deep-sea mining for the first time. We recommended support for both, as a commitment to a moratorium on deep-sea mining or a clarification on the companies' positions, would signal that they acknowledge the importance of supply chain oversight as vehicle electrification accelerates. Many EV auto manufacturers have already signed up to the moratorium.

At Tyson's AGM, we recommended support for a shareholder proposal on deforestation-free supply chains. We also continued to implement our deforestation voting policy, which targets companies that are lagging on the disclosure and management of deforestation-related risks. This year, we recommended voting against directors or other relevant proposals at Wen's Foodstuff Group, WH Group and Cencosud, among others.

[8] https://comptroller.nyc.gov/newsroom/nyc-comptroller-lander-nyc-pension-funds-launch-shareholder-drive-to-hold-banks-accountable-for-transition-away-from-financing-of-fossil-fuels/.
[9] https://www.pewtrusts.org/-/media/assets/2020/10/breakingtheplasticwave_distilledreport.pdf.

We also recommended support for a resolution on AMR at Yum! Brands. We think the company could reduce the risks in its animal supply chain and protect its returns by adopting a stronger AMR policy in line with the World Health Organization's Guidelines on the use of Medically Important Antimicrobials in Food-Producing Animals.

There were resolutions on animal welfare at H&M, Denny's Corp, Kraft Heinz and McDonald's. We recommended support for a resolution asking H&M to report on the reputational impact of clothing containing feather down, due to concerns about live plucking and other risks. At Kraft Heinz, Walmart, and Denny's Corp, we recommended voting in favour of phasing out pork purchases from suppliers who use gestation stalls. At McDonald's, we recommended supporting a shareholder resolution asking the fast food chain to disclose its key welfare indicators, and explain how it uses each to measure and improve animal welfare.

Chemicals and pesticides

We attended the AGM of Swiss chemicals company Sika virtually and asked the chair about its approach to managing risks related to hazardous substances, reminding the company that we co-lead the Investor Initiative on Hazardous Chemicals (IIHC) for Sika. We reiterated the litigation, regulatory, and reputational risks related to the use or production of hazardous substances. We welcomed Sika's increased transparency, including disclosure of the proportion of sales containing substances of very high concern and per- and polyfluoroalkyl substances (PFAS), and the work to remove these substances from existing products. We encouraged the positive direction of travel and asked Sika to confirm it would not develop any new products containing these substances.

We also asked the company to annually disclose the full list of substances it has managed to phase out in line with best practice, suggesting a distinction be made between those substances fully phased out and those retained as intermediates for industrial purposes. Finally, we asked whether the company would tackle those chemicals that are not yet on the EU's Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH) list, but meet the hazard-based criteria to be placed on it.

The chair of the board emphasised the role that the company's new sustainable portfolio management methodology will play in guiding work on reducing the risks associated with hazardous substances. All new products must meet sustainability criteria, including a hazard risk criterion. We were pleased to hear the chair confirm that the company will make sure that no new products will contain these substances of very high concern. The company noted our request on future reporting and said it would review its reporting on hazardous chemicals ahead of next year. We were disappointed that the company did not comment on those chemicals that are not yet on the REACH list yet and whether these would be proactively managed.

At cereal company Kellanova (formerly Kellogg's), we recommended support for a shareholder resolution seeking a report on the risks associated with pesticide use in the supply chain. We discussed this resolution with the company and believe it does not yet provide robust disclosure on reducing, assessing, and reporting on pesticide use.

Emerging social themes

In Europe, Nestlé received a shareholder proposal to set a time-bound target to increase the proportion of its sales derived from healthier products. While we supported the broad aim of the proposal, following engagement we recommended voting against, because it appeared overly prescriptive. Also, the company has responded well to engagement since 2022, taking positive steps including a 2030 target to grow its sales of more nutritious products. However, we recommended a vote against the approval of the non-financial report because of insufficient transparency around the approach to reporting on the nutritional values of its global portfolio.

As part of our engagement, we will ask Nestlé to demonstrate it is achieving its 2030 target by meaningfully investing in growing its healthier food and beverage sales, rather than solely increasing sales from products such as coffee.

A growing number of shareholder proposals addressed digital rights issues such as privacy, freedom of expression, and responsible artificial intelligence. We used our EOS Digital Rights Principles to inform our decisions on these proposals. For example, we supported a proposal filed at Meta requesting a human rights impact assessment of targeted advertising. The company's advertising policies are publicly available and include some explanation of how it decides which advertisements to show users. However, the company falls short of obtaining user consent for its own collection, inference, sharing, and retention of data for targeted advertising.

We also supported a proposal filed at Amazon requesting a report on customer due diligence. The company has processes in place for this and policies relating to the responsible deployment of AI. However, there is room for improved transparency on how human rights are considered in the company's relations with governments as customers.

Diversity, equity, and inclusion

Our diversity and inclusion voting policies encourage greater representation of women and ethnic minorities on boards and in leadership teams. Globally, we opposed 2,939 responsible director proposals due to concerns about insufficient diversity at board level.

In North America, anti-ESG shareholder proposals continued to target diversity, equity, and inclusion strategies at companies, seeking to undermine efforts to eliminate discrimination.

In Europe, we support a goal of 50% overall board diversity, including gender (with at least 40% representation of the minority gender, including those who identify as non-binary), race and ethnicity, and other diversity traits such as LGBTQ+ and disability. Where best practice or listing rule obligations exist in a country, we expect companies to adhere to these at a minimum.

In Europe we also support gender diversity at the management team level, and will consider our voting approach for companies of significant size where there is no female representation at the top levels of executive management. In 2024 we continued to push for greater gender diversity on boards and in leadership teams and opposed companies that did not meet our minimum expectations. This included at KBC Group, HelloFresh, PolyPeptide Group and British American Tobacco.

In the US, ideally we want to see companies strive for 50% overall board diversity including LGBTQ+ and disability. In line with our expectations of a minimum of 40% board diversity including gender, race and ethnicity, we recommended opposing 1,403 responsible directors for low board diversity. Notable examples include Netflix and Walmart. At Netflix, we were pleased with the governance improvements made since 2022, including the declassification of the board. However, we remained concerned by slow board refreshment as three directors have served concurrently for 20 years. The overall diversity is also below our expectations, with no indication of future refreshment.

Similarly, at Walmart we recommended voting against the nomination and governance committee chair due to the continued low gender and overall board diversity. At Nasdaq and TSX-listed companies, we also opposed responsible directors where executive teams fell short of at least 30% representation of women or the minority gender, including those who identify as non-binary.

In North America, anti-ESG shareholder proposals continued to target diversity, equity, and inclusion strategies at companies, seeking to undermine efforts to eliminate discrimination and the marginalisation of underrepresented and underserved populations. Such proposals require careful scrutiny of the potential outcomes associated with their implementation, in order to ensure that unintended negative consequences do not occur.

Coca-Cola, Disney, and Boeing received shareholder proposals asking for reporting on the risks associated with increased efforts around inclusion. While these proposals may seem uncontroversial, their proposed implementation would lead to significant negative changes to existing company reporting, which was previously endorsed by shareholders. Disney and Johnson & Johnson also received shareholder proposals that had the intention of invalidating individual identities. We recommended voting against these proposals.

Wider societal impacts

Companies have increased their focus on tax transparency, in line with upcoming OECD and EU regulations, but we still saw some related shareholder proposals on ballots. For example, in the US, charity Oxfam filed proposals at energy companies Chevron, Kosmos, ExxonMobil and ConocoPhillips. The shareholder proposals were successfully challenged by ConocoPhillips and ExxonMobil on procedural grounds, and grounds of ordinary business respectively. Chevron published an updated version of its high-level approach to tax in May 2024 ahead of the annual meeting. The proposals received 15% shareholder support at Chevron and 23% at Kosmos.

Elsewhere, le Mouvement d'éducation et de défense des actionnaires (MÉDAC), a prolific filer of shareholder proposals in the Canadian market, filed a new tax-related shareholder

proposal at the Canadian banks. We did not believe the country-by-country tax reporting requested would result in robust outcomes or increased shareholder value. This was because of the link that the proponent was attempting to make between tax reporting and CEO pay ratios – which we confirmed with banks and expert stakeholders would be impossible to calculate with the information requested.

However, EOS strongly advocates for increased tax transparency including country-by-country reporting, in line with our responsible tax principles and engagement approach. We shared our own expectations on responsible tax reporting with the banks.

Executive pay, auditor tenure and governance

We continued to see excessive CEO pay, excessive auditor tenure, and questionable governance structures in various sectors and markets. For example, several US healthcare and services companies such as HCA Healthcare and Tenet Healthcare awarded excessive pay packages, despite issues with staff retention in the sector. We pressed them to consider how this would impact workforce perceptions, and said that investing in human capital would drive better long-term value for shareholders.

We recommended voting against the pay packages at several North American oil and gas companies, including Exxon, Canadian Natural Resources, Suncor, Chevron, and Cheniere Energy due to the high quantum and other structural concerns. In addition, we opposed the pay award at aircraft manufacturer Boeing, due to concerns relating to the level of quantum and a lack of downward discretion applied despite several serious safety issues.[10]

This year we welcomed the decisions by Netflix, Kimberly Clark, DuPont and General Motors to eliminate options capable of vesting in the short term from executive long-term incentive plans. These will be replaced with time restricted or performance restricted shares, demonstrating responsiveness to shareholder concerns. In the case of DuPont and General Motors, the decision to replace options with restricted share units was taken to encourage greater talent retention and attraction.

At TotalEnergies, we recommended voting against the re-election of the lead independent director, Jacques Aschenbroich, due to concerns around shareholder rights. We understood that the board had refused to allow a shareholder resolution onto the ballot from the Ethos Foundation regarding the separation of the chair and CEO roles, both currently held by Patrick Pouyanné.[11]

We had engaged with the company's head of corporate and securities law on the process that the board followed before dismissing the shareholder resolution. While we received assurance that the lead independent director had consulted with board members without the influence of the chair/CEO, we were concerned that the board stated that it would no longer accept advisory shareholder resolutions on to the ballot. We consider this to be an erosion of shareholder rights.

We continued to recommend votes against the audit committee chair and the ratification of the external auditor where the audit firm had been in place consecutively for 80 years or more, with no review or consideration of auditor rotation. This year we recommended opposing the auditor and audit committee chairs for 135 companies, including Target, Dow, Goodyear, Sherwin-Williams, Archer Daniels-Midland, Deere & Co, Kimberly-Clark, Coca-Cola and Johnson & Johnson.

Telecoms provider BCE completed an auditor rotation request for proposal in 2023 and will be switching from Deloitte to EY. It saw a reduction in support for the auditor ratification in 2023 (86%) and decided it was time to make a change. We have been engaging with the company on auditor tenure for three years.

[10] https://www.theguardian.com/business/article/2024/jun/01/boeing-safety-crisis-response-union-busting.

[11] https://www.responsible-investor.com/investors-launch-legal-appeal-following-totals-refusal-to-table-advisory-proposal/#:~:text=Swiss%20sustainable%20investment%20body%20Ethos,the%20CEO%20and%20chair%20roles.

Proxy contests in the US

The finalisation of US proxy contest rules in 2021 and the SEC's adoption of the use of universal proxy cards gave rise to more proxy contests in 2024. These permit shareholders to create their own board of directors by making selections from the company and the activist proxy card.

One of the highest profile proxy contests in recent memory occurred at the Walt Disney Company.[12] Amidst a three-way power struggle, we met the company twice and spoke one-on-one with the dissident nominees from Trian Partners, led by Nelson Peltz. At the Council of Institutional Investor (CII) conference, ValueAct Capital, a Disney shareholder known for engaging with its portfolio companies, presented an encouraging picture of change. It highlighted the addition of five new board members, some strategic changes indicating a better streaming bundling offer, as well as Disney CEO Bob Iger's strong track record on deals.[13]

In contrast, Peltz's CII presentation took issue with the board and Iger holding high equity in the company while Disney underperformed against peers. Notably, Peltz did not take questions from the audience. We did not have the opportunity to engage with the other dissident, Blackwells Group, but the group gained less recognition for its efforts than Trian and ultimately declined to address shareholders at the annual meeting.

Peltz's depth of analysis, thorough engagement, and willingness to challenge the status quo on previous boards had led to some positive results in his tenures at other companies. We considered the quality of each dissident group's plans and nominees, and our own engagement with the company on board composition, executive compensation, and succession planning. Ultimately, we concluded that the company had put in place substantial, credible groundwork to resolve its most material issues, and it was too early to measure the success of its initiatives.

While each dissident group made compelling arguments, we felt that neither gave sufficient evidence that the appointment of their nominees would bring more value to shareholders than supporting the incumbent board. Given this, we recommended support for all incumbent directors. At the annual meeting, the management nominees received majority approval from shareholders, with the highest level of approval for a dissident nominee being approximately 31% for Peltz.

Another proxy contest arose at wireless infrastructure business Crown Castle, where long-time poor performance had led to the co-founder of the company Ted Miller nominating a rival slate of directors to get the company back on track.[14] We met all four dissident nominees from Miller's investment vehicle Boots Capital, as well as Crown Castle, to gain insight on its strategy. We ultimately recommended support for all the incumbent directors due to concerns around the intentions, relevant and timely experience, and familial connections of the dissident slate.

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Coffee chain Starbucks also faced a proxy contest primarily regarding concerns about collective bargaining rights. Initially, the board's response to the unionisation drive was insufficient. Ahead of the annual shareholder meeting, we engaged with the dissident – the Strategic Organizing Committee (SOC), a group of labour unions – and the company to understand each side's position. However, the labour unions ultimately withdrew their slate from the proxy contest prior to the annual meeting, following the company's commitment to negotiating collective bargaining agreements with Starbucks Workers United representatives.[15]

[12] https://www.hollywoodreporter.com/business/business-news/disney-proxy-fight-result-bob-iger-nelson-peltz-1235863896/.
[13] ValueAct builds stake in Disney, adds drama at home of Mickey Mouse -sources | Reuters.
[14] https://www.cnbc.com/2024/02/20/crown-castle-cofounder-launches-proxy-fight-challenges-elliott-agreement.html.
[15] https://www.cnbc.com/2024/03/05/labor-unions-end-proxy-fight-at-starbucks-after-bargaining-progress.html.

VOTING CASE STUDY

Tesla

At Tesla's annual meeting, shareholders were asked to consider the company's move from Delaware to Texas and to ratify CEO Elon Musk's 2018 stock option award for a second time. The company faced seven shareholder proposals on governance, human rights and environmental matters. We sided with management on only two proposals, including the ratification of the auditor.

Only two directors stood for election this year. We recommended opposing Elon Musk's brother Kimbal Musk and James Murdoch due to independence concerns. In addition, the classified board structure with no sunset date, low board diversity, pledging of shares and lack of climate targets led us to recommend a vote against Murdoch as the only member of the nominating and governance and audit committees standing for re-election. The re-election of both directors passed with Kimbal receiving the support of 78% of the outstanding shares voted and Murdoch receiving 68% support.[16]

While the CEO and most named executive officers received modest or no compensation for FY2023, we were concerned about an outsized promotion grant to a named executive officer with limited explanation regarding the magnitude and design of the award. Tesla has maintained a non-traditional compensation plan and we are concerned that the executive pay structure and practices do not serve long-term investors or align properly with the core long-term objectives of the company.

Court decision

The ballot items to redomicile the company in Texas and re-ratify Musk's 2018 performance award appeared to be conflated with the Delaware Court of Chancery's decision in early 2024 to invalidate Musk's 2018 stock option award. Shortly after the decision was handed down, Musk took to social media platform X (formerly Twitter) stating that: "Tesla should move immediately to hold a shareholder vote to transfer state of incorporation to Texas."[17]

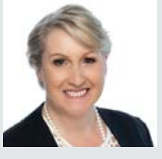
The board tried to assure shareholders that Tesla's redomiciling was raised before in response to its headquarters move from California to Texas in 2021, and argued that the legal landscape in Delaware was evolving in ways detrimental to the company's future. On consideration, we did not view the board's rationale as compelling. Delaware has one of the most respected corporate judicial systems in the US and an extensive body of corporate case law. Meanwhile, Texas is in the process of forming a specialised business court system and it is unclear how this will function. Due to the substantial uncertainty around the application of corporate law in Texas, we recommended a vote against the proposal.

Stock option award

The concerns we had about Musk's stock option award in 2018 remained intact, including the excessive size of the award and the dilutive effect upon exercise. The company's rationale did little to allay our concerns. We were also concerned about the lack of clarity on the board's plans for Musk's future compensation, including the ability of the award to increase Musk's focus on Tesla given his growing outside interests. For these reasons we recommended a vote against the proposal.

The redomiciling proposal attracted 63% support from the outstanding shares voted while Musk's stock options award garnered the support of 76% of the outstanding Tesla shares voted.[18]

We supported six of the seven shareholder proposals, which included declassifying the board, adopting a simple majority vote, improving disclosure on harassment and discrimination prevention efforts, respecting freedom of association, assessing the feasibility of including sustainability as a performance metric for executive compensation, and asking the company to commit to a moratorium on sourcing minerals from deep sea mining. While stockholders sided with Tesla management on most shareholder proposals in casting their ballots, two non-binding advisory governance proposals were approved. The proposals to reduce director terms to one year and to adopt a simple majority vote each received 53% support.[19]



Joanne Beatty
Theme lead: Corporate Reporting

[16] ISS June 2024.
[17] Musk Says Tesla Will Hold Shareholder Vote 'Immediately' To Move Company's Incorporation To Texas (forbes.com).
[18] ISS June 2024.
[19] ISS June 2024.

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