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2012

ABOUT THE AUTHORS:

Heidi Welsh, the founding executive director of the Sustainable Investments Institute (Si2), has analyzed and written about corporate responsibility for more than 20 years. She oversees Si2's impartial, in-depth social and environmental research; Si2 was launched in 2010 and is primarily supported by more than a dozen of the largest-endowed U.S. colleges and universities and large pension funds, along with grants from the Investor Responsibility Research Center Institute. Welsh started her career at the Investor Responsibility Research Center in 1987. In addition to proxy season work, she monitored corporate compliance with the MacBride Principles Fair Employment Code in Northern Ireland for 16 years. She also co-authored the Carbon Disclosure Project's S&P 500 report in 2007, headed up sustainability research within a unit of RiskMetrics and served on the GRI's Electric Utility Sector Working Group in 2008-09. Welsh received her BA from Carleton College, *cum laude*, and holds an MS from the Institute for Conflict Analysis and Resolution at George Mason University.

Michael Passoff, CEO of Proxy Impact, has over 20 years of experience in corporate social responsibility, shareholder advocacy, philanthropy, and proxy research and education. For more than a decade Michael served as the Senior Program Director for As You Sow's Corporate Social Responsibility Program. From 2005 to 2010 Michael authored the annual *Proxy Preview* to alert foundations to upcoming shareholder resolutions that are relevant to their missions. The *Preview* is hailed as the "Bible for socially progressive foundations, religious groups, pension funds and other tax-exempt organizations" by the *Chicago Tribune*. Michael has led and participated in more than 100 shareholder dialogues and resolutions and worked closely with shareholder advocates in the SRI, pension fund, labor, philanthropic, and faith-based communities. His shareholder advocacy work led him to be named as one of 2009's "100 Most Influential People in Business Ethics." He also received the 2009 Climate Change Business Journal award for a shareholder campaign which received a historic 51% of the vote—the first environmental resolution to receive a majority vote.

SPONSORS:

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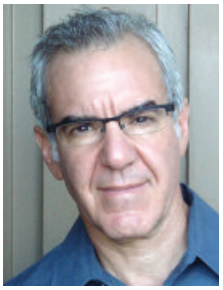
We hope that this publication will help shareholders align their values and investments by facilitating informed engagement. We also believe it will provide the broader investment community and the public at large with a record of how and why shareholder advocates try to influence corporate behavior—and the impact on corporate policy when they do.

LETTER FROM THE PUBLISHER



Welcome to *Proxy Preview 2012™*. I trust that you have taken note of our red, white, and blue election year cover. But this year it's more than just the cover with a political component. In fact in 2012, nearly a third of the shareholder resolutions refer to concerns about corporate political spending, lobbying, and the influence of corporate money on government policy. Every year the resolutions reflect a snapshot in time, the zeitgeist of the day—and surely the Supreme Court *Citizens United* case has had an impact on corporate influence and power that shareholders are reacting to. Simultaneously, the Occupy Wall Street movement is providing a voice to those opposing growing economic inequality and the entrenched concentration of corporate power.

For decades shareholder advocates have been changing corporate behavior from the inside. They have challenged companies and shown them that doing good is good business and corporate responsibility helps corporate profitability. Record-breaking proxy votes show that shareholder advocates have been joined by large mainstream institutional investors to reach a tipping point of support for social and environmental resolutions. This shift toward corporate responsibility, transparency, disclosure, environmentally friendly practices, improved worker conditions, and fair social policies is happening because these issues are win-win-win, for people, planet, and profit.

This publication provides context to enhance understanding about why these resolutions are critically important to today's world. *Proxy Preview* is particularly focused on enabling investors with a social mission—such as foundations, educational institutions, endowments, non-governmental organizations, and individual shareholders—to better align their organizational missions, personal values, and investments. You will see that the decade-long increase in votes that favor shareholder resolutions continues and a clear message has been sent to corporate boards and management that investors expect financial performance and responsible environmental, social, and governance performance.

We are continuing with the new format we started in 2011, combining a comprehensive review of hundreds of social and environmental resolutions with an insider view from the shareholder advocates themselves. Readers responded positively last year to this added insight on key votes, and we have expanded this section to represent a wider variety of shareholder advocates and issue experts.

The issue experts that have joined with As You Sow in this effort represent: AFL-CIO, Boston Common Asset Management, California State Teachers Retirement System, Calvert Investments, Center for Political Accountability, Ceres, Fund Votes, GMI, Green Century Capital Management, Humane Society of the United States, Interfaith Center on Corporate Responsibility, Investor Environmental Health Network, Jessie Smith Noyes Foundation, Maryknoll Sisters, Nathan Cummings Foundation, New York City Comptroller's Office, Pride Foundation, Proxy Impact, Responsible Sourcing Network, Trillium Asset Management, UCI Environmental Accountability, and Walden Asset Management. We worked collaboratively to provide advocacy positions on shareholder resolutions about the environment (climate change, coal, electronic waste, hydraulic fracturing, toxic exposure, and sustainability) and a range of social issues (political spending, lobbying, animal welfare, health, human rights, banking practices, sexual orientation discrimination, and worker safety). We also discuss other key proxy issues such as executive compensation and mutual fund votes. And, finally, we profile two long-time leaders in the shareholder advocacy and aligning investor and mission movements.

The 2012 *Preview* is the result of a collaboration between As You Sow, an environmental and social advocacy organization that has published this report since 2005; the Sustainable Investments Institute (Si2), which conducts impartial research on social and environmental shareholder proposals, and is responsible for compiling the resolution analysis; and Proxy Impact, a proxy voting service designed specifically to meet the needs of foundations and socially responsible investors, and is responsible for feature content and editorial support for the advocacy positions.

I extend a special thanks to our sponsors, co-authors Heidi Welsh and Michael Passoff, our issue advocates, and everyone who contributed to make *Proxy Preview 2012* as informative and useful as possible. To our readers, thank you for your efforts to use the power of your proxy votes to ensure a safe, just, and sustainable world.

Best wishes,

Andrew Behar
CEO, As You Sow

EXECUTIVE SUMMARY

Shareholder advocates who want companies to take a more proactive position on key social and environmental issues have filed a slightly smaller number of shareholder resolutions in 2012 than last year. But it is not for lack of success, since votes in 2011 were higher than they have ever been, crossing the 20% average support threshold for the first time and logging five majority wins.

Political spending proposals continue to increase in both number and focus, now making up nearly a third of the 349 social and environmental proposals filed so far—a jump from a quarter of the 360 proposals filed at this time last year. A wide variety of environmental issues and requests for broad sustainability reports still are the most common category, though, making up a little more than a third of the total. Requests for action and disclosure on climate change are being expressed more in terms of energy efficiency, while the natural resource management focus is still mainly but not exclusively on coal and hydraulic fracturing. Advocates have trimmed the number of human and labor rights proposals considerably; they make up just 7% of the total, down from 12% last year and 18% in 2010. Diversity, both on boards and for employee non-discrimination policies, has held steady with 11% of the total, as have animal welfare-related issues with 6%. In all, 276 resolutions are now pending, compared with 290 at this time last year. Companies have mounted SEC challenges that remain undecided for 62 of these proposals.

2012 Proxy Season Overview

This section provides a brief overview of the upcoming proxy season, highlighting new issues and continued big campaigns. The main body of the report, starting on p. 17, gives a detailed analysis for each category listed here.

Animal welfare: Animal welfare advocates have filed 21 resolutions, split evenly between those concerned with animals used in laboratories, and those consumed for food or killed for fur. In a change from last year, no proposals relate to poultry slaughter, but a few ask department stores to stop selling fur; there is also more emphasis on the confinement of pregnant sows, which the groups say is inhumane.

Banking: It appears that four resolutions are likely to go to votes on bank foreclosure subjects, out of 12 that were filed. The New York City pension funds have resubmitted a proposal asking for more information about loan modifications, foreclosures, and securitization. Investors last year clearly affirmed these requests, giving all more than 20% support and one (at **Bank of America**) nearly 40%. A Presbyterian Church (USA) proposal is also pending on loan modifications at **JPMorgan Chase**. New resolutions on repurchase transactions were filed by the Sisters of Charity and the Maryknoll Sisters at **JPMorgan Chase**, **Citigroup**, **Stanley Morgan**, and **Bank of New York Mellon**, although the latter has been withdrawn and the others failed to survive SEC challenges.

Boards and governance: About two dozen proposals request structural reforms at companies in how they manage and oversee social and environmental issues, asking for board committees on specific subjects, board member nominees who have specialized expertise or a more varied background, and related executive pay changes.

Diversity: Proponents continue to wage their largely successful campaign to get companies to adopt sexual orientation and gender identity non-discrimination policies, with 38 filings this year; there have been seven withdrawals to date given agreements with companies and more are likely. A new proposal from Trillium Asset Management is asking **Aflac** to provide domestic partner benefits for executives.

Environment: Environmental proposals fall into three major categories: climate change, natural resource management, and toxics. This report includes a separate section on sustainability since those proposals invoke issues beyond the environment.

Climate change—Building on past success, proponents are broadening the definition of climate change risk. An increased number of dialogues with companies has resulted in only 28 proposals, down from about 40 last year, although many of the sustainability proposals also ask for climate action. Advocates still want companies to cut greenhouse gas emissions and be more transparent about how they are doing this, and they are couching these requests in terms of energy efficiency and renewable energy more this year than in the past. A new effort on more energy efficient set-top boxes deployed by cable companies comes from the New York City Comptroller's office, but it looks like only one of these resolutions will go to a vote, at **DISH Network**. Efforts to get food firms to sign on to sustainable palm oil sourcing have borne fruit, but one or two proposals

may nonetheless go to votes. Aside from the cable and food company proposals, the primary targets for climate proposals are oil and gas, construction and real estate, and utility firms.

Natural resource management—Coal and hydraulic fracturing still dominate the group of 44 natural resource management proposals, but the Fukushima nuclear disaster in 2011 has prompted nine new proposals about nuclear power, as well. Coal and hydraulic fracturing resolutions earned record 2011 votes and account for 19 filings this year. **Exxon Mobil** faces another oil sands proposal, and As You Sow is continuing to push for extended producer responsibility and more recycling at five firms, while Domini Social Investments is moving forward with its focus on paper and forests. Social investment groups have new proposals to apparel companies, too, asking them to report on supply chain water risks.

Toxics—More disclosure about bisphenol A (BPA) will likely result in an agreement to withdraw the resolution at **Safeway**, and SEC approval for **Coca-Cola** to leave it out of its proxy statement, but the issue is still pending at **Panera Bread**. **Danaher** faces another mercury proposal, as well, regarding its dental products.

Sustainability: Fourteen of the 29 sustainability reporting resolutions mention specific issues while asking for broad-based reports on how companies are grappling with environmental and social issues. Environmental topics raised include climate change, water, and energy efficiency, while social issues include vendor standards, product safety, and diversity. The New York City pension funds are continuing a supply chain focus begun last year at **Walmart** and have persuaded three leading electronics companies—**Apple**, **HP**, and **Intel**—to require their suppliers to issue sustainability reports—an issue that has particular resonance given the recent focus on suicides and difficult working conditions at the giant Foxconn assembly plant in China. Resolutions on this subject remain pending at **Dell** and **Motorola Solutions**.

Labor and human rights: As noted above, there has been a significant contraction in the number of proposals about human rights, although a few of the sustainability reporting requests raise these issues. Mainly from faith-based investors, a core group of these proposals persists in asking large defense contractors and a few others to be more stringent in how they operate in global conflict zones (five proposals). Prison management is raised at **Corrections Corp. of America** and **Geo Group**, while NorthStar Asset Management continues its push for the recognition of a human right to water (two proposals). **JPMorgan Chase** faces a proposal about investment connections to Sudan and **Chevron** a proposal regarding Burma (both are re-filings). In a reversal of fortunes, proponents won a victory at the SEC on net neutrality and a slightly revised proposal this year has avoided exclusion on ordinary business grounds (pending at **AT&T**, **Sprint Nextel**, and **Verizon Communications**.)

The AFL-CIO has resubmitted its 2011 proposal to oil refinery companies asking them to be more transparent about accident prevention, a push it began last year following the **BP** oil spill in the Gulf of Mexico, with three pending and two withdrawn after agreements (including at **Tesoro**, one of the 2011 majority votes).

Political spending: The headline issue for the 2012 proxy season is political spending, not just in elections, as has been the primary focus until this year, but also after elections in terms of lobbying—speaking to the allegations of undue corporate influence on politics and the economy raised by the Occupy Wall Street movement. Companies are providing more oversight and disclosure of their political spending, but the investor appetite for more is huge, evidenced by both high votes and the sheer number of proposals. There are 47 resolutions from the Center for Political Accountability on campaign spending and another 40 about lobbying—the big new push this year that is coordinated by Walden Asset Management and the American Federation of State, County, and Municipal Employees (AFSCME). Trillium Asset Management and Green Century Capital Management are proposing the all-out strategy of eschewing campaign spending altogether, at three companies, while NorthStar Asset Management has expanded its request for advisory votes on political spending, going to seven companies.

Other proposals: A handful of resolutions have been filed by politically conservative groups, but only a few are likely to go to votes given challenges at the SEC. In addition, three proposals raise health issues and four more ask companies to report on tax law changes and reputational risk; this proposal does not appear likely to go to a vote, however.

Recent Regulatory Developments

Ongoing implementation of national financial reform, a petition to require political spending disclosure in securities filings, and potential changes to the rules governing the shareholder resolution process are part of the changing regulatory landscape that forms the backdrop for this year's proxy season.

Financial reform: Key issues raised in shareholder resolutions were addressed in the Dodd-Frank Wall Street Reform and Consumer Protection Act President Barack Obama signed into law on July 21, 2010. The landmark legislation had numerous provisions, including the U.S. markets' first regulatory oversight of derivatives markets and the creation of a Consumer Financial

Protection Bureau (CFPB), now headed by former Attorney General of Ohio Richard Cordray. The bill has prompted controversy and included several new disclosures to address various corporate responsibility issues that require the U.S. Securities and Exchange Commission (SEC) to enact rules to implement them:

- ***Conflict Minerals (Section 1502)*** addresses the ongoing conflict in the Democratic Republic of the Congo (DRC) and companies' ties both directly and through supply chains to minerals mined in the DRC and fueling the conflict there. With input from a multi-stakeholder group including industry, investors, and NGOs, the SEC issued a draft rule for comment in December 2010. The rule has been met with swift opposition from the U.S. Chamber of Commerce, the Business Roundtable, and other corporate interests who say that it is far too costly and onerous in its present form. The SEC's commissioners and staff are weighing these and other comments and plan to issue a final rule for a vote during the first quarter of this year.
- ***Mine Safety (Section 1503)*** was included in Dodd-Frank as a reaction to the Massey Upper Big Branch Mine disaster in West Virginia in April 2010. The SEC's final rule on this portion of Dodd-Frank came into effect on January 27, 2012. It adds a section to annual report filings Form 10-K, 20-F, and 40-F, as well as quarterly Form 10-Q, for companies titled "Mine Safety Disclosures." The new disclosure requires a company to include a statement whether it or one of its subsidiaries is an operator of a coal or other mine covered by the Federal Mine Safety and Health Act of 1977. If so, the company must add an exhibit that includes information on health and safety violations, orders and citations, related assessments and legal actions, and mining-related fatalities. During the drafting and comment period for the rule, the SEC staff estimated that only approximately 100 companies filing Form 10-K would be required to provide the disclosures called for by the new provisions. All other companies can state that the item is "not applicable."
- ***Payments to Governments by Resource Extraction Issuers (Section 1504)*** was intended to combat corruption and related investment risks—such as expropriation of funds, disruption of operations related to social unrest, pressure from corrupt foreign officials, tax and regulatory risks, or harm to companies' local or global reputation—through revenue transparency. The SEC issued a draft rule for comment in December 2010, and, like the conflict minerals piece, it has been hotly contested by the U.S. Chamber of Commerce, the Business Roundtable, the American Petroleum Institute, and other associations representing resource extraction firms. The delays in implementing the rule for the provisions have been so long that it prompted Senators Ben Cardin (D-Md.), Patrick Leahy (D-Vt.), Carl Levin (D-Mich.), Chuck Schumer (D-NY), and John Kerry (D-Mass.) to send a letter to the SEC seeking swift action on the matter. The SEC is expected to vote on a final rule in coming weeks.

Rules on conflict minerals and payments to governments are likely to be contested in court if enacted, so they face further implementation hurdles.

Proposed SEC-mandated political spending disclosure: A group of 10 leading law school professors, dubbed the Committee on Disclosure of Corporate Political Spending, submitted a rulemaking petition to the SEC on August 3, 2011.The petitioners cite as support for their view the evolution of disclosure requirements at the SEC, increased interest by shareholders in corporate political spending, increased voluntary disclosure by companies, the need for corporate accountability, and similar disclosure rules for other corporate information. It requests that the SEC "initiate a rulemaking project" that would increase the transparency of corporate political spending. Many of the groups who want to craft an effective response to the controversial *Citizens United* Supreme Court decision, which opened the way to unlimited corporate and union spending on political campaigns, are pressing hard to get the SEC to take action. But with its plate still overflowing with unfinished work on Dodd-Frank, any immediate action on the petition appears unlikely. Despite this, comments on the petition have been pouring in from groups who support the petition; these and others can be viewed on the SEC website and as of February 15th, 29,500 letters have been submitted.

Proxy plumbing: The U.S. proxy voting system has not been substantially changed for three decades, despite the creation of the Internet, the rise in electronic communications, changes in how stock is held by different participants in the financial markets, and a host of other developments. In July 2010, as an initial step to map out possible reforms, the SEC approved a "concept release" about the proxy voting system. So far the SEC has received more than 250 comment letters on the release. Internal discussions on proxy plumbing continue within the SEC, but staff time has been consumed with implementation of Dodd-Frank and no immediate action is expected.

Possible reforms include the regulation of proxy advisory services, which can substantially affect the outcome of any vote with their recommendations that are used by many institutional investors. The proxy advisory industry is dominated by two players: the ISS division of MSCI and Glass Lewis. The SEC also is looking at empty voting, in which the economic and voting components of share ownership are decoupled, company communications with beneficial owners of their stock, and voting instructions. The SEC wants to encourage more voting by retail investors. (One way these individual shareholders can find out

more about issues coming to votes is from newcomers such as Moxy Vote and ProxyDemocracy.org, which are experimenting with models where investors can emulate the decisions of well-known organizations they trust. Moxy Vote's membership recently surpassed 100,000 and continues to grow.)

Climate change: In a development that continues to affect the 2012 proxy season, in January 2010 the SEC approved new interpretive guidance for companies that clarifies what they must report to investors concerning the risks and opportunities presented by climate change. The SEC took this action in response to a petition filed in 2007 by a coalition of institutional investors, state officials, and environmental groups. The timing of the guidance meant that 2011 was the first full year of disclosure, when companies had to discuss in their annual 10-K reports and in other SEC filings any "material" effects on their operations that arise from the:

- ***Direct effects*** of existing or pending legislation and regulations related to climate change.
- ***Indirect effects*** of these laws and regulations (including reputational risk—the risk that negative public perception of a company's publicly-reported greenhouse gas emissions might affect its business).
- ***Effect of physical changes caused by climate change*** (such as more severe weather events, water availability, changing patterns of farmland arability).

INTRODUCTION

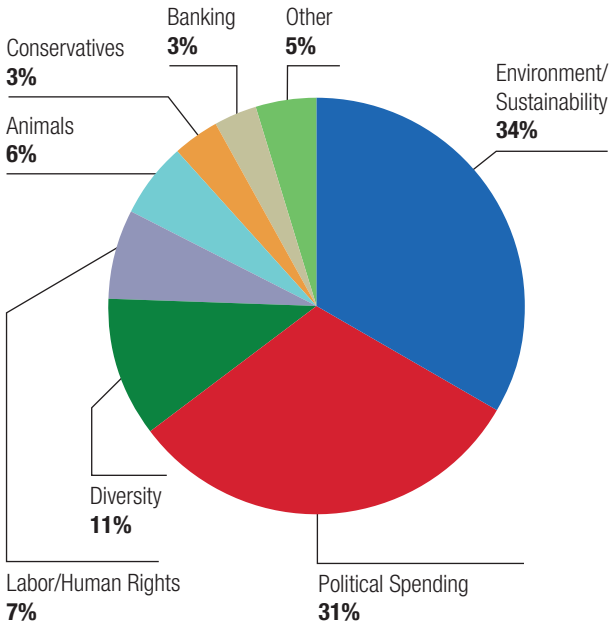
Types of Proposals

Investors vote on proposals from both management and shareholders about issues that raise governance and social policy issues. Proposals are also commonly referred to as resolutions, and both terms are used interchangeably in the *Preview*.

Governance proposals focus on the management of the corporation. Proxy items submitted by management include the election of directors, appointment of auditors, and approval of company stock plans. Proposals raised by shareholders commonly include board structure, such as calls for more independent board members or for the separation of the Board Chair and CEO position; compensation concerns, such as linking executive compensation to performance, or short and long term incentive plans and golden parachute arrangements; improved voter access via cumulative or supermajority voting; and anti-takeover measures such as poison pill provisions. Several hundred governance proposals are filed every year and numerous sources of information on these are publically available. The *Proxy Preview* only includes a small subset of governance proposals that overlap with social issues such as board diversity or linking executive compensation to social criteria.

Social proposals focus on a wide variety of social and environmental issues. These proposals generally call for reports or policy changes on key issues that can have an impact a company's bottom line. Managements steadfastly oppose these proposals (with rare exceptions), yet these proposals are gaining much greater support among large, mainstream institutional investors. Social proposals often serve a "canary in the coal mine" role, as they have historically identified many areas of financial risks—including climate change and the sub-prime mortgage crisis—years before companies begin to address (or in some cases, even acknowledge) these issues.

2012 Proposals Filed



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