2013 Proxy Season Preview

Environmental and Social Issues

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Key Takeaways

- The campaign for lobbying disclosure has now overtaken contributions reporting as the top political issue in the largest category of Environmental and Social (E&S) shareholder resolutions proposed for the annual meeting season.
- While now surpassed by political questions, the environment category still contains a large and rich mix of resolutions, including some issues that had fallen out of favor.
- Propelled by the new Thirty Percent Coalition, the number of resolutions asking companies to diversify their boards has passed 20 for the first time in almost 20 years.

Introduction

For the second year, political issues have surpassed environmental concerns as the top environmental and social (E&S) subject that shareholders will be asked to vote on at annual meetings during the spring proxy season, but both areas contain substantial numbers of resolutions. In addition, fueled by a new coalition, the number of resolutions on board diversity has passed 20 for the first time in almost 20 years. In turn, some other issue areas continue to shrink in volume of resolutions, in part because some proponents—especially from religious groups--have reduced their number of filings in favor of discussions with corporations. All told, the number of E&S resolutions ISS has identified as filed for spring 2013 stands at 358 as of March 1; the equivalent figure for 2012 was 336.

Major Issues

Within the political category, a well-organized campaign on lobbying disclosure led by the American Federation of State, County, and Municipal Employees (AFSCME) and Walden Asset Management has now overtaken the long-running political contributions disclosure campaign in volume. The lobbying disclosure effort, now in its third year, accounts for more than 50 resolutions filed; the 10 year-old contributions campaign coordinated by the Center for Political Accountability (CPA) this year accounts for 43. Adding 21 miscellaneous political proposals, resolutions proposed in that issue area total 115. That is about the same as in 2012, though the mix of proposals is somewhat different.

While the political proposals dominate by numbers, the energy/environment category, with 80 resolutions, features a rich and varied mix of issues, including some new approaches to old concerns and renewed attention to issues that largely had fallen out of favor. The number of proposals on climate change per se remains just below 20, but there are almost as many resolutions on energy efficiency and renewables—issues not very visible in recent proxy seasons—which are largely couched as mechanisms to reduce global warming. This year there are fewer resolutions than usual asking companies to set goals to reduce carbon emissions, but at the same time there are new approaches to climate change, including requests for reports on mitigating methane emissions. In addition, the Securities and Exchange Commission staff has told a bank that it must bring to a vote a resolution asking it to assess the effects of its lending portfolios on greenhouse gas production—a new approach to the issue.

Looking at environmental issues beyond climate change, this year six resolutions were filed on hydraulic fracturing (dubbed “fracking”), a subject unfamiliar to many shareholders before activists initiated a proxy campaign in 2010. In addition to the fracking proposals, a number of other resolutions also raise questions about water contamination and shortages. Toxic substances are again a subject of resolutions, and this year that category includes a new effort to get companies to reduce health hazards in the manufacture and recycling of lead batteries. The use of genetically modified organisms—a big proxy concern 10 years ago--resurfaces as a prominent shareholder issue this year, as proponents were riled up by heavy corporate spending to defeat a California referendum on the issue in November 2012. Other energy/environment subjects for 2013 include mountaintop mining, sustainable palm oil production, recycling, and nuclear power.

In other issue areas, sustainability reporting again accounts for more than 30 proposals, and the broad human rights category, which had slipped below 20 last year, is on the upswing again. Coordinated by a new group, the Thirty Percent Coalition, the number of resolutions on board diversity now tops 20. By contrast, the number of resolutions asking companies to amend their nondiscrimination statements to outlaw discrimination on grounds of sexual orientation drops below 20 for the spring proxy season for the first time in years; this, though, seems to relate in part to the fact that many of the larger corporations, which tend to hold their annual meetings in the spring, have now made that policy change. In addition, in another dip, the number of animal welfare proposals continues to fall off.

On the lowest side of the ledger, the numbers of proposals specifically on labor questions and tobacco issues, both near the top of the list of E&S resolutions 10 years ago, are now at low levels, and there are hardly any proposals on health-related concerns or charitable contributions. And for the third year there are no resolutions on defense-related issues to military contractors—once a staple of the proxy season. On the smoking issue, church groups that have focused on antitobacco proposals filed five resolutions this year, but have already withdrawn them all after agreements.

SEC Role

The number of resolutions that will actually come to votes has been shrinking in recent weeks as the Securities and Exchange Commission staff makes decisions about which proposals companies can omit from their proxy statements under Rule 14a-8, its rule governing shareholder proposals. As of March 1, 28 social issues proposals had been omitted and 33 challenges to E&S proposals were still pending, including some of the trickier calls.

Rule 14a-8 provides a number of technical as well as 13 substantive benchmarks that enable companies to exclude some resolutions. To receive clearance to omit resolutions under sections of the rule, corporations file "no-action requests" with the SEC staff, challenging resolutions and making their case for omissions, and "no-action letters" containing decisions on those challenges are now appearing daily on the SEC website. Approaches to no-action challenges vary significantly from company-to-company; some will try to exclude almost every E&S resolution they receive, even if precedent seems to be against them, while others will include resolutions in their proxy statements that they could probably have gotten permission to omit if they had gone to the SEC. This latter factor can make proxy activity hard to predict since resolutions may turn up unexpectedly in proxy statements.

The substantive exclusion most often cited for omission of E&S resolutions is a finding that a proposal deals with the "ordinary business," or day-to-day management, of a company, which should not be up to shareholders to decide. Important decisions so far this year have established that two resolutions must appear in proxy statements because they go beyond ordinary business—a resolution on greenhouse-related lending at PNC Financial Services and a proposal on lead batteries at AT&T.

Corporate attempts to get resolutions omitted on grounds that they are moot (the shareholder proposal rule's terminology is "substantially implemented") are also common. One of the other exclusions that has come into play in recent years allows a company to omit a proposal if the SEC staff agrees that a resolution is "substantially the same" as another one that the company received first and that it plans to include in its proxy statement. In 2011 and 2012, the SEC staff agreed with companies that resolutions in the big lobbying expenditure reporting and political contributions reporting campaigns were "substantially the same," allowing any company that received both to omit the second one filed. This year some of the proponents have refined those proposals to differentiate them more precisely and in a test case deliberately proposed both to CVS Caremark and JPMorgan Chase; SEC decisions on whether the second one received may still be omitted are pending. In a related decision, the staff has held that two political resolutions to Bank of America—one on lobbying but a different one asking for consideration of a policy banning political spending (rather than reporting on spending)—were not substantially the same so that both had to go in the proxy.

On the technical omission side, this year there have been an unusually large number of omissions on grounds that proponents failed to provide within 14 days documentary support that they held the amount of stock required to submit a resolution ($2,000 worth) or that they had held the stock continuously for at least a year. Failure to meet this requirement has knocked out proposals on energy efficiency at Rockwood and Dominion Resources; resolutions on lobbying at Norfolk Southern and Southern; a proposal on political contributions at Aetna; a resolution on sexual orientation at Alpha; and two proposals to Mondelez (formerly Kraft), one on forestry, and one on genetically modified foods.

One proponent noted to ISS that companies had been particularly vigorous this year in pursuing challenges with tiny technical details. In one case, Entergy was initially told it could omit a nuclear proposal from the New York State Common Retirement Fund because it had not proved beneficial ownership in time, but the fund returned to the SEC with the argument that the company's instructions had been misleading, and, in a rare move, the decision was reversed.

Still to be decided at the SEC is an unusual argument from Transocean over another New York State proposal; the company is saying that the state must demonstrate that it has not given money managers the power to vote or trade its shares in order to have standing to propose a resolution.

Withdrawals

The number of pending resolutions also shrinks every year because proponents withdraw some proposals from consideration, with the lion's share of withdrawals coming after sponsors and their corporate targets work out agreements. The nature of these agreements varies substantially from proponent to proponent and from situation to situation. Some proponents will decide to withdraw simply because a company acknowledges the legitimacy of their concerns and agrees to keep open the channels of communication on the issue. Other proponents will withdraw only if the company agrees to fulfill the resolution's request in full; this has been particularly common for resolutions asking companies to amend their EEO statements to outlaw discrimination against gay employees, on which filers have taken an all-or-nothing approach.

As of March 1, proponents and companies have announced substantive agreements on board diversity (nine withdrawals), sustainable production of palm oil (four), lead batteries (two), sexual orientation (five), and political contributions (six). All three resolutions asking media companies to assign "R" ratings to movies depicting smoking have been withdrawn after agreements, though none of the companies went as far as the proponents had requested. All-told, ISS has found 62 withdrawals; if precedent holds, about twice that many will be withdrawn by the end of the proxy season.

As usual, a few withdrawals have taken place not because companies and proponents reach agreements, but because proponents realize (usually from SEC no-action challenges) that they have not adhered to the technical requirements in filing proposals and decide to withdraw them before they receive no-action letters from the SEC. This year this has happened in the case of a sustainability proposal at Clarcor and a proposal on genetically modified ingredients at Mondelez, among others.

The Proponents

Most of the 2013 social issues shareholder proponents are familiar from recent years. As always, religiously affiliated proponents are prominent, with their activity coordinated through the New York-based Interfaith Center on Corporate Responsibility. Social investment funds are again major actors, including Walden Asset Management, Calvert Funds, Trillium Asset Management, Domini Social Investments, NorthStar Asset Management, Clean Yield, and Green Century. Both the New York City pension funds and the New York State Common Retirement Fund are major filers on a number of issues; New York City has not yet released a full list of resolution targets, but did provide ISS with the numbers filed in each issue category. Also among public pension funds, the California State Teachers' Retirement System and the Connecticut Retirement System are other social issues filers.

The American Federation of State, County, and Municipal Employees is co-leader with Walden of the big lobbying disclosure campaign and a variety of other labor unions are among the filers in the political contributions campaign. Other proponents include the Nathan Cummings Foundation, People for the Ethical Treatment of Animals, and the As You Sow Foundation.

Now barely visible this year as shareholder activists are conservative groups that have been a feature of recent proxy seasons—the National Legal and Policy Center and the National Center for Public Policy Research, which in the past have filed proposals on lobbying and climate issues. These groups have lost some eligibility to file at companies where they have particular concerns in recent years because their resolutions tend to get low votes and often have not received enough support for resubmission, especially after the second year. It is possible that some proposals from conservative filers may yet appear; sometimes companies do not seek to get them omitted, and the groups did not respond to ISS' request for information about their proxy season plans.

Early Votes

A handful of resolutions have already come to votes at companies that hold their annual meetings before the traditional spring proxy season. Two of those are new resolutions in the lobbying campaign, which received support of 31.2 percent at Accenture and 37 percent at Visa. A repeat resolution asking Emerson Electric to publish a sustainability report got 37.6 percent support, two points up from the year before. Other votes were lower: 7.6 percent from a proposal on GMOs at Monsanto and 5.7 percent for a new resolution asking Family Dollar to adopt the labor conventions promulgated by the International Labor Organization.

Proposals for 2013

Following is a discussion of the E&S resolutions proposed for 2013 that ISS has identified and organized by social issues category. The companies where resolutions are still pending are shown in boldface. The most interesting corporate challenges to resolutions at the SEC are also discussed, along with early SEC decisions that have allowed companies to omit proposals from their proxy statements and agreements with companies that have enabled proponents to withdraw some resolutions.

Animal Welfare

The number of resolutions on animal welfare issues, which have been offered mostly by People for the Ethical Treatment of Animals and the Humane Society of the United States (HSUS), continues to drop. ISS has found only 15 filed for 2013, down from 19 proposed in 2012 and 29 as recently as 2010. The reduction has come in part because, since votes on animal issues tend to be low, proposals have failed to receive enough support for resubmission (3 percent on the first vote, 6 percent the second, and 10 percent thereafter) at some of the most obvious targets. Beyond that, recent successes HSUS has had on factory farming issues—getting restaurants to use more free-range eggs and pork not raised in confining "gestation crates"—have reduced the number of resolutions.

PETA is continuing to use the shareholder resolution process to press concerns about the use of animals in research, though the number of its resolutions on that issue this year is down from seven to four. The company is going back to **Charles River Labs** with a proposal asking it to report on violations of animal protection laws and steps taken to ensure compliance. PETA also asked General Electric to report on use of animals in testing and steps to reduce it but then withdrew the proposal after an agreement. Merck and Pfizer were asked to detail all measures to reduce the use of animals. Pfizer successfully challenged the resolution at the SEC on grounds that its existing reporting makes the resolution moot; Merck, which had won that argument on a similar resolution last year, made it again and at that point PETA withdrew its proposal.

In addition to those four animal testing proposals from PETA, Calvert social investment funds have a lone proposal on the issue; the funds are asking consumer products manufacturer **Church & Dwight** to disclose whether it relies on animal testing for product safety and, if so, what products it tests and what commitment it has made to reducing animal use.

PETA also has a resolution to three companies on a new shareholder issue—the dehorning of cattle. The resolution asks **Dean Foods, Domino's**, and **Papa John's** to ask their dairy product suppliers to phase out the practice of dehorning by using only naturally hornless cattle. PETA says dehorning, which often entails burning hot irons into cattle heads to destroy horn tissue, is extremely painful and easily avoidable by using cattle born without the gene for horns. A PETA representative told ISS March 1 that those resolutions are likely to come to votes.

HSUS, which has had a number of successes in its factory farming campaigns in recent years, is sponsoring only a handful of resolutions. It withdrew a resolution asking Tyson Foods to make moves away from confining breeding pigs in small gestation cages. An HSUS representative told ISS that it withdrew the proposal "as a strategic decision based on conversations we've had with some of our partners." Carl Icahn had teamed up with HSUS to seek board representation at Tyson—a move that gained little traction.

HSUS filed only three other factory farming proposals. One is a resolution "encouraging" **Wendy's** to ensure that all eggs it purchases in the United States come from hens not confined to cages. Among the points made in the resolution is that "All of the 15 scientific studies published in the last five years comparing salmonella in commercial cage and cage-free facilities found higher rates of salmonella in cage operations." A resolution to Marriott International encouraged that company "to ensure that within the next five years, Marriott's egg supply chain will be free of battery cages and its pork supply will be free of gestation crates." The HSUS representative told ISS that the group had withdrawn the resolution at Marriott after it phased pig gestation crates out of its supply chain. HSUS has also filed that resolution at **Caribou Coffee**, but says it may not come to a vote because of a merger.

The group's antifur campaign is going back to **Kohl's** with a resolution on fur sales. This year's proposal asks Kohl's to report on the risks to its reputation and finances if it fails to implement a fur-free policy. A somewhat different resolution on fur sales got 3.3 percent support at the company last year. Over the years, SEC interpretations have allowed companies to omit resolutions on fur sales on ordinary business grounds because they deal with product choices, but Kohl's has chosen not to challenge the proposals. Last year the staff allowed Dillard's to omit a resolution on raccoon dog fur sales as ordinary business; the Humane Society returned to the company this year with a request that it disclose a policy on fur sales aimed at preventing animal cruelty, and then worked out a withdrawal agreement with the company. It also filed for the first time at Sears and is in the process of withdrawing that proposal after an agreement.

Banking Issues

The number of resolutions with social policy ramifications on banking tends to wax and wane. There were 21 in 2009, right after the financial crisis, but that number dropped by stages to zero in 2012. For 2013 a variety of long-time proponents developed a new resolution that harks back to the issue of predatory lending, which was broached by church groups a decade ago before many investors were familiar with the concept, but the new proposal is being shot down at the SEC. In the new resolution Trillium, Domini Social Investments, and church groups asked Fifth Third Bancorp, Regions Financial, **US Bancorp**, and Wells Fargo to issue reports "discussing the adequacy of the company's direct deposit advance lending policies" in addressing concerns about high interest rates and risks to the banks' reputations. The resolution asserts that direct deposit advances, which are repaid automatically out of the next direct deposit, result in long-term debt for the borrowers.

Fifth Third, Regions Financial, and Wells Fargo have already been allowed to omit the direct deposit advance resolution on ordinary business grounds; the SEC said it could be omitted because it related to products and services. Also challenging, US Bancorp argues that its current reporting makes the resolution moot and also that the resolution is misleading "because it strongly implies that the company's Checking Account Advance product is the same as traditional payday lending products." That argument has not yet been decided.

Also for 2013, two banks—JPMorgan Chase and PNC Financial--have received new resolutions asking them to assess greenhouse emissions enabled by their lending portfolios. Those proposals are discussed below in the section on "Environment—Climate Change."

Board Diversity

Proponents have stepped up a long-running campaign asking companies to commit to a policy on board diversity and report on their efforts. ISS has identified 24 resolutions, 20 of which are coordinated by a group called the Thirty Percent Coalition Institutional Investor Committee, led by Janice Hester-Amey of the California State Teachers Retirement System and Timothy Smith of Walden Asset Management and including the New York State Common Retirement Fund, Calvert Investments, Trillium Asset Management and many religious groups. The coalition's objective is 30 percent female representation across public company boards by the end of 2015. The group cites studies that show a correlation between gender diversity, good corporate governance, and financial performance.

The resolved clause of most of the resolutions reads:

That the Board of Directors consistent with their fiduciary duties:

1. Take every reasonable step to ensure that women and minority candidates are in the pool from which Board nominees are chosen;

2. Publicly commit itself to a policy of Board inclusiveness to ensure that:

   - Women and minority candidates are routinely sought as part of every Board search the company undertakes;

   - The Board strives to obtain diverse candidates by expanding director searches to include nominees from both corporate positions beyond the executive suite and non-traditional environments such as government, academia, and non-profit organizations; and

   - Board composition is reviewed periodically to ensure that the Board reflects the knowledge, experience, skills, expertise, and diversity required for the Board to fulfill its duties.

3. To report to shareholders, at reasonable expense and omitting proprietary information, its

efforts to encourage diversified representation on the Board.

This year, the universe of filers on the issue has expanded to include AFSCME, the California State Teachers Retirement System, and New York State Common Retirement Fund, as well as SRI funds and religious groups. Resolutions are pending at **Amphenol, B/E Aerospace, Equinix, Great Lakes Dredge & Dock, IPG Photonics, Leucadia National, Linear Technology, MEMC Electronic Materials**, **MetroPCS Communications, Precision Castparts, Rackspace Hosting, ResMed,** and **Urban Outfitters**. Resolutions have been withdrawn following agreements at Hartford Financial, Hospitality Properties Trust, Lowe's, QEP Resources, Republic Services, Stericycle, Superior Energy Services, Teradyne, and Zimmer. Another public pension fund has also filed a few board diversity proposals but not yet made the information public.

Additional withdrawals are likely before companies print their proxies. Board diversity resolutions usually have a high percentage of withdrawals; five of eight proposed in 2012 were withdrawn and a sixth is not eligible for reconsideration because the proponent failed to show up at the annual meeting. The only repeat this year is at Urban Outfitters, where the proposal got 39 percent support the last time out.

Board Oversight of E&S Issues

Calvert social investment funds have four resolutions with a somewhat different request from any made in earlier proxy seasons. Proposals are asking **Denbury Resources, Lowe's, Range Resources,** and **UPS** to see that their boards "commit to oversight of environmental and social matters through a board committee charter and report on the implementation of such oversight" by Dec. 1, 2013. The resolutions assert that "effective management of environmental and social risks is linked to business performance" as demonstrated by high-profile disasters at a Massey Energy mine and BP offshore oil rig. They cite Home Depot, Target, and Wal-Mart as companies that have established board oversight of sustainability matters through a designated board committee and request that the recipients of this resolution do the same.

Charitable Contributions

The number of resolutions on charitable contributions has shrunk in recent years; most of those that are filed are submitted by conservative filers with concerns about corporate contributions, although they must phrase resolutions on the issue in general terms in order to get around an SEC prohibition on aiming proposals at particular types of giving. The only charitable contributions resolution that has surfaced so far this year was from a conservative who sponsors resolutions periodically, Donald Perella, at Pfizer. The resolution requested a review of charitable and political contributions followed by a "report addressing the interrelation of both and how they will serve overall corporate policy." This resolution has already been omitted, after the SEC staff accepted Pfizer's argument that it was "substantially the same" as a recent proposal on political contributions from Evelyn Y. Davis that failed to get enough support for resubmission.

This omission does not mean that shareholders definitely won't face any resolutions on charitable contributions, which periodically show up unexpectedly in proxy statements.

Energy Issues

Energy Efficiency & Renewable Energy

The linked issues of energy efficiency and renewables, for many years barely visible on proxy ballots, have become prominent in the 2013 proxy season filings, though a large percentage of those resolutions have already been omitted or withdrawn.

The California State Teachers' Retirement System filed a new resolution asking five companies—**Citrix Systems, Dun & Bradstreet, Fiserv,** FLIR Systems, and Walter Energy--to report on their energy management. The resolved clause proposes that each company "issue a report describing the company's short- and long-term strategies on energy use management. The requested report should include a company-wide review of … policies, practices, and metrics." The resolutions assert that investments in energy efficiency "are an attractive way to manage rising energy costs, can enhance a company's role as a corporate citizen, and are usually quite profitable and low-risk."

CalSTRS has already reached a withdrawal agreement at Walter Energy and another of the resolutions has been omitted. FLIR Systems challenged the proposal at the SEC, arguing that it should be excludable because it does not deal with a matter of significant social policy and embraces day-to-day management questions that are not for shareholders to decide. The SEC staff has agreed, writing: "In our view, the proposal and supporting statement, when read together, focus primarily on FLIR's strategies for managing its energy expenses. Proposals that concern the manner in which a company manages its expenses are generally excludable" as ordinary business. There is no correspondence on the SEC website showing Citrix, Dun & Bradstreet, or Fiserv have made similar challenges.

Green Century Funds filed a new resolution asking IBM to "set company-wide targets to increase renewable energy sourcing and/or production and annually assess progress in reaching the targets." The proponents withdrew the resolution after an agreement; a Green Century representative told ISS the company agreed to publish its policy for reporting only the renewable energy it was directly responsible for adding to the grid, thus clarifying a seemingly low percentage of renewable energy it reports compared to its peers.

Calvert social investment funds filed a resolution on renewable energy that ties that issue squarely to climate change. A new proposal to Public Storage asked the company to "set targets to reduce energy use and associated GHG emissions" and report on progress. That resolution has already been withdrawn after the company promised to disclose more information about its energy use and reductions over time.

The New York State Common Retirement Fund has refiled a proposal to utilities on energy issues that was voted on at **Ameren** last year and now proposed it as well to DTE Energy**, First Energy,** and **Scana**. It has already reached a withdrawal agreement at DTE. The resolution requests by September 2013 "a report [reviewed by a board committee of independent directors] on actions the company is taking or could take to reduce risk throughout its energy portfolio by diversifying the company's energy resources to include increased energy efficiency and renewable energy resources." The resolution cites various statistical arguments, including a 2009 study by McKinsey & Company that found that investments in energy efficiency could realistically cut U.S. energy consumption by 23 percent by 2020. First Energy is challenging on ordinary business and other grounds.

Dominion has a proposal from an individual shareholder, Elena Baum, asking it to report "on policies and best practices for the company's service territory within the Commonwealth of Virginia to achieve the goal established by the state of Virginia of a 10% increase in efficiency by 2022 relative to the amount consumed in 2006," including strategies to maintain shareholder returns as energy efficiency increases. The company is challenging the proposal, arguing that its annual Demand-side Management report to the state of Virginia makes the proposal moot.

Three energy efficiency proposals have been dropped because the proponents failed to show beneficial ownership within the time limit. Wesleyan University filed a new resolution to Rockwood Holdings, a chemical company, asking that the "board of directors develop policies that will minimize Rockwood Holdings' impacts on climate change, with a focus on setting company-wide targets to improve energy efficiency, and annually assess progress in achieving the company's goals." Resolutions from educational institutions, such as this one, have been rare since the end of apartheid in South Africa in the early 1990s put an end to vigorous campus debate over investment policy, and this one will not come to a vote. Also omitted because the proponent failed to demonstrate beneficial ownership was a resolution from the Sierra Club to Great Plains Energy that asked the company the report on actions it could "take to reduce risk throughout its energy portfolio by pursuing all cost effective demand side energy efficiency resources." And after a filing slip-up Dominion Resources was allowed to omit a new resolution from the Presbyterian Church asking it to report "on actions the company is taking or could take to reduce risk throughout its energy portfolio by diversifying the company's energy resources to include increased energy efficiency and renewable energy resources."

Specific Renewables

In addition to general proposals on renewable energy at Dominion, several shareholders submitted more specific requests at that company, but neither resolution will appear in the proxy. Robert Vanderhye offered a new resolution asking for a report on the company's plans to deploy wind turbines for utility-scale power generation off the Virginia and North Carolina coasts. The company argued that its existing reporting made the proposal moot, and the SEC staff agreed.

Another proposal, also from an individual shareholder, asked that Dominion cease conversions of coal plants to biomass and cease other investments in biomass power, due to the admitted high carbon emissions from biomass power plants and the increasing rejection of 'carbon neutral' status for biomass power at the state and federal level. The company challenged the proposal, arguing that it "would require the company to undertake acts that it could not carry out while requiring the company to violate its existing legal obligations both to state utility regulators and to the primary contractors involved in the Biomass Conversions." The resolution has been withdrawn; it is not clear whether the proponent reached some sort of agreement or felt she was headed for a loss at the SEC.

Nuclear Energy

The New York State Common Retirement Fund has a new proposal asking utilities that use nuclear power to "implement a policy to better manage the dangers that might arise from an accident or sabotage by minimizing the storage of waste in spent fuel pools and transferring such waste at the earliest safe time into dry cask storage" and to report quarterly on progress. The resolution has been proposed to Duke Energy**, Dominion Resources, Entergy, NextEra Energy,** and **Xcel Energy.** The resolution has been omitted at Duke Energy as having been filed late. A representative of the Comptroller's office told ISS that they had had a good meeting with Xcel and that that proposal might be withdrawn but said it is expected to come to a vote at the other three companies. Entergy, Next Era, and Dominion challenged the proposal on ordinary business grounds, though a landmark 1976 SEC staff decision that "it seems apparent that the economic and safety considerations attendant to nuclear power plants are of such magnitude that a determination whether to construct one is not an 'ordinary' business matter" has largely served to protect resolutions on the nuclear issue from ordinary business challenges at the SEC.

Nuclear power was the top shareholder issue in the years right after the 1979 Three Mile Island accident, but had largely faded until last year when, following earthquakes in Japan and the United States, New York State filed proposals with seven utilities asking for information on nuclear safety. Most of these were withdrawn—in part because several companies demonstrated that the request for a report was moot—and this new resolution on spent fuel pool safety replaces last year's broader request.

In addition to the New York State proposal, the GE Stockholders Alliance Against Nuclear Power, a long-running coalition, asked General Electric to report on "the current vulnerability and substantial risks of the interim storage of irradiated fuel rods at all GE-designed reactor sites and that proposes measures to reduce those risks." The company successfully raised various eligibility issues about the proponent coalition's stockholdings, and the resolution has been omitted.

Climate Change

Climate Risk

A number of this year's greenhouse-related resolutions get into the risks to corporations from climate change. Resolutions on corporate financial risk were not admissible under the SEC's staff interpretations of its shareholder proposal rule until it issued an October 2009 legal bulletin legitimizing resolutions that request evaluation of business risk so long as the underlying issue raised a significant policy question. At the time, some SEC watchers thought the new policy presaged an explosion of resolutions on risk and climate change. That did not materialize immediately, but the issue comes up in more resolutions this year than it has in the past.

Similar new resolutions to **Alpha Natural Resources** (from the Unitarians) and **Consol Energy** (from As You Sow) ask each for a "report on the company's goals and plans to address global concerns regarding fossil fuels and their contribution to climate change, including analysis of long- and short-term financial and operational risks to the company and society." The resolutions assert that a portion of each company's coal and gas reserves and related infrastructure "may become unusable, unmarketable, or otherwise not economically viable as a result of greenhouse gas restrictions" and ask for additional disclosure of plans related to likely regulation and a resulting move to diversification.

A new resolution from an individual at **Dominion Resources** asks that company to report to shareholders, "describing the financial risks to Dominion Resources posed by climate change and resulting impacts on share value, specifically including the impact of more frequent and more intense storms, as well as any actions the Board plans to address these risks." The company lost its argument at the SEC that its existing reporting makes the resolution moot.

The Capuchins have a new resolution to **ExxonMobil** on the issue of physical risk from climate change, asking the company to issue a report "that reviews and estimates the costs of the disaster risk management and adaptation steps the company is taking, and plans to take, to reduce exposure and vulnerability to climate change and to increase resilience to the potential adverse impacts of climate extremes." The company is arguing that it should be able to omit this proposal because its subject matter is substantially the same as a recent resolution that failed to receive enough support for resubmission.

The Connecticut Retirement Fund and Christopher Reynolds Foundation have a resolution at **Chevron** asking it to form a review committee of independent board members to review the company's vulnerability to climate risk and issue a report "that reviews and estimates the costs of the disaster risk management and adaptation steps the company is taking, and plans to take, to reduce exposure and vulnerability to climate change and to increase resilience to the potential adverse impacts of climate extremes." Connecticut filed a similar proposal at Chevron in 2010 and 2011; the 2011 vote in support was 7.3 percent. It decided to continue its outreach to the company only through discussions in 2012 but is now again filing.

Two new resolutions to banks also relate to climate change risk. **JPMorgan Chase** and **PNC Financial** are each asked to provide an "assessment of the greenhouse gas emissions resulting from its lending portfolio and its exposure to climate change risk in its lending, investing, and financing activities." The resolution asserts: "Banks and other financial institutions contribute to climate change through their financed emissions, which are the greenhouse gas footprint of loans, investments, and financial services. A bank's financed emissions can dwarf its other climate impacts and expose it to significant reputational, financial and operational risks." Proponents have said a withdrawal agreement may be worked out at JPMorgan, but the proposal will be in the proxy at PNC.

PNC argued unsuccessfully at the SEC that it should be allowed to exclude the proposal from its proxy because it raises ordinary business questions about loan-making decisions; that sort of argument had carried the day when proponents attempted to propose resolutions to banks on mountaintop mining financing several years ago but this time the SEC staff said the resolution could not be classified as ordinary business because "it focuses on the significant policy issue of climate change." A Feb. 21 Los Angeles Times article quoted SEC spokesman John Nester as saying the decision does not mean every financial company must consider the issue of climate change, but was based on the nature of PNC's lending criteria and public statements, which demonstrated a "meaningful relationship" between climate change and its operations. Pittsburgh-based PNC has a history of lending to mining and gas companies, and proponents have accused the bank of reneging on a promise not to extend credit for mountaintop removal.

Calvert funds have resubmitted a resolution asking **Amazon.com** to report on how it is "managing risks related to climate change, including physical risks, greenhouse gas emissions, energy use, and renewable energy use." The proposal was supported by about 21 percent of shares voted in each of the last two years.

Methane Emissions, Natural Gas Flaring

New resolutions on the subjects of methane and gas flaring were motivated by concerns about climate change, though they also have relevance for the hydraulic fracturing proposals discussed later in this report. The methane resolutions, which emanate from Trillium Asset Management, have been proposed to **ONEOK, Range Resources**, and **Spectra**. The resolved clause asks a report on how each company "is measuring, mitigating, setting reduction targets, and disclosing methane emissions." The resolution explains that methane is the primary component of natural gas and is emitted during production, processing, transmission, storage, and distribution. It quotes statistics from the Intergovernmental Panel on Climate Change that methane has 72 times the impact on temperature as CO2 over a 20 year period. Spectra lost a challenge on mootness and ordinary business grounds.

The resolution on gas flaring, which Mercy Investments proposed to Continental Resources, has already been withdrawn after the parties agreed to continue discussions on the issue. It asked the company "to adopt quantitative, company-wide goals, based on current technologies, for reducing or eliminating flaring in all operations and facilities under the company's financial or operational control." The supporting statement cited a March 2012 letter from investors to gas and oil companies expressing concern that "that excessive flaring, because of its impact on air quality and climate change, poses significant risks for the companies involved, and for the industry at large."

Quantitative Goals for Greenhouse Gas Reduction

Fewer companies than usual are receiving the familiar proposal asking them to "adopt quantitative goals, based on available technologies, for reducing total greenhouse gas emissions from the company's operations." This resolution, originally conceived by the Sisters of St. Dominic, a pioneer in climate shareholder activism, has received some of the highest levels of support for climate-related proposals over the years. This year it is again pending at **ExxonMobil** and **ConocoPhillips**, two companies where it received support in the mid-20s last year, and at **Berkshire Hathaway,** which owns a coal-burning electrical utility. The resolution had gotten 10 percent support in 2011 and was withdrawn because of a technical filing glitch last year. In another filing, Walden proposed it to Stryker for the first time, but has announced that the resolution has been withdrawn because the company will assess the emissions from all its facilities, including recent acquisitions.

Environment

Hydraulic Fracturing

Proponents concerned about hydraulic fracturing have changed their basic resolution this year from one that asked generally for a report on risks associated with community concerns about the process to one that requests a quantitative report on company actions to minimize risks. A major concern for the proponents of these resolutions remains potential contamination of groundwater and wastewater from the chemicals used in the fracking process, which some gas drillers do not disclose.

The new resolution, proposed to five companies, asks them to report, by "Oct. 30, 2013, via quantitative indicators, the results of company policies, procedures and practices above and beyond regulatory requirements, to minimize the adverse environmental and community impacts from the company's shale energy operations." This proposal is pending at **Chevron, ExxonMobil, Pioneer Natural Resources**, and **Ultra Petroleum,** though proponents say withdrawal at Ultra is possible. It was also proposed to EOG Resources but was withdrawn after an agreement, as was a different fracking proposal there in 2012. Last year's fracking resolution came to votes at Chevron (27.9 percent), ExxonMobil (29.6 percent), and Ultra Petroleum (35.4 percent). This is the first resolution on the issue at Pioneer.

A sixth and differently phrased resolution on fracking was proposed to Cabot Oil & Gas and has already been withdrawn. It asked for a report on policy options "above and beyond regulatory requirements, to curtail the use of toxic chemicals in hydraulic fracturing fluids" in the company's shale energy operations. In announcing withdrawal of the resolution, the New York State Common Retirement Fund released a statement from Cabot saying that it would prohibit its contractors from using diesel or benzene, toluene, ethylbenzene, and xylenes (BTEX) chemicals in hydraulic fracturing fluids and will disclose all chemicals used in fracking on the FracFocus Chemical Disclosure Registry website.

Water Issues

In addition to the fracking resolutions, a number of other proposals this year raise questions about water use.

As You Sow has a resolution to **FirstEnergy** related to earlier proposals. The resolved clause asks the company to "adopt strategies and quantitative goals to reduce the company's impacts on, and risks to, water quantity and quality, above and beyond regulatory compliance." This proposal has elements of two other resolutions that came to votes at FirstEnergy in both 2010 and 2011—one on exposure to coal-related risks and the other on management of coal combustion waste (CCW)—both of which received substantial votes. It notes that FirstEnergy's generation portfolio is 64 percent dependent on coal, a water-intensive energy source, and that this dependence enhances concerns about water contamination risk from CCW disposal. The company is challenging this proposal on ordinary business grounds and also arguing that it is moot.

As You Sow has a similar resolution to **Ameren**, which had also received resolutions on coal reliance and coal combustion waste in the previous two years, and which generates 85 percent of its power from coal. This one asks that the company "adopt strategies and quantitative goals to reduce water use and thermal impacts on receiving waterways from the Company's power generation and operations, maximizing the use of less water-intensive energy sources such as photovoltaic solar and wind" and issue a report. Unlike the one to First Energy, the resolution at Ameren focuses on water scarcity rather than water contamination. It quotes the U.S. Department of Energy: "Water shortages, potentially the greatest challenge to face all sectors of the United States in the 21st century, will be an especially difficult issue for thermoelectric generators due to the large amount of cooling water required for power generation."

Calvert social investment funds have resubmitted a resolution at **Fossil** aimed at operations of its suppliers in water-scarce regions and proposed a related resolution to Ralcorp for the first time. The proposal at Fossil asks for a report by Nov. 1, 2013, "describing the company's vendor standards pertaining to reducing supply chain environmental impacts—particularly water use and related pollution." In the case of Fossil, the proponents are concerned that leather tanning and finishing are water-intensive and polluting processes that use and discharge heavy metals, chemicals, and acids. The resolution got 30.8 percent support last year. The resolution at Ralcorp, a major food supplier to Wal-Mart, requested a report identifying water use throughout its operations and "value chain." That proposal has been withdrawn because Ralcorp is being acquired.

David Brook, an individual shareholder, has resubmitted his resolution to **Home Depot** asking it to establish a written Stormwater Management Policy. The proponent is concerned about the potential for contaminated runoff from chemicals at Home Depot lots. The resolution got 3.6 percent support last year.

Continuing to raise issues of water scarcity, NorthStar Asset Management is pursuing for a sixth year its campaign to get companies to proclaim their commitment to the "human right to water" articulated by the United Nations. This year it has resubmitted its resolution to **Aqua America**, where it got 9.3 percent support last year.

The Sisters of St. Francis have a new resolution to **Alpha Natural Resources**, now the parent of Massey Energy, asking for a report on efforts to reduce environmental concerns associated with its Appalachian mining water management, an issue that had been brought up at Massey in earlier years.

In addition to the above water-related resolutions, several proposals asking for sustainability reports, discussed later in this Preview, asked specifically for reporting on water issues. Those are a new resolution that has been withdrawn at Molycorp, which faces an estimated $800 million superfund cleanup, and a resubmitted proposal to **Cleco**, which got 34 percent support last year.

Mountaintop Mining

The resolution to Alpha on water management, discussed above, is inspired in large part by water pollution issues related to the company's use of mountaintop mining. There are also several other 2013 resolutions related directly to that issue. The New York State Common Retirement Fund filed new proposals at Arch Coal and Teco Energy asking each to "report on (i) the conditions resulting from … mountaintop removal operations that could lead to environmental and public health harms and (ii) feasible, effective measures to mitigate the harms associated with mountaintop removal mining." Both companies challenged the proposals at the SEC. Teco won the argument that its sustainability report makes the resolution moot; Arch lost the argument that mountaintop mining is not significantly related to its business, but then worked out an agreement and that resolution has been withdrawn, so neither resolution will come to a vote.

An individual shareholder has a new proposal to **Dominion Resources** asking it to provide a report on "the impact and optimum timing of a future policy ending the company's use of MTR (Mountaintop Removal) coal, and (ii) request to add this policy as one of the measurable goals in its Sustainability Model and Scorecard." This replaces last year's resolution to Dominion from the Sierra Club asking the company to report on the impact of its suppliers' mountaintop mining operations. It got 9.5 percent support.

Toxic Substances

Resolutions on toxics this year include a new effort on health hazards from lead batteries and a revived crack at the issue of mercury in dental amalgam.

Lead Batteries

A variety of proponents filed a new resolution with five companies on reducing health hazards from manufacturing and recycling lead batteries. The resolution notes that lead battery production now accounts for over 80 percent of global lead consumption and notes particular concern that lead battery recycling outside the United States endangers public health "in part because of a lack of rigorous government controls." The resolution asked Amazon**, AT&T, Google,** IBM**,** and Verizon to report on practices they can adopt "to reduce the occupational and community health hazards from manufacturing and recycling lead batteries in the company's supply chain." It suggested that the report address such questions as how the companies track shipments of used batteries, how to ensure batteries are not being shipped to recycling facilities in countries with weak enforcement, and how to assess suppliers' and recyclers' performance against standards of best practices. The targets were picked in part because of concern about the heavy use of lead acid batteries at call centers.

The lead battery resolutions have already been withdrawn at IBM and Verizon after agreements. The proposal has also been withdrawn at Amazon, apparently because of a technical problem. AT&T unsuccessfully challenged its proposal at the SEC, arguing that it should be able to omit it on ordinary business grounds. The SEC staff disagreed, writing, "In our view, the proposal focuses primarily on the environmental and public health impacts of AT&T's operations and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate."

Mercury-Containing Dental Products

Trinity Health is sponsoring a resolution asking **Danaher** to issue a report by October 2013 describing "policies and plans for eliminating releases into the environment of mercury from Danaher products." Catholic Health Care East is sponsoring a resolution with the same resolved clause at **Dentsply**. The resolutions cite a 2011 World Health Organization report which found that mercury from dental amalgam poses a serious environmental health problem because it releases a "significant amount of mercury" into the environment that ultimately enters the human food chain, especially through fish consumption.

The resolution to Danaher acknowledges that the company's use of amalgam has dropped substantially, but says it is looking for more detailed information on the reduction and for an end-date to its use. The proposal at Dentsply, by contrast, says "statistics appear to indicate that Dentsply reported an increase of almost three times in total quantity of mercury used for dental amalgams between 2007 and 2010." This issue has been raised at both companies in the past but came to a vote only once, back in 2009 at Danaher when it got 16.7 percent support. Other resolutions have been withdrawn at both companies after agreements, but the proponents told ISS this year that there had been little disclosure to show for the withdrawals and agreements this year were not likely. Both companies are vigorously challenging their proposals at the SEC, with a variety of arguments, including the rarely successful one that the subject relates to less than 5 percent of the company's business.

Safer Chemicals in Health and Beauty Products

Green Century Funds has a new resolution encouraging **Avon Products** to seek out safer substitutes "for chemicals that are known or suspected to cause cancer or mutations, harm the reproductive system, affect the endocrine system, accumulate in the body or persist in the environment." It asks the company to report on its policy on using safer substitutes by September 2013. The resolution asserts that there has been "an increase "in scientific and public concern surrounding the use of hazardous chemicals in health and beauty products," pointing to pressure from the Campaign for Safe Cosmetics, a nine-year-old group coordinated by the Breast Cancer Fund. It notes that Johnson & Johnson in August 2012 announced that it would phase out selected chemicals even though they satisfy regulatory requirements, and says the campaign has challenged Avon to meet or beat J&J's commitments. To date, a Green Century representative told ISS, Avon has taken an "antagonistic rather than precautionary approach to growing consumer safety concerns."

PCB Cleanup

The New York State Common Retirement Fund revived an old issue—the cleanup of polychlorinated biphenyls (PCB) that General Electric had discharged into the Hudson River decades ago. Shareholder proposals on this issue ceased after 2004 when GE began proceeding with a cleanup under a 2002 Environmental Protection Agency order, but the state pension fund this year asked the firm to report "on the potential to reduce the company's long term liability for the remediation of PCB discharges into the Hudson River and for resulting natural resource damages by removing highly contaminated sediments in addition to those sediments identified in Dredge Area Delineation Reports." GE asked the SEC staff for permission to omit the proposal, arguing that it raised ordinary business issues because it "seeks to reopen complex and highly technical issues regarding the choice of remediation techniques pursued at a specific site, which has already been extensively evaluated and reported on in a series of reports issued by the EPA over a period of more than 20 years." The company then worked out a withdrawal agreement with the fund before the challenge was decided.

Palm Oil

Shareholders are raising the issue of sustainable palm oil production at a record number of companies, but have been reaching withdrawal agreements at many. Groups proposed resolutions for the first time to Church & Dwight**,** Dean Foods, Dunkin' Products, **Kroger,** and Starbucks that asked them to "adopt and implement a comprehensive sustainable palm oil policy." The resolutions suggested that the policy include: 1) a target date for sourcing 100% Certified Sustainable Palm Oil or for purchasing GreenPalm certificates covering 100% of sourced palm oil; 2) plans for independent verification of suppliers' compliance with the policy; 3) support for a moratorium on palm oil expansion in rainforests and peatlands; and 4) a commitment to disclose publicly the company's progress on this issue." The resolution has been withdrawn at Dean Foods after discussions persuaded the filer that the company was in compliance with the aims of the proposal. It was also withdrawn at Starbucks, Dunkin' Products, and Church & Dwight. In the case of Starbucks, the company agreed to purchase 100 percent of the palm oil it uses from certified sustainable suppliers by 2015 and also to become a member of the Roundtable for Sustainable Palm Oil. Church & Dwight says it will use 100 percent sustainable palm oil by 2016 and is now verifying the processes of its suppliers.

The current sustainable palm oil resolution is basically the same request as a proposal on the issue to **Yum Brands** from Trillium that got 37 percent support last year and that is pending there again this year. But the resolutions proposed to Church & Dwight and Kroger have an added emphasis: child labor in current methods of palm oil production. The proposals cite statistics that almost 25 percent of palm production in the Philippines comes from child labor and that child labor contributes to palm oil production in Indonesia and Malaysia. They say many of these children are not part of family farms and assert that such labor practices may violate international codes of human rights.

Last year's vote on the resolution at Yum was unusual; companies have traditionally had good luck in working out withdrawal agreements on resolutions on sustainable palm oil, and votes have been rare since proponents began pressing the issue in the last five years.

Sustainable Forestry

In a proposal that touches on the palm oil issue, Domini Social Investments continued, at a low level, its campaign to get paper companies to purchase raw materials from sustainably managed forests. This year it resubmitted its resolution to Kraft (now re-named Mondelez) asking the company to assess its supply chain impact on deforestation. However, the SEC staff agreed with the company that the proponent failed to provide timely information on stock ownership, and it appears that there will be no resolutions on forestry issues this year for the first time in more than a decade.

Genetically Modified Organisms

Genetic engineering, one of the hottest environmental topics on the shareholder scene 10 years ago, had largely fallen off the radar in recent years. The number of resolutions on the issue increased from one to seven this year, though, ramped up in response to heavy corporate spending to defeat a California referendum on the issue of GMO product labeling last November. Some of the resolutions are directed at labeling. Another focuses on removing GMOs from products. Still others are aimed at companies that produce genetically engineered seeds and focus on controls to avoid potential adverse impacts.

DuPont and **Dow Chemical** are receiving resolutions asking them to report on internal controls, including adequacy of current post-marketing monitoring systems; adequacy of plans for removing GE seed from the ecosystem; and the effectiveness of established risk management processes. The resolution came to a vote at DuPont two years ago, receiving 6.3 percent support, a typical vote for the GE issue.

Monsanto, the only recipient of a GMO resolution last year, has already again voted on that resolution at its January 2013 meeting. The resolution asked for a study of risks from the inadvertent mixing of plants grown from its genetically engineered seeds. It got 7.6 percent support, up two points from the previous year.

Abbott has a new resolution from As You Sow asking it to "adopt a policy of removing genetically engineered crops, organisms, or products thereof from all nutritional products sold or manufactured by the company, whenever feasible, until long-term safety testing has shown that they are not harmful to humans, animals, and the environment" and to take the interim step of labeling products that may contain these ingredients. The resolution notes that Abbott uses genetically modified ingredients in its infant formula products.

GMO resolutions focused only on labeling were proposed at **ConAgra,** Mondelez, and **PepsiCo**. They asked the companies to "adopt a policy to identify and label all food products manufactured or sold by the company under the company's brand names or private labels that may contain genetically engineered ingredients." The proponents withdrew the resolution at Mondelez after the company raised questions about stock ownership.

The spate of GMO proposals comes after California voters in fall 2013 rejected Proposition 37 by a vote of 53 to 47 percent. Proposition 37 would have required labeling of food made with genetically modified ingredients. Press reports said the initiative had first been expected to pass, but was defeated after agribusiness and food company opponents spent $45 million to defeat it, mounting an advertising campaign that asserted that GE ingredients are safe and that the measure would substantially increase the grocery bills of California residents. Sister Pat Daly, whose Tri-State Coalition for Responsible Investment is sponsoring some of the resolutions, told ISS that with the exception of a climate change resolution at ExxonMobil, her group "was filing only GMO proposals in 2013 because it was "REALLY aggravated after the dollars poured into defeating Prop 37."

Recycling

The As You Sow Foundation (AYS) continues to take the lead on recycling issues. This year it is focusing on Extended Producer Responsibility, a policy used extensively in Europe that shifts accountability for financing collection and recycling of materials from taxpayers and governments to producers. AYS has resubmitted proposals to **Mondelez** and **Kroger** and is filing on the issue for the first time at **Whole Foods** and **Yum Brands**. Last year's votes were 25.6 percent at Mondelez (then Kraft) and 12.8 percent at Kroger. The resolutions call for a report "assessing the feasibility of adopting a policy of Extended Producer Responsibility for post-consumer product packaging as a means for increasing rates of packaging recycling, reducing carbon emissions and air and water pollution resulting from the company's business practices." Paper and packaging comprise 44 percent of U.S. landfill waste.

AYS also has three resolutions on electronics recycling, at **Amazon, Target,** and **Wal-Mart**. The companies are asked to report "on policy options to provide mechanisms for take back of electronics, promotion of reuse of working equipment and to prevent improper export of hazardous e-waste and untested or non-working equipment." The proposal is a third year resubmission at Target, where support last year fell from 30.8 percent to 8.5 percent after the company enhanced its reporting on the issue. Amazon and Wal-Mart have challenged it at the SEC, arguing that it is moot and that it relates to ordinary business by involving policies regarding products and services.

Board-Level Environmental Expertise

The New York State Common Retirement Fund is continuing to press companies to add a member with explicit environmental expertise to their boards. This year it has resubmitted a resolution to **Chevron** (21.5 percent support in 2012) and **Freeport McMoran** (31.6 percent support) and proposed one for the first time to **Newfield** and **Transocean**.

Activity involving in part that long-running environmental expertise resolution at Chevron, filed by Trillium Asset Management as well as New York State, has taken an unusual and complicated twist this year. The company, under fire from shareholder activists for an unpaid $18 billion judgment involving pollution from its Texaco subsidiaries' former operations in Ecuador, has subpoenaed Trillium asking for documents relating to shareholder resolutions the SRI group has filed with the company over the years. A Chevron spokesman told The New York Times the subpoena reflects the company's belief that Trillium was working with the plaintiffs in the Ecuador case to pressure Chevron into a settlement. Chevron also filed an ethics complaint against New York State Comptroller Thomas DiNapoli, another shareholder activist at the company, contending that DiNapoli and the plaintiffs' lawyer in the Ecuador case "had an illicit and unethical quid pro quo arrangement" in which the comptroller put pressure on Chevron in exchange for campaign donations. In turn, two other SRI groups, Zevin Asset Management and the Needmor Fund, filed a shareholder resolution with Chevron asking a committee of its independent board members to review its legal initiatives against shareholders, report on their rationale, and discuss "the precedent this would set in chilling shareholder communications with any company about key environmental, social, and governance issues and their impact on shareholder value." Chevron is challenging the proposal on ordinary business grounds because it relates to litigation strategy; the company has its annual meeting at the tail end of the traditional proxy season and the no-action decision is still pending, but the litigation strategy argument usually carries the day.

Equal Employment

Sexual Orientation

There has been at least a temporary drop in the number of proposals in the long-running campaign to get companies to add sexual orientation and gender identity as a protected category in their EEO statements. Patrick Doherty, who coordinates the effort on that issue for the New York State Comptroller's Office, told ISS that he expected to file a substantial batch of resolutions on the issue later this year at smaller companies that have their annual meetings later than the traditional spring proxy season.

At this point, the New York State Common Retirement Fund has filed its perennial resolution to **ExxonMobil**—the most prominent hold-out on the issue—now in its 15th year. The resolution had been supported by 39 percent of shares voted in 2009, but since then the vote has hovered around 20 percent. The drop occurred because, while Exxon has not significantly altered its proxy statement response opposing the resolution, or its written EEO policy, after the 2009 proxy season the company had expanded its "employment policies and practices" statement to say discrimination based on sexual orientation or gender identity was not acceptable. While that change has satisfied some institutional investors, the New York State Common Retirement Fund and social investment funds continue to press the company for an explicit change in the written policy. ExxonMobil was unsuccessful in an attempt last year to get permission from the SEC staff to omit the proposal on grounds that it is moot.

New York State has also refiled the resolution with **American Financial** that got 31 percent support last year and filed a new proposal at **Universal Forest Products**. It has withdrawn resolutions after agreements at Mettler-Toledo and Holly. A resolution was omitted at Alpha Natural Resources because of a filing issue.

The New York City pension funds also continue to press this issue, but its seven filings are not expected to be made public until April.

Other resolutions on the issue come from SRI funds and the Pride Foundation. A nondiscrimination proposal is still pending at **AGL Resources**, and SRI funds have withdrawn nondiscrimination proposals after agreements at East West Bancorp, j2 Global, and Sealed Air. In addition, narrower resolutions ask two companies—**Amgen** and **ConocoPhillips**--that already outlaw discrimination against gay employees specifically not to sanction discrimination on grounds of gender identity as well. The resolution at ConocoPhillips, another perennial, is sponsored by the Unitarian Universalist Association and got 31.1 percent support last year.

EEO Reporting

A large coalition of shareholders has once again filed a request for public EEO reporting at **Home Depot**. It has been submitted since 2006, after the company reversed itself on as pledge to provide the information. It got 23.6 percent support in 2012.

A pension fund has filed EEO reporting resolutions at three companies; information will be released later in the spring.

Linking Pay to Social Issues

There appear to be only a handful of resolutions this year suggesting that companies link executive pay to performance on certain social issues.

The Nathan Cummings Foundation has a proposal asking **Caterpillar** to "adopt a policy that incentive compensation for senior executives should include a range of non-financial measures based on sustainability principles and reducing any negative environmental impacts related to company operations. The resolution defines "sustainability" as "methods in which environmental, social, and economic considerations are integrated into long-term corporate strategy." The resolution cites the BP Deepwater Horizon explosion as emblematic of the greater need for tying incentive pay to sustainability, and says a recent Caterpillar Clean Air Act settlement shows it is not immune to environmental risks.

The other resolution in this category is a proposal from an individual shareholder at **Dominion Resources**, which has a very similar resolved clause. The resolution notes that "The 2012 proxy does not disclose any specific sustainability performance measures, in particular reducing carbon emissions, in the company's incentive plans. Addition of sustainability to the performance incentive plans would ensure that long-term sustainability was given appropriate weight in long-term planning and measurement of executive performance."

The pending resolutions are very similar to proposals that several labor unions submitted to a variety of companies in 2011 and 2012, which often led to withdrawal agreements; the unions are not continuing that approach this year.

In addition, a sustainability report request at **Nabors**, discussed in the sustainability section below, asks among other things that the company discuss the link between its executive compensation and ESG performance—not a common feature of sustainability proposals.

Health

While the 2013 season is notable for its lack of resolutions on health questions, Harrington Investments has refiled its proposal asking **McDonald's** for a report "assessing the company's policy responses to public concerns regarding linkages of fast food to childhood obesity, diet-related diseases and other impacts on children's health."

The proposal was originally filed by church groups in 2011, who then concluded that the company was taking constructive steps and decided not to refile. But Harrington picked it up for 2012, when it got 8.5 percent support. It will need 10 percent support this year to be filed again.

Human Rights

The number of resolutions on human rights is in the mid-20s—recovering somewhat from a drop into the teens in 2012, which was considerably below the volume of recent previous years.

Human Rights Policies

As usual, the largest group of resolutions on human rights asks companies to review their human rights policies and recommend areas where they can be strengthened. This resolution is pending for the first time at **Hewlett-Packard** and **Northrop Grumman**. It was also proposed for the first time to Marathon Oil, but has already been withdrawn after an agreement. While the resolution itself does not make this explicit, the proposal at Hewlett-Packard, from the Presbyterian Church, relates to the church's long-time struggle over stockholdings in companies that supply military equipment to Israel that has been used to continue control over occupied Palestinian territories. Hewlett-Packard supplies biometric scanners used at checkpoints and technology used by the Israeli Navy in the blockade of Gaza. The church's social investment committee voted to divest from Hewlett-Packard, Motorola, and Caterpillar stock in 2012, but the full church General Assembly voted 333-331 to reject the recommendation and instead encourage "positive investment" in the occupied territories.

Caterpillar shareholders had given 25.4 percent support to a human rights policy proposal led by Jewish Voice for Peace and Mercy Investment in 2012. This year the Presbyterian Church is sponsoring that policy resolution, after its General Assembly vote last June (discussed above) to reject divestment from Caterpillar over human rights concerns, especially the use of Caterpillar-made bulldozers to demolish Palestinian homes. This year Jewish Voice for Peace and Mercy have a different resolution at Caterpillar asking the company to issue a report "fully identifying potential risks and associated costs, both tangible and intangible, and assessing the total financial impact on our company, its brand reputation, and shareholder value caused by the human rights reports, boycott and divestment efforts related to Caterpillar bulldozer activities in the occupied Palestinian Territory." AFSCME also has a human rights resolution at Caterpillar, asking the company to "report on its process for identifying and analyzing potential and actual human rights risks of Caterpillar's products, operations, and supply chain." Caterpillar is arguing at the SEC that it should be able to omit both the Jewish Voice for Peace and AFSCME resolutions on grounds that they are "substantially the same" as the Presbyterians' policy proposal, which it received first and which it plans to include in its proxy.

A human rights policy review proposal has also been resubmitted to **General Dynamics**, where it got 21.4 percent support in 2012. The resolution also came to a vote in 2012 at **GEO Group**, where it got about 29 percent support. For this year, the Jesuit Conference of America has revised the resolution to GEO to ask for an audit of the company's compliance with human rights standards. The resolved clause asks for "an independent, third-party audit to assure GEO's compliance with generally recognized international and domestic standards, as well as constitutional norms, that govern custodial facilities which are operated, managed, or contracted for any services. Auditors shall be persons nationally recognized as experts in the particular area of review and who are in all respects unaffiliated with any private correctional service provider." (This is the only resolution on prison issues that ISS has found for 2013. The proponent of last year's resolution on prison sexual abuse at Corrections Corp. of America is filing a governance proposal there instead.)

AFSCME has also filed its resolution asking for a report on human rights risks at **Halliburton** and **McDonald's.** Church groups had proposed a human rights policy resolution to Halliburton from 2010-2012, but withdrew the proposal in 2012 after reaching an agreement.

AFSCME representatives stressed that the union's human rights resolutions this year, its first ever, differ from earlier proposals from other proponents in asking for details about the companies' assessment of human rights risks, including the methodology and frequency of the assessment, the persons consulted, and how the results are incorporated into company decision making.

A group of individuals have a new resolution at **Wal-Mart** asking it to issue a report assessing human rights risks in its operations and supply chain. The company is arguing that its current reporting makes the proposal moot.

Sexual Exploitation of Minors

Mercy Investment is filing a general human rights resolution at **Choice Hotels** asking the company to report on the implementation of its human rights policy. That resolution also expresses concerns about child sexual exploitation, and it says it believes human rights policy reporting would help

Choice "integrate and gain value from existing efforts on human rights, identify gaps and opportunities, and publicize innovative practices."

Mercy Investment also has a new resolution to **Expedia** asking the company "to adopt a human rights policy including prohibition of sexual exploitation of minors. It cites State Department estimates that more than 2 million children are exploited annually in the global sex trade, an "organized multi-million dollar industry that includes tour guides, websites, and brothel maps." The resolution points to "The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism," devised by a network of hotels, airlines and tour operators known as ECPAT, and suggests that Expedia's policies should address the provisions of the code. Its criteria include an overview of tourism personnel education and training; supplier contracts repudiating child sex exploitation; a plan for communicating information to travelers; and an annual progress report.

Action to stop child sexual exploitation is an issue that has been raised at a number of companies in the travel and transportation industry over the years, but withdrawal agreements have always been struck before companies printed their proxy statements and none of the resolutions has come to a vote.

Human Trafficking in the Supply Chain

Some of the general human rights policy resolutions single out human trafficking as an issue for corporations to examine. In addition, the Sisters of St. Francis of Philadelphia have a new resolution this year asking **Kroger** to "publish a report assessing the human rights risks, including human trafficking and forced labor (modern day slavery) throughout its supply chain. The report should evaluate all policies and procedures in place to manage identified risks relating to the labor practices of suppliers, including labor brokers. In addition, the report should include the findings from any audits undertaken and steps taken to resolve any identified issues." The resolution asserts that as a purchaser of significant amounts of fruit and vegetables, Kroger faces human rights risks from the possible use of forced labor in its supply chain. It notes that the U.S. Department of Justice has successfully prosecuted cases involving the forced labor of over 1,000 agricultural workers since 2006.

Board Committees on Human Rights

Four resolutions have been proposed asking companies to establish special board committees to examine human rights issues and enhance company policy. One, from Harrington Investments, was in the proxy for **Apple**'s late February annual meeting. Harrington has the same resolution for **Coca-Cola's** April meeting. The others, from human rights activist Jing Zhao, have been submitted to **Hewlett-Packard** and **Goldman Sachs**. Goldman is challenging that proposal on grounds that it is phrased as a demand, which is out of bounds under the shareholder proposal rule, and also argues that its existing policies make it moot.

Genocide-Free Investing

Investors Against Genocide has submitted for a third year its resolution asking **JPMorgan Chase** to implement procedures to prevent it from investing in companies that contribute to genocide and has filed the resolution for the first time at **Franklin Resources**. The proposal cites particularly investments in companies that are active in Sudan, most prominently PetroChina, which has substantial interests in petroleum exploration and production operations there. The resolution got 10.7 percent support at JPMorgan last year.

In a related effort, the New York State Common Retirement Fund has a resolution at **Caterpillar** asking it not to do business in Sudan. The company has challenged it at the SEC, arguing that its existing policies already accomplish that end.

Country-Investment Criteria

The Teamsters have resubmitted their long-running resolution asking **Chevron** to publish its criteria for investment in and withdrawal from specific countries. The resolution was prompted by Chevron's acquisition of Unocal, which has a major investment in a controversial Burmese pipeline. Among the proponents' concerns is a lack of transparency in Chevron's payments to the Burmese authorities. The resolution got 22.8 percent support in 2012, slightly lower than the vote the previous two years.

Internet Neutrality

Trillium Asset Management and the Nathan Cummings Foundation are continuing to press three Internet providers on network neutrality—a subject that became a live shareholder issue last year when the SEC staff reversed a longstanding policy that the issue involved ordinary business matters not appropriate for resolutions. Last year's resolution asked AT&T, Sprint Nextel, and Verizon to make a public commitment to operate their wireless networks so that no transmission is either prioritized or downgraded. The resolutions got relatively modest support, with the highest vote (7.9 percent) at Sprint.

For 2013, the proponents rewrote the resolution to ask for a report that would describe "how [the company] is responding to regulatory, competitive, legislative and public pressures to ensure that its network management policies and practices support network neutrality, an Open Internet," and its core set of standards. The resolution is pending at **Sprint** and **Verizon**, but has been withdrawn at AT&T, though not because of an amicable agreement. What happened was that when AT&T received the report request, it went to the SEC to ask for permission to omit the resolution on grounds that a recent report made it moot. The proponents were not aware of the report until they saw the no-action request. Once they got access to it, they withdrew the resolution, in effect acknowledging the mootness argument, but at the same time criticized the content of the report. In a release published on Trillium's website, Jonas Kron of the SRI firm argued that "AT&T's position on open Internet for wireless amounted primarily to complying with existing federal regulations – which, in fact, provide huge exemptions from oversight for wireless networks." He and co-filers objected that "AT&T fails to discuss reports of an increasing number of consumer complaints about discrepancies in how much data AT&T wireless customers are using and being charged for" and that it did not mention recent controversy over alleged violations of federal regulations involving the blocking of Apple's FaceTime wireless application.

Verizon also asked for permission to omit the resolution on grounds of mootness, but the SEC staff did not agree that its existing reporting met the request.

Data Security

Trillium also has now proposed resolutions on data privacy, along with Pax World Funds. A proposal filed with **Amazon,** Apple and **eBay** asked the companies to publish reports explaining how they are "overseeing privacy and data security risks." The proposal stressed it "is not asking the Company to disclose risks, specific incidents, supplier relationships or legal compliance procedures, but rather, we believe investors need to understand more fully how the Board is overseeing the concerns described above."

The resolution is still pending at Amazon and eBay, but was withdrawn at Apple after an agreement. The company updated its board's audit and finance committee charter to include responsibility regarding regulatory, legislative, and reputational privacy risks. In a statement posted on Trillium's website, Jonas Kron said, "We very much appreciated having a productive dialogue with the company which resulted in a fundamental improvement to the company's critically importance governance structure….This kind of positive dialogue between a company and its shareholders is a great example how active investors can benefit the company and its stakeholders."

Labor Issues

ISS has found only a handful of resolutions on labor issues for 2013. An AFL-CIO representative told ISS that the group had decided it had accomplished as much as it could expect from its 2011-12 campaign on oil company safety and was not refiling. The AFL-CIO filed one resolution on international labor standards, at Family Dollar, which has already come to a vote.

The most extensive filings on labor issues are proposals asking companies to require their suppliers to provide sustainability reports, an effort started by New York City funds in 2011 that has now been picked up by other filers. Those resolutions are discussed below, under Sustainability.

Political Contributions and Lobbying

Direct and Indirect Expenditure Reporting - CPA Proposal

The Center for Political Accountability is now in its tenth year as coordinator of a large campaign asking companies to report their direct and indirect political contributions. Average support for the proposals last year was about 30 percent, slightly below the high reached the year before. For the list of this year's 45 target companies for the spring proxy season, see the box below. In addition to those, CPA has identified seven companies that are likely to receive the resolution after the spring proxy season.

While the group made some important changes in the proposal after the 2010 proxy season, the resolved clause of most of the 2013 CPA proposals is the same as the previous two years. It asks for a report on the following:

1. Policies and procedures for political contributions and expenditures (both direct and indirect) made with corporate funds.

2. Monetary and non-monetary contributions and expenditures (direct and indirect) used to participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, and used in any attempt to influence the general public, or segments thereof, with respect to elections or referenda. The report shall include:

   a. An accounting through an itemized report that includes the identity of the recipient as well as the amount paid to each recipient of the Company's funds that are used for political contributions or expenditures as described above; and

   b. The title(s) of the person(s) in the Company who participated in making the decisions to make the political contribution or expenditure.

2013 CPA Targets

Amazon*	Dentsply	PPL
Amerisource Bergen**	Dr Pepper Snapple	Plum Creek Timber
Anadarko*	DTE Energy	Raytheon
AT&T*	Express Scripts***	Regions Financial*
AutoNation*	Harley Davidson**	Republic Services*
Biogen Idec	Hess	Southwest Airlines
Boeing**	Humana	Spectra Energy
CBS	JPMorgan Chase*	Sprint Nextel*
CenturyLink*	KeyCorp**	Travelers*
CF Industries Holdings	Lorillard**	Valero Energy
Charles Schwab*	Lowe's	Waste Management
Comcast	McKesson	Wellcare*
Consol Energy	Motorola Solutions	Windstream*
CVS Caremark	Mylan**	Yahoo
Danaher	NiSource	

*Denotes companies where the resolution was voted on in 2012.

**Companies where the resolution has already been withdrawn, usually because of an agreement.

***Companies where the resolution has been omitted.

In addition to those companies that are part of the CPA campaign, a resolution with the same resolved clause is pending at **Seaboard**. The Humane Society told ISS it had picked up and submitted the proposal because "The pork industry has devoted resources in attempting to thwart animal welfare reforms, even in industries outside its own. We feel shareholders have the right to know who their company is giving political and charitable funds, and allow shareholders to determine if it's in their best interest. As long as the companies within the pork industry continue to actively oppose animal welfare reforms, we're going to do our part to expose these activities to their shareholders."

Contributions and Corporate Values—NorthStar Campaign

NorthStar Asset Management, a Boston-based SRI firm, is trying a new approach in its three-year effort to ensure that companies do not make contributions to candidates whose stances are contrary to expressed corporate values.

This year's resolution, pending at seven companies, asks that "that the Board of Directors create and implement a policy to systematically screen corporate political contributions and electioneering communications against candidates whose voting records are inconsistent with our corporate values as defined by [the company's] published policies … and to report to shareholders at reasonable expense and excluding confidential information on a quarterly basis regarding any such contributions that raised an issue of incongruency with those corporate values, and stating the justification for any such exceptions."

The resolution has been proposed to **Chubb, Ecolab, EMC, Intel, Johnson & Johnson, Praxair,** and **Western Union**.

This replaces a proposal filed with most of those same companies last year that asked them to hold an annual proxy advisory vote on the company's political contribution policies and its planned electioneering communications for the next fiscal year. The effort grew out of a controversy that was prominent in the 2011 proxy season, which had been stirred up when Minnesota corporations with liberal employment policies donated to an organization that supported a staunchly antigay candidate. The advisory vote proposal received relatively low votes—at two companies it failed to muster even the 3 percent level required for resubmission.

NorthStar representatives told ISS that they were having negotiations with four of the seven 2013 targets to articulate policies against which they could judge contributions and that there is a possibility that some of the resolutions will be withdrawn. Unlike some proponents, who will withdraw resolutions in return for companies' agreement to continued discussions, the firm has a policy of not withdrawing proposals unless corporations largely accede to the request. Two of the companies--Western Union and Target--have challenged the resolution at the SEC. Western Union is arguing that it is too vague for shareholders to understand what they are voting on. Target makes a similar point and also says the resolution is moot.

No Corporate Spending to Influence Elections—Clean Yield and Others

More SRI firms are joining the second year of a campaign started at Trillium Asset Management last year to get companies to refrain entirely from political spending. Now organized by Clean Yield, and including Green Century, Zevin Asset Management, Harrington Investments, and Responsible Wealth, the coalition is proposing resolutions to seven firms, up from three last year. Not all the resolutions are the same. **3M, Bank of America, EQT, ExxonMobil**, and **Target** are asked to study the feasibility of adopting a no-spending policy. A resolution to **Chevron**, which was filed by Green Century, asks the company to "refrain from using corporate funds to influence any election." During the 2012 election cycle, Chevron made the single largest donation ever to a Super PAC--$2.5 million. A resolution to **Starbucks** also calls for a complete end to political spending and in addition asks the company to pledge not to establish a political action committee.

The original no-contributions effort last year grew out of the same concern that has motivated the NorthStar campaign discussed above—controversy over boycotts following Target's and 3M's contributions to a group that had supported a gubernatorial candidate known for opposition to gay rights. This year the coalition supporting the effort is stating its concerns more generally. In a press release, Shelley Alpern of Clean Yield says the resolution is a response to the unprecedented level of outside spending in last year's election cycle, asserting that "The value of corporate political spending to shareholders is highly questionable, even as the risk it poses to our democracy is self-evident."

EQT has already lost a challenge at the SEC; the staff rejected the company's arguments that the resolution was vague, that it involved ordinary business, and that its existing practices made it moot. The staff also turned down a challenge from Bank of America that the proposal could be omitted on grounds that it is substantially the same as the lobbying proposal. The only challenge now pending in the SEC open files is ExxonMobil, which says the resolution can be omitted because it is "substantially the same" as a lobbying disclosure proposal (see below) that it received first and that it plans to include in its proxy. That decision is pending. All three of the resolutions proposed in 2012 simply asked the companies to refrain from making contributions. Those resolutions fared poorly in the voting, receiving support of 4.8 percent at Bank of America, 5.2 percent at 3M, and 5.4 percent at Target.

Lobbying Disclosure - AFSCME, Walden, and Many Other Filers

The campaign on lobbying disclosure started by AFSCME as a pilot effort in 2011 has now grown to eclipse the major CPA political contributions disclosure campaign in size, with more than 50 resolutions filed. Walden Asset Management is also coordinating the many filings.

Here is the text of the resolved clause of this year's proposal, which differs in minor ways from the 40 resolutions filed last year. The resolution asks for disclosure of:

1. Company policy and procedures governing lobbying, including that done on our company's behalf by trade associations.

2. Payments used for lobbying as well as grassroots lobbying communications.

3. Membership in and payments to any tax-exempt organization that writes and endorses model legislation.

4. Decision-making processes and oversight by management and the Board.

The third point in the resolved clause, requesting disclosure of support for tax-exempt organizations involved with model legislation, references a controversy that has blown up over the American Legislative Affairs Council (ALEC). ALEC is a non-profit policy organization which, according to its website, has a mission "to advance the Jeffersonian principles of free markets, limited government, federalism and individual liberty…." ALEC's previously low profile was raised in 2012 through association with promoting "Stand Your Ground" model legislation based on the Florida law cited in the killing of teenager Trayvon Martin by a neighborhood watch volunteer. ALEC has also been associated with legislation intended to weaken state climate-change initiatives and with voter identification laws. This year's lobbying resolutions cite company payments to ALEC where known. According to the coalition behind the lobbying proposal, after last year's controversy, 42 companies announced that they were severing ties with ALEC. The list includes Amgen, Bank of America, Coca-Cola, General Electric, Johnson & Johnson, Kraft, McDonald's, PepsiCo, Walgreen, and Yum Brands.

2013 Recipients of Lobbying Resolutions

3M*	DaVita	Peabody Energy*
Abbott Labs*	Devon Energy*	PepsiCo**
Accenture	DuPont	Pfizer ***
Allergan	eBay	Reynolds American
Alliance One	Endo Pharmaceuticals	SLM
Alliant Techsystems	Exxon Mobil	Southern***
Allstate	General Dynamics	Time Warner
Altria*	GEO Group*	Union Pacific*
American Electric Power	Goldman Sachs*	UnitedHealth*
AT&T**	IBM*	Universal
Bristol-Myers Squibb	JPMorgan	United Parcel*
Chevron*	Lockheed Martin	Verizon*
Cigna	Lorillard	Visa
ConocoPhillips*	Marathon Oil	Wells Fargo
Corrections Corp. of America**	Norfolk Southern***	WellPoint***
CVS Caremark	Northrop Grumman	Xcel Energy**
Chevron	Nucor	

*Also came to a vote in 2012

**Withdrawn

***Omitted

Other Political/Lobbying Proposals

In addition to the larger campaigns discussed above, there are scattered proposals on political issues that do not fit into any neat category:

Massachusetts Laborers at Northern Trust

The labor union has a political contributions reporting proposal that does not include the trade association element of the resolution coordinated by the CPA. The proposal requests a semi-annual report "disclosing the amount that the company has paid or incurred on behalf of (or in opposition to) any candidate for public office; and attempting to influence the general public, or segments thereof, with respects to elections, legislative matters or referenda."

Harrington Investments at Goldman Sachs

The California SRI firm filed an unusual resolution at the company that ties Goldman Sachs's political spending (which the proponent calls "massive") to the Supreme Court's *Citizens United* decision (which the proponent says "unleashed the corporation as a 'person' for purposes of these fundamentally political and person activities"). Given those factors, the resolution says, "We believe it is more appropriate for the corporation to forthrightly participate in the political process than to do so covertly." Thus the resolved clause proposes "that the board of directors undertake an analysis of the opportunities under federal and state law for Goldman Sachs, as a 'person' with certain rights under the laws…to run for electoral office where permissible, and to issue a report to shareholders...on policy options regarding whether and where the corporation can seek to itself run, as a person, for electoral positions."

The company challenged the proposal on a number of grounds; the one the SEC staff cited in allowing the omission was section i-5 of the shareholder proposal rule, which allows a company to omit a proposal that relates to less than 5 percent of its business. The staff wrote in the no-action letter: "In this regard, we note your representation that Goldman Sachs 'currently has no involvement, never has had any involvement, and has no plans to become involved in the business of running for political office.'"

Harrington at WellPoint

Harrington Investments filed a political contributions disclosure request at WellPoint asking for much of the same information as the CPA, but acting separately from that campaign. The SEC staff agreed with the company that it could omit a resolution on lobbying that it had received from the AFL-CIO after it received the Harrington proposal, terming the resolutions "substantially the same," so only the political contributions proposal will be in the proxy.

Special resolutions at Aetna

Two resolutions to **Aetna** were inspired at least in part by a $4 million payment the company had made to the U.S. Chamber of Commerce for voter education, but one has been omitted on technical grounds.

The Unitarian Universalist Association and United Auto Workers Retiree Benefit Trust filed one resolution to Aetna that asks the company to amend its Political Contributions Policy to include the following:

- "Assign to the Board responsibility for (a) formulating and revising the Policy and (b) establishing the parameters of Aetna's commitment to publicly disclose political expenditures (in addition to legal disclosure requirements);

- Assign to the Audit Committee responsibility for analyzing and reporting to the full Board annually on (a) compliance with the Policy; and (b) the risks associated with Aetna's political activities, including those undertaken through politically active intermediaries such as trade associations and social welfare organizations ("Intermediaries"); and

- Establish specific criteria tailored to analyzing whether to make payments to Intermediaries for political purposes, requiring articulation of the business rationale for each payment and consideration of the use(s) to which the funds will be put by the Intermediary."

The New York State Common Retirement Fund filed a resolution asking Aetna to "disclose annually all payments made in the previous calendar year to tax-exempt organizations (other than charitable organizations not permitted to engage in lobbying as a substantial part of their activities) that were used or that Aetna had reasonable grounds to believe were used, for a political purpose, including the recipient and amount of the payment." The resolution was omitted on grounds that the proponent did not provide proof of ownership on time.

Lobbying at Bristol-Myers Squibb

The SEC staff has allowed Bristol-Myers Squibb to omit a resolution from a conservative group, the National Center for Public Policy Research, on ordinary business grounds. The resolved clause asked for a report describing the outcomes of the company's public policy advocacy activities. While the SEC staff's interpretation of its shareholder proposal rule allows resolutions on the general issue of lobbying, it considers resolutions on specific lobbying activities to be out of bounds, and in this case the staff agreed with the company that the proponent's intent was to highlight the company's support of the Affordable Care Act.

Hybrid lobbying/contributions resolution

Reinvestment Partners, a Durham, N.C., group that is not a member of the CPA coalition, has a resolution to **Equity Lifestyle Properties** asking it to report annually both its political contributions payments (including those to trade associations) and its grassroots lobbying expenditures and memberships in tax-exempt organizations involved with model legislation.

In addition, the resolution to **Valero** included on the chart of CPA-coordinated resolutions above differs somewhat from the standard CPA proposal. The company already discloses political contributions, and now the Nathan Cummings Foundation is again asking Valero to disclose all payments to tax-exempt organizations used to fund lobbying and/or to make political contributions. The resolution got 35.9 percent support last year.

Evelyn Y. Davis proposals

ISS has not received a list of pending proposals submitted by perennial shareholder activist Evelyn Y. Davis. Davis usually proposes a handful of resolutions on three political subjects: asking companies to publish their political contributions in national newspapers, to affirm their political nonpartisanship, and to identify employees who had previously served in the government.

Sustainability Reporting

The number of resolutions asking companies to provide reports on their sustainability efforts remains high. ISS so far has identified 24 filed for 2013 that ask companies themselves to issue reports, plus 12 more that ask companies to require sustainability reports from their suppliers, for a total of 36. As in recent years, the majority of the resolutions asking companies to prepare sustainability reports specify areas for the reports to address. These most frequently include climate change and water use, but sometimes go farther afield, as in the case of a new resolution to Nabors that zeroes in on the issue of linking executive pay to sustainability progress, among other issues.

New York City is continuing its three-year campaign to ask companies to request sustainability reports from their suppliers, but has not yet made public information on its six filings for 2013. The Laborers International Union of America proposed a similar resolution at Kohl's and has already reached a withdrawal agreement there. The New York State Common Retirement Fund has proposed supplier sustainability report resolutions at **Bed Bath & Beyond, Best Buy, Dollar Tree, Hasbro, Staples,** and Xerox. The resolution has been withdrawn at Xerox and discussions with some of the other companies are in the works. New York State also has a resolution asking **NYSE Euronext** to assess and report on issuers' sustainability disclosure. The company is challenging the proposal on grounds that it is vague and misleading and that it "seeks to interfere with the Company's relationships with customers who have listed their securities on the Company's exchanges."

Resolutions Asking Companies to Issue Sustainability Reports

Anadarko Petroleum	Cousins Properties	Men's Wearhouse
Cameron International	C.R. Bard*	Molycorp**
CF Industries Holdings	Emerson Electric*	Nabors Industries
Chubb	Equity Residential*	Roper Industries
Cincinnati Financial	Gentex*	Simpson Manufacturing
Clarcor**	Kimco Realty**	SL Green
Cleco	Health Management Systems	Starwood Hotels**
Coherent**	LifePoint Hospitals	Westinghouse Air Brake

*Resubmission

**Withdrawn

Tobacco

Not only has the number of resolutions on smoking dropped significantly in recent years, but every resolution ISS has identified for 2013 has now been withdrawn. Religiously affiliated shareholders withdrew all three new resolutions that dealt with smoking and youth. The text asked the companies "to take the steps necessary to implement the Surgeon General's recommendations by voluntarily rating 'R' (or its equivalent) all movies, DVDs and TV productions depicting smoking."

Church groups had tried to broach this issue through shareholder resolutions in the past, but entertainment companies have always succeeded in getting permission from the Securities and Exchange Commission staff to omit the resolutions on grounds that they involved "ordinary business" decisions about programming in which shareholders should not have a say. However, since those earlier submissions, the May 8, 2012, Surgeon General's report, "Preventing Tobacco Use among Youth and Young Adults," found a "causal relationship between depictions of smoking in the movies and the initiation of smoking among young people." Father Michael Crosby of the Midwest Capuchins told ISS the proponents were hoping the report would force a "game change" in the SEC staff attitude toward that issue, but then withdrew the resolutions after meetings with the companies before challenges were decided. The resolutions were proposed to CBS, Comcast, and Time Warner. In a withdrawal letter directed to Comcast, Crosby wrote that the resolution targets had "given us enough assurance of their continued efforts to seriously address this issue, including the creation and publication of a policy by CBS and the recognition that events may merit an updating of its policy by Time Warner." He said he was withdrawing at Comcast in light of "your willingness to continue our discussions on the matter." All three companies had filed requests for no-action letters; the one from CBS was 41 pages and Time Warner's was 83.

Also withdrawn this year is a resubmitted proposal to Philip Morris International directed against marketing efforts that could affect children. The proposal to PMI asks it to "create an independent ethics committee to review any and all future marketing efforts of PMI anywhere in the world to ensure shareholders that all of its tobacco products do not undermine the efforts of sovereign nations to adopt laws and practices…meant to keep our products from illiterate people or children." The resolution got 3.5 percent support at PMI last year.

Another ethics review committee resolution was filed at Walgreen in the form of a proposal asking the company to examine recommendations that drug store chains that include pharmacies discontinue tobacco sales. The resolution was withdrawn when the company promised to study the situation.

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