

2022 Proxy Season ESG Lookback: Key Takeaways for Retail

RILA Retail ESG Initiative



**RETAIL INDUSTRY
LEADERS ASSOCIATION**

October 27, 2022

WELCOME



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

ENVIRONMENTAL

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

SOCIAL

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

GOVERNANCE

- Chief Legal Officer Committee
- Legal Direct Report (L2) Committee
- Compliance Council
- Chief Finance Officers Council
- Retail Talent Council
- Diversity, Equity & Inclusion Leaders Council
- Internal Audit Committee
- Finance Leaders Council

REPORTING: VOLUNTARY & SEC

- Chief Legal Officer Committee
- Legal Direct Reports (L2) Committee
- Internal Audit
- Finance Leaders Council
- Sustainability Committee
- Chief Financial Officers Council
- Communications Committee

OTHER IMPLICATIONS

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

ESG MARKET EDGE

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



***RILA has a
monthly ESG
newsletter!***

- Each edition looks at a different topic in the evolving ESG landscape.
- Customized for a retail industry audience.
- Spotlights RILA committee lead topical experts and key external thought leadership.
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Antitrust Statement

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

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

- Do not discuss current or future prices, price quotations or bids, pricing policies, discounts, rebates, or credit terms.
- Do not discuss cost information such as production costs, operating costs, or wage and labor rates.
- Do not discuss profits or profit margins, including what is a "fair" profit margin.
- Do not discuss allocating markets, territories, or customers.
- Do not discuss current or future production or purchasing plans, including plans to take facility downtime, production quotas, or limits on output.
- Do not discuss refusing to deal with any suppliers, customers, or competitors (or any class or type of suppliers or customers).
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REMINDERS

1. Recording and slides will be shared as follow up, along with relevant links/resources
2. How to ask a question or make a comment:
 1. Send question/comment via chat to all at any point
 2. (*Anonymous option*) Send question/comment via chat only to Erin Hiatt or Kathleen McGuigan at any point – We will read without attribution
 3. During Q&A at the end, use "Reactions" button to raise your hand and Erin will call on you to unmute yourself

SPEAKERS



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Lessons from the 2022 Proxy Season

October 27, 2022

*Marc Treviño
June Hu*

Background

- The number of Rule 14a-8 proposals has increased over the last decade, in particular during the last few proxy seasons.
 - The 797 proposals submitted for H1 2022 broke the record set in 2021 (733 in H1 2021) and represents a 50% increase over the number of submissions 10 years ago.
- It is clear that the U.S. market's growing environmental, social and political emphasis has altered proxy season engagement over the course of the last decade.
 - Whereas companies received similar numbers of governance proposals in H1 2022 as they did 10 years ago, they are receiving far more environmental, social and political ("ESP") proposals than ever (503 ESP submitted in H1 2022 compared to 408 in H1 2021, more than doubling the numbers 10 years ago).
- ESP proposals now represent 63% of submissions overall and 77% of submissions in the retail industry.

Roadmap

- In this presentation, we will focus on the following developments related to the 2022 U.S. annual meeting proxy season:
 - Impact of Recent SEC Developments
 - Trends in Rule 14a-8 Shareholder Proposals



Impact of Recent SEC Developments

SLB 14L

- On November 3, 2021, the staff of the Division of Corporation Finance of the SEC issued new guidance under Staff Legal Bulletin No. 14L (“SLB 14L”), which significantly narrowed the standards for the “ordinary business” and “economic relevance” exclusions.
- Companies had a significantly lower likelihood of obtaining no-action relief on ESP proposals following the SEC’s release of SLB 14L.
- For no-action requests from retail companies,* success rate decreased from 79% to 48%.

Proposal Category	SEC Response Date						YoY Change in % Granted
	November 3, 2020 – April 30, 2021			November 3, 2021 – April 30, 2022			
	Considered	Granted	% Granted	Considered	Granted	% Granted	
Environmental	15	7	47%	18	3	17%	(30%)
Social/Political	67	49	73%	82	21	26%	(48%)
Governance	82	59	72%	58	34	59%	(13%)
Compensation	12	7	58%	8	4	50%	(8%)
Total	177	123	69%	166	62	37%	(32%)

** In calculating retail industry data, we looked at companies labelled as “Consumer Goods/Retail” by ISS.*

SLB 14L — Related Impact

- Not only were companies less likely to obtain no-action relief, proponents were less incentivized to negotiate settlements with companies.
- As a result, significantly more shareholder proposals made it to a shareholder vote.
 - For the first time, we observed that a majority of ESP submissions reached a vote.
 - In the retail sector, although only 46% of ESP submissions reached a vote, this number increased meaningfully from less than 30% in 2021.
- Overall, shareholder support of ESP proposals decreased, reaching the lowest average percentage of votes cast since 2018, with institutional investors expressing concern over the increasingly prescriptive proposals.
- However, the percentage of passing ESP proposals increased in the retail industry (10 out of the 52 retail sector ESP proposals passed in 2022, compared to 1 out of 26 in 2021).

Further SEC Developments

- We expect the SEC's extensive rulemaking on environmental, social and governance issues, including those on the following topics, to have an even greater impact on submission, voting and engagement trends in future proxy seasons
 - Universal proxy requirements (effective for contested elections after August 31, 2022)
 - Pay versus performance (effective for proxy statements for fiscal years ending on or after December 16, 2022)
 - Proposed amendments to Rule 14a-8 (proposed in July 2022)
 - Climate-related disclosure requirements
 - Human capital management disclosure requirements
 - Board diversity disclosures (proposed rules expected in Spring 2023)



Rule 14a-8 Shareholder Proposals

Overview

- Shareholders submitted 797 proposals for meetings in H1 2022, the highest number in recent years.
- Social/political proposals remained the largest category of submissions:
 - Submissions increased 17% year-over-year overall.
 - In the retail industry, submissions increased 37% year-over-year.
- Governance proposals decreased by a further 11% year-over-year, with nearly half of these proposals focusing on amending special meeting thresholds:
 - In the retail industry, governance submissions decreased by 45%, with a third of these proposals focused on amending special meeting thresholds and 20% focused on requiring an independent board chair.
- Environmental proposals increased by 38% year-over-year (and by 48% in the retail industry), with proponents focusing on greenhouse gas reduction and other climate-related targets in a third of submissions.
 - In the retail industry, 45% of environmental submissions focused on emissions targets.
- The number of compensation proposals remained low, with proponents submitting fewer proposals linked to environmental and social performance metrics.

Data on Rule 14-8 Shareholder Proposals

<i>Type of Proposal</i>	<i>Shareholder Proposals Submitted</i>		<i>Shareholder Proposals Voted On</i>		<i>Average % of Votes Cast in Favor</i>		<i>Shareholder Proposals Passed</i>	
	<i>2022 YTD</i>	<i>2021</i>	<i>2022 YTD</i>	<i>2021</i>	<i>2022 YTD</i>	<i>2021</i>	<i>2022 YTD</i>	<i>2021</i>
Social/Political	344	323	196	135	26%	30%	21	21
Governance	247	309	193	224	35%	40%	23	46
Environmental	159	130	58	39	35%	43%	14	14
Compensation	47	51	34	25	30%	22%	3	1
Total	797	813	481	423			61	82

Data on Rule 14-8 Shareholder Proposals — Retail Industry

<i>Type of Proposal</i>	<i>Shareholder Proposals Submitted</i>		<i>Shareholder Proposals Voted On</i>		<i>Average % of Votes Cast in Favor</i>		<i>Shareholder Proposals Passed</i>	
	<i>2022 YTD</i>	<i>2021</i>	<i>2022 YTD</i>	<i>2021</i>	<i>2022 YTD</i>	<i>2021</i>	<i>2022 YTD</i>	<i>2021</i>
Social/Political	78	63	43	21	25%	20%	6	0
Governance	29	39	18	30	28%	37%	0	7
Environmental	34	25	9	5	45%	28%	4	1
Compensation	4	8	2	4	26%	8%	0	0
Total	145	135	72	60			10	8

Social/Political Proposals

- In H1 2022, the total number of social/political proposals increased by a 17% overall compared to H1 2021, and by 37% in the retail sector.
 - Main driver was an 81% growth in the number of submissions on civil rights, human rights and racial equity impact.
 - In the retail industry, civil rights, human rights and racial equity impact proposals represented around 20% of social/political submissions, representing the most prevalent sub-topic together with political spending.

	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average% of Votes Cast in Favor		Shareholder Proposals Passed	
	2022 YTD	2021	2022 YTD	2021	2022 YTD	2021	2022 YTD	2021
Social Capital Management	147	131	109	61	21%	18%	10	1
Human Capital Management	99	119	38	32	33%	32%	6	10
Political Spending/Lobbying	98	73	49	42	32%	42%	5	10

Social/Political Proposals (cont'd)

- For the past five years, most social/political proposals have either been settled, omitted or otherwise resolved before going to a shareholder vote.
- This year, however, social/political submissions that reached a vote increased by a staggering 72%.
- In the retail industry, the prevalence of voted submissions increased from 33% in 2021 to 55% in 2022.
- Overall, the total number of passing proposals did not increase, although more civil rights, human rights and social justice proposals passed. In the retail sector, however, 6 social proposals passed compared to none in 2021 (3 relating to civil rights/racial rights audits and

Social/Political Proposals—Racial Equity / Civil Rights Audits

- **Racial equity audit proposals:**
 - Asked companies to commission audits on their impacts on racial equity.
 - In 2021, proposals received meaningful shareholder support, and were withdrawn at several companies after they agreed to conduct racial equity audits.
 - In H1 2022, 30 companies received racial equity audit proposals, including banks, institutional investor issuers and companies in the retail/consumer goods and technology sectors.
 - The SEC rejected all no-action requests on these proposals in 2022.
 - Although 16 of these proposals were withdrawn after companies agreed to some form of the audit, 14 proposals made it to a vote. Shareholder support ranged from a low of 18% to a high of 64%, with three proposals passing.
- **Civil rights audit proposals:**
 - Asked companies to report on racial equity and other issues (including gender equality, pay equity and human rights impacts).
 - The SEC also rejected all no-action requests on these proposals.
 - Four proposals passed, with the highest support being 62%.
- **Around 20% of racial equity and civil rights audit proposals were directed at retail companies.**

Social/Political Proposals—Political Spending

- This year, although most political proposals still focused on general political spending/lobbying reporting, there were 20 proposals that specifically linked political expenditures to companies' ESP-related priorities or values.
 - 15% of these “congruency” proposals were directed at retail companies.
- This new type of proposal asks companies to assess the congruency or alignment between their stated company values and priorities and their political spending/lobbying activities.
- Companies settled many of these proposals with the proponent, but the 10 that went to a vote received relatively high votes (between 30% and 50% of votes cast).

Social/Political Proposals—Human Capital Management

- Perhaps in anticipation of new SEC requirements that could mandate workforce DEI disclosures, proponents in 2022 submitted fewer proposals on employee-related DEI topics and instead focused on issues such as harassment, inadequate paid sick leave and employee health and safety issues.
- Harassment-related proposals:
 - In 2022, 10 out of 15 harassment-related proposals focused on the use of concealment clauses, including non-disclosure or non-disparagement agreements with employees.
 - Eight concealment proposals reached a vote, receiving an average support of 48%, passing at three companies (at between 65% and 98% of votes cast).
 - 20% of harassment-related proposals were directed at retail companies.

Social/Political Proposals—Human Capital Management

Continued

- **Employee health:**
 - These included six proposals on the adoption of a paid sick leave policy for employees, which, when voted, received between 26% and 34% of votes cast.
 - Four of the six paid sick leave proposals were directed at retail companies.
- **Reproductive rights proposals:**
 - This year, a handful of companies received proposals asking them to report on the employment-related risks and costs associated with state-level restrictions on access to reproductive healthcare.
 - All of the reproductive rights proposals were directed at retail companies.

Social/Political Proposals—“Anti-ESG” Proponents

- There was a notable increase in the number of proposals—in particular social proposals—submitted by so-called “anti-ESG” entities.
 - This year, 54 proposals were identifiable as being submitted by these proponents (compared to 25 in full-year 2021).
 - These included nine proposals on civil rights audits, and 14 proposals (mainly at financial services and retail companies) to report on their charitable contributions.
 - 22% of social/political proposals from “anti-ESG” proponents were directed at retail companies.
- The increased number of social proposals from “anti-ESG” proponents meaningfully contributed to the year-over-year decrease in shareholder support.
 - Social proposals submitted by these proponents received average shareholder support of 9%, compared to 29% support without counting these proposals.
- The voting results this year on civil rights audit, charitable contribution and political congruency proposals submitted by these proponents illustrate the significance of a proponent’s stated policy agenda on voting outcomes, which is a significant development this season.

Governance Proposals

- Governance proposals continue to decline, as both structural governance and board composition proposals declined in 2022.
 - Retail companies only received one board composition proposal in 2022.
- Around three-quarters of submitted governance proposals went to a vote, with SLB 14L seeming to have a smaller impact on this category.

	GOVERNANCE							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	2022 YTD	2021	2022 YTD	2021	2022 YTD	2021	2022 YTD	2021
Structural Governance	163	217	140	168	38%	45%	22	42
Special Meetings	105	36	102	30	36%	38%	9	5
Proxy Access	18	33	9	26	29%	32%	1	0
Written Consent	7	77	5	69	36%	41%	1	10
Board Composition	60	84	45	54	25%	28%	0	3

Governance Proposals—Special Meeting Thresholds

- The single most prevalent governance proposal this proxy season, both overall and in the retail industry, was a request to lower the ownership threshold in existing special meeting provisions, which accounted for 58% of all structural governance submissions and 35% of all governance submissions. In the retail industry, the request to lower the ownership threshold accounted for 53% of all structural governance submissions and 31% of all governance submissions.
 - Around 90% of these proposals were “amend” proposals rather than requests to adopt a new right.
 - The majority of the “amend” special meeting proposals went to a vote and received an average of 36% of votes cast, increasing from 33% in 2021 but still mostly failing to pass (four passed compared to one in 2021).
- ISS’s recommendations were important to voting outcomes.
 - In the four cases where ISS recommended against the proposal, ISS cited the presence of a large shareholder that could unilaterally call a special meeting at the proposed threshold.
 - The proposals ISS recommended against each received a much lower percentage of votes cast compared to proposals with ISS support.

Environmental Proposals

In 2022, shareholder proposals on environmental issues were more granular, focusing on:



1
GHG Reduction
Targets



2
IEA-Aligned
Financing
Policies



3
Climate Transition
Plans



4
Paris Agreement-
Aligned Lobbying

- In 2022, shareholders submitted more environmental proposals than ever.
- These proposals were more granular, and received lower overall support (35% compared to 41% in H1 2021).
 - Institutional investors voiced concern that proponents may be taking a one-size-fits-all approach without fully considering the context in which companies are operating their businesses.
- Voted proposals increased by 76%.

Environmental Proposals in the Retail Industry

- 26% of environmental proposals reached a vote in the retail industry in 2022, as compared to 20% reaching a vote in 2021.
- Common environmental proposals in the retail industry included:
 - Proposals to report on sustainable packaging efforts,
 - Proposals to report on and adopt policies pertaining to short-, medium-, and long-term science-based GHG emissions reduction targets, and
 - Proposals to report on efforts implemented to address climate impacts caused by a company's supply chain.

Environmental Proposals—Climate-Related Targets

- In 2021, with limited exceptions, proposals on climate-related targets and goals focused on (generally long-term) alignment with the Paris Agreement.
 - A quarter of these proposals went to a vote.
 - All but one passed.
- In 2022, proponents submitted a much higher number of climate target/goal proposals (53 in H1 2022 compared to 30 in full-year 2021); around 30% of these submissions were at retail companies.
 - Around 40% of the target/goal proposals requested the adoption of some combination of short-, medium- and/or long-term science-based targets for Scope 3 emissions.
 - None of these more prescriptive proposals passed.
- Target-related proposals were less likely to be withdrawn by the proponent than they were in 2021.

Environmental Proposals—Political Spending

- For the last two years, investors have requested disclosures on the alignment between companies' lobbying activities and the Paris Agreement goals.
- In H1 2022, companies received 16 of these environmental congruency proposals, compared to 14 in all of 2021.
 - Last year, half of these proposals went to a vote and only one failed.
 - Only one of these proposals was directed at a retail company in 2022.
- Perhaps due to the success of these proposals in 2021, companies were more willing to settle in 2022.
 - Only three went to a vote.
 - None of the H1 2022 environmental lobbying proposals passed.

Compensation Proposals

- Compensation proposals remain the smallest category, but more proposals reached a vote in 2022.
- Voted proposals received a decade-high average support of 30% and three passed.
 - The passing proposals all requested the board seek shareholder approval for large executive severance or termination payments, suggesting that, even in a competitive market, shareholders remain wary of potentially excessive or unreasonable severance payments.
- Of the four compensation proposals directed at retail companies, two related to addressing the pay disparity between the CEO and other employees.

	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	2022 YTD	2021	2022 YTD	2021	2022 YTD	2021	2022 YTD	2021
Severance	13	2	13	2	44%	48%	3	1
Compensation – Social	12	13	4	8	10%	9%	0	0
Clawbacks	5	3	5	3	28%	34%	0	0
Compensation – Environmental	4	9	3	3	10%	11%	0	0
Stock Retention	2	3	2	0	26%	–	0	0



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SULLIVAN & CROMWELL



Questions?

Join RILA next month!

Establishing Appropriate Corporate Governance to Managing Legal Risks Related to ESG Goals, Reporting and Marketing Claims

November 16, 2022 – 1-2pm ET

From discussions with employees, investors and other stakeholders, development of company ESG goals, voluntary reporting, and green marketing claims, ESG is increasingly becoming integrated throughout every aspect of retail business operations. This webinar will focus on identifying and managing legal risks through corporate governance structures and processes.

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Thank you!