Corporate Social Issues: A 2011 Proxy Season Preview

United States

Report Authors

Carolyn Mathiasen: carolyn.mathiasen@issgovernance.com
Erik Mell: erik.mell@issgovernance.com

Contributors

Alex Gallimore: alex.gallimore@issgovernance.com
Eric Shostal: eric.shostal@issgovernance.com

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Key Takeaways

- After last year's landmark *Citizens United* Supreme Court decision, resolutions on corporate political contributions are more numerous and more varied.
- The environment is once again the largest issue area, with proposals on the risks of coal prominently featured.
- Following the success of previous proxy season efforts, the number of resolutions on sustainability is falling.
- Institutional investors appear to be increasingly incorporating social and environmental considerations into their proxy voting decisions, as demonstrated by voting trends and institutional investor initiatives.

2011 Season Overview

ISS' annual pre-season outreach to social issues shareholder proponents indicates that the 2011 social issues proxy season may be almost as busy as last year's, but while it will feature many familiar issues, the balance of resolutions has shifted — in some cases substantially.

The 2011 Social Issues

In the wake of last year's Supreme Court *Citizens United* decision permitting unlimited corporate contributions, activist investor concerns have led to a noticeably higher number of resolutions on **political contributions**, which now reaches about

75. Moreover, some proponents are raising the issue in new and more focused ways by asking for advisory votes on political spending and by seeking disclosure on lobbying expenditures.

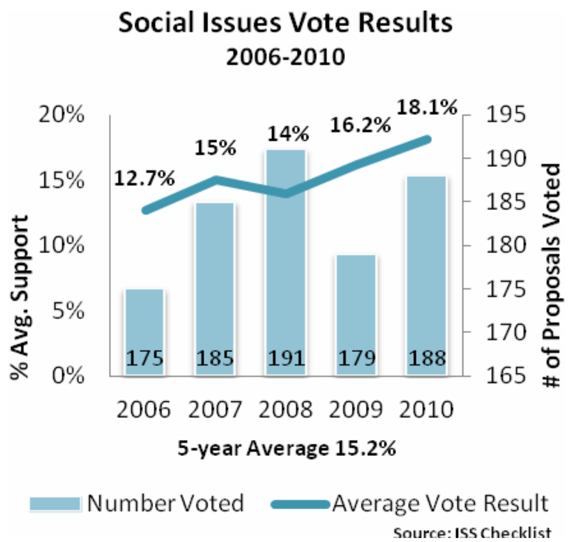
Conversely, the number of resolutions asking for **reports on corporate sustainability efforts** is down by about half from 2010 levels, to about 20. The **environment** remains the largest social issues category, with resolutions numbering in the mid-80s. **Climate change,** with more than 30 resolutions**,** remains the most prominent component of the environmental resolutions, but a new campaign on **coal risks** is a notable addition to the batch of those that deal with environmental management. One issue area that looks pretty much the same as in recent years is the campaign seeking amendments to **nondiscrimination policies to include sexual orientation and gender identity**, where there are again about 30 proposals filed.

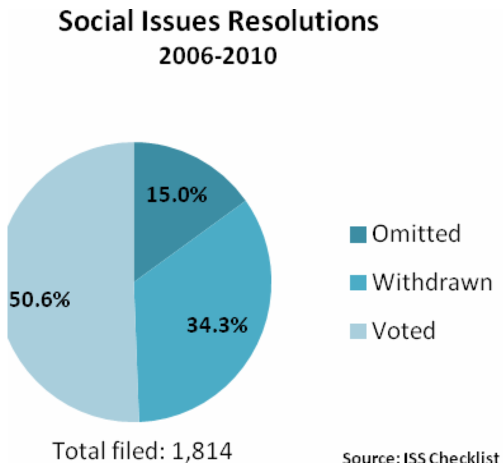
For the first time since social issues were legitimized as appropriate subjects for shareholder resolutions back in 1971, there are no specific proposals on military questions, but the **human rights** category, which includes more than 20 proposals, includes many defense companies as recipients of requests to amend and implement broad human rights policies. Also missing for the first time in more than a quarter of a century are resolutions asking companies to implement the **MacBride principles** against religious discrimination in their Northern Ireland operations, as a successful shareholder campaign winds down. The number of resolutions on **global labor practices** and **tobacco** also continues to shrink, although ISS has identified a handful for 2011.

Other aspects of the coming season include a substantial drop in the number of **animal welfare** proposals; an increase in the number of **health care-**related resolutions, with the reappearance of an old campaign on drug pricing; a new use of the device of **linking executive pay to performance** on social issues to raise questions about sustainability performance; and a new labor campaign on **worker safety**. The last two campaigns appear to be inspired by the 2010 BP oil spill in the Gulf of Mexico and the Massey Energy Upper Big Branch mine explosion.

As of Jan. 31, ISS has identified 327 social issues resolutions submitted for 2011 consideration, about the same as the number a year ago at this time, indicating that the roster of resolutions could eventually reach the 2010 total of 384 for the entire year. The current number will undoubtedly grow not only as proposals are filed for meetings in the second half of the year, but also as scattered resolutions from new proponents for the spring proxy season show up unannounced in proxy statements or in the challenge files at the Securities and Exchange Commission. The challenge files, available on-line, show instances where companies seek permission to omit resolutions from their proxies under the exclusions allowed by its shareholder proposal rule.

Again in 2011, ISS expects that around 180 proposals will come to votes, consistent with the last five years. Also, while the average vote result for proposals has risen steadily since 2006, it is too early to speculate if this trend will continue in 2011. However, several factors contributing to this trend are likely to continue as discussed in the Institutional Investor and Issuer Views on Social Issues section below. The following chart provides the levels of support accompanied by the number of proposals that have come to votes each year since 2006.





Withdrawals and Omissions

While the number of proposals filed will increase, the number of pending resolutions is beginning to drop. Already some resolutions have disappeared from the pending list as companies and proponents have worked out withdrawal agreements; the withdrawal process in what has traditionally been one of the most fruitful areas of agreement — sexual orientation nondiscrimination — has already begun to yield substantial numbers.

Regarding the withdrawal of shareholder resolutions generally, based on the last five years' observations, ISS estimates that around 35 percent of filed resolutions will be withdrawn in 2011.

Other resolutions will drop from ISS' Checklist of pending proposals as the SEC staff issues "no-action letters" agreeing with companies that they are in violation of its shareholder proposal rule, Rule 14a-8. The rule allows companies to challenge resolutions both on certain technical grounds (such as failure by the proponent to demonstrate stock ownership) and substantive grounds, such as being moot or dealing with routine "ordinary business" issues that the SEC staff judges to be for management to decide without input from shareholders. Another exclusion allows companies to omit a proposal that is deemed "substantially the same" as an earlier resolution that had failed to receive enough support for resubmission within the previous five years.

SEC rules require that a resolution receive 3 percent support the first time up to be resubmitted, 6 percent the second time and 10 percent thereafter. At this point, 63 challenges to social issues resolutions are pending at the SEC and new ones are likely to appear. History indicates that the SEC staff omits 12 to 15 percent of challenged resolutions as a result of Rule 14a-8 decisions.

Proponents in 2011

The 2011 social issues shareholder proponents are familiar from recent years. As always, religiously affiliated proponents are prominent, with their activity coordinated through the New York City-based Interfaith Center on Corporate Responsibility. Social investment funds are also again major actors, including Calvert Investments, Domini Social Investments, Walden Asset Management, Trillium Asset Management, and North-Star Asset Management. Both the New York City pension funds and the New York State Common Retirement Fund are major filers on a number of issues; neither system has yet released a full list of resolution targets, but did provide ISS with the numbers filed in each issue category. Among state pension funds, the California State Teachers' Retirement System (CalSTRS) and the Connecticut Retirement System are also social issues filers. A variety of labor unions are among the filers in the political contributions campaign and have submitted resolutions in other social issues areas as well. Other proponents include the Nathan Cummings Foundation, People for the Ethical Treatment of Animals (PETA) and the As You Sow Foundation.

Institutional Investor and Issuer Views on Social Issues

In June 2010, ISS launched its annual policy survey in order to gain a better understanding of the breadth of financial market views on a range of topics including boards of directors, shareholder rights, executive compensation and social / environmental issues. The survey was sent out to both issuer and investor communities and ISS received 900 total responses, including 201 institutional investors and nearly 700 corporate issuers. The results of the survey, as it relates to social and environmental issues, clearly indicate that institutional investors are increasingly incorporating the evaluation of non-financial Environmental, Social and Governance (ESG) risks and opportunities. Specific results from our survey questions are displayed below.

Does your organization believe that ESG factors can have a significant impact on shareholder value in the long term?

	Investors	Issuers
Yes	83%	71%
No	17%	29%

If yes, is supporting shareholder resolutions that promote greater transparency on ESG issues or that encourage comparability of ESG disclosures by corporations:

	Investors	Issuers
Very Important	52%	15%
Somewhat Important	33%	41%
Not Important	11%	25%
N/A	3%	19%

The results of ISS' survey are substantiated by the increasing levels of support that shareholder resolutions on social issues have received in recent years, as displayed in the chart on page two. This apparent increase in the willingness of mainstream investors to consider incorporating ESG risk and opportunity, beyond the traditional socially responsible investor market, is likely to continue. This trend is evidenced by the recent, remarkable growth in institutional investors becoming signatories to the United Nations Principles for Responsible Investment initiative (UNPRI). As of October 2010 over 800 investment institutions from 45 countries have become signatories (a full list of current signatories can be found here).

2011 Corporate Social Issues Preview

Following is a discussion of the resolutions proposed for 2011 that ISS has identified, organized by social issues category. Charts showing a five-year snapshot of omission and withdrawal rates as well as the number of proposals voted and their vote results are also found in the corresponding issue sections. The companies where resolutions are still pending are shown in boldface. The most interesting pending SEC challenges are also discussed, along with early withdrawal agreements.

2011 Social Issue Resolutions	Number Pending*
Political Contributions	60
Climate Change	34
Human Rights	24
Other Environmental	22
Sustainability	21
EEO/Sexual Orientation	21
Miscellaneous	19
Board Diversity	14
Animal Welfare	12
Health	11
Link ESG to Compensation	10
Coal-Related	10
Natural Gas Fracturing	9
Labor Practices	7
Nuclear and Renewables	4
Tobacco	3

*Number of proposals that have not been withdrawn or omitted and are still pending a shareholder vote, as of Feb. 2, 2011. Source: ISS Checkilst

Animal Welfare

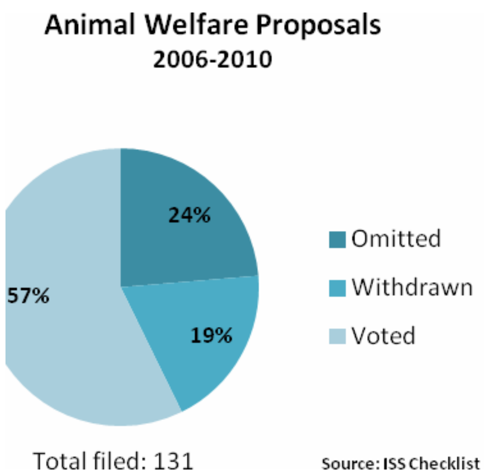
The number of resolutions being filed on animal welfare issues is on the decline. ISS has identified 15 filed so far for 2011, with 12 of those still pending, and while that number should climb a little, it is unlikely to approach the total of 29 submitted in 2010.

Part of the reason for the cutback in filings is that the Physicians Committee for Responsible Medicine, one of three active animal welfare proponents in recent years, is not filing at all in 2011. The Humane Society of the United States (HSUS), another previously active proponent, told ISS that

> "We have been able to successfully work with many companies we hold stock in over the last few months" and thus had filed only two proposals. One of those is a new proposal, from HSUS's "Chimps Deserve Better" campaign, directed at **Abbott Laboratories**. The resolution asks Abbott to amend its "Global Animal Welfare Policy" to phase out research on chimpanzees and post a phase-out schedule by Dec. 15, 2011, on the company's website. The resolution alleges that Abbott "used chimpanzees in an invasive Hepatitis C virus study," although "decades of chimpanzee HCV research has proven futile" and chimpanzee research has been demonstrated to be "expensive, inhumane and ineffective."

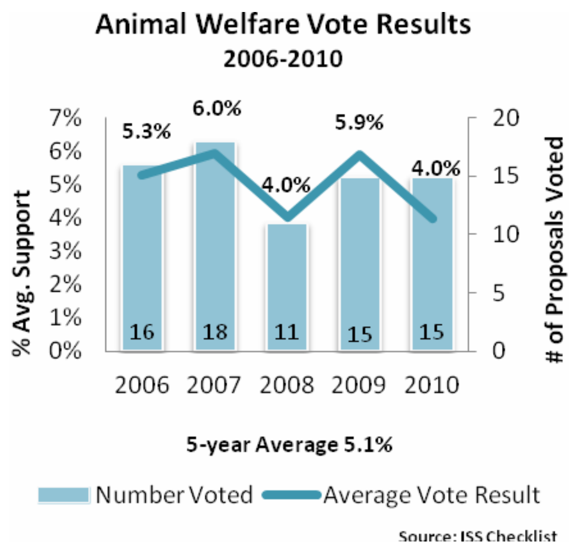
The other HSUS resolution continues an effort at **McDonald's** to get the company to switch to use of eggs produced by hens that are not confined to small "battery cages." This is an issue that has been raised at the company for the previous two years, and the 2010 resolution got 5.3 percent, not enough for resubmission of a second-year proposal, and the company is asking the SEC staff for permission to omit the proposal. However, the 2011 resolution is phrased to stress "food safety concerns recently highlighted by the largest egg recall in U.S. history," rather than the animal welfare concerns previously at issue, so it's possible that the resolution could survive SEC scrutiny.

Other pending animal-related resolutions emanate from PETA, always the most active proponent on these issues. This year, the bulk of its resolutions return to the question of transparency in the use of animals in research — an issue PETA had to drop at a number of companies for several years when earlier resolutions failed to receive enough support for immediate resubmission. Resolutions pending at **Baxter International, General Electric, Merck** and **Pfizer** ask for reports on the number and species used at in-house and contract laboratories, as well as a discussion of plans to phase out the use of animals in testing. (This resolution was also initially proposed to Abbott, but withdrawn after the company challenged it as overlapping with the HSUS chimpanzee proposal.) A PETA resolution to **Johnson & Johnson**, rather than asking for a report, asks the company to adopt non-animal testing methods "whenever possible." The J&J resolution also asks the company to eliminate the use of animals to train sales representatives — a request prompted by concern over the use of pigs in laparoscopic demonstration training.



Another PETA animal testing proposal is going to **Covance**, a company with which PETA has had a particularly difficult and litigious relationship after it conducted an undercover investigation of the treatment of test animals at the company. The resolution asks for an annual report on "(1) the measures that it is taking to resolve, correct, and prevent further U.S. Department of Agriculture (USDA) citations for violations of the Animal Welfare Act (AWA), and (2) procedures to ensure compliance with basic animal welfare considerations, including enrichment measures to improve living conditions for the animals used." That resolution received 9.6 percent support at Covance in 2009; in an apparent slipup, PETA did not submit it in 2010.

PETA also has filed three factory farming resolutions so far, encouraging **BJ's Wholesale, McDonald's** and **Tyson Foods** to require their poultry suppliers to switch to a controlled-atmosphere killing processing method, which it considers a more humane method of slaughter than the electric immobilization/throat slitting method in general use. In 2010, the resolution got 3.5 percent support at BJ's and 5.1 percent at McDonald's.



Finally, PETA, citing reports of mistreatment of animals sold in the pet trade, is asking **PetSmart** to request its suppliers to certify that they have not violated the Animal Welfare Act.

Banking Issues

There are only a handful of banking resolutions tied to social issues, although some of the traditional social issues proponents have submitted governance proposals to banks. Harrington Investments does have a resolution asking three banks (**Bank of America, Citigroup** and **JPMorgan Chase)** to adopt principles to prevent illegal financial flows. All three banks have strong ordinary business arguments against including the proposals pending at the SEC.

Board Diversity

Unlike most of the board diversity resolutions submitted in 2010, this year's version is frequently requesting a report in addition to the adoption of a policy. Here is a version of the resolved clause:

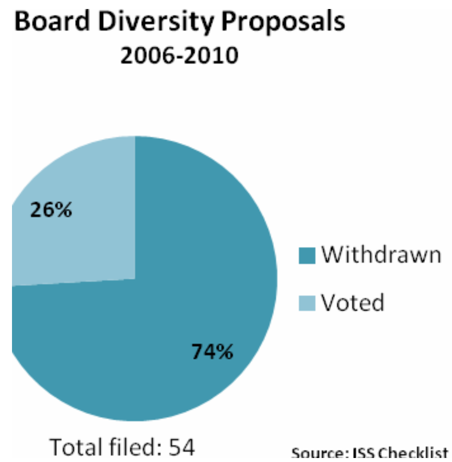
"That the Board of Directors consistent with their fiduciary duties:

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:

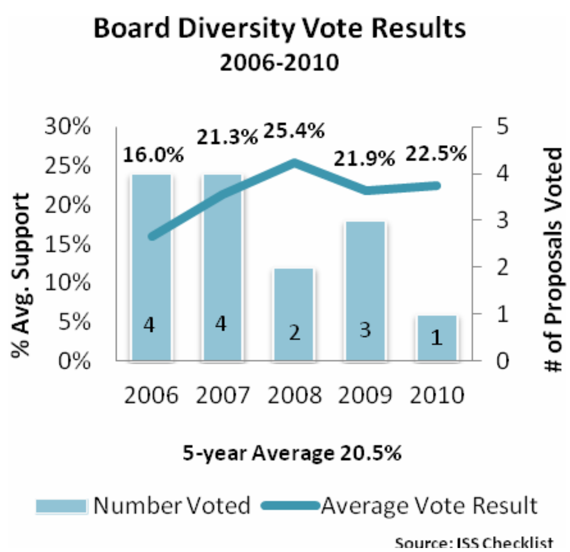
    - Women and minority candidates are routinely sought as part of every Board search the company undertakes;
    - The Board strives to obtain diverse candidates by expanding director searches to include nominees from both corporate positions beyond the executive suite and non-traditional environments such 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."

Calvert funds have filed this resolution at **American Financial Group, General Cable, Jeffries Group, Urban Outfitters** and **WABCO Holdings**.

The United Methodist Church Foundation has submitted this resolution to **National Oilwell Varco.**



In addition, CalSTRS is filing this or similar resolutions at eight companies, three of which have already been withdrawn; a spokesman told ISS it will release the names of the targets after it formally briefs its board at a February meeting. In 2010, 17 board diversity proposals were filed; however, all but one was withdrawn after the target companies agreed to the request.



Environmental Issues: Climate Change

The Ceres coalition of investors continues to coordinate a large campaign on climate change. A familiar proposal, on setting greenhouse gas (GHG) emissions reduction goals, is the most common this year, but there are also resolutions seeking the adoption of climate change principles and on reporting requests that are somewhat different from proposals in earlier proxy seasons.

Setting Reduction Goals

Consistent with proposal activity seen in recent years, a big bloc of climate change resolutions asks companies 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 been well tested at the SEC and received some of the highest levels of support for climate-related proposals. This year it is pending at **AMB Property, Berkshire Hathaway, ConocoPhillips, ExxonMobil, First Energy, Lennar, Portland General Electric, Ryland Group, Southern** and **Standard Pacific**. It is a resubmission at ConocoPhillips, ExxonMobil, Lennar, Ryland Group and Standard Pacific. The proposal has already come to a vote this year at **D.R. Horton,** where it received 34.1 percent support**. Southern** says the proposal is ineligible because the proposal failed to receive enough support for resubmission last year, which appears to be the case.

Climate Principles

Calvert funds have a new proposal asking six companies to "adopt public policy principles on climate change and issue a report on how the principles are to be implemented at reasonable cost and omitting proprietary information. The resolution cites a number of companies it says "recognize the way to address climate change must include national legislation and international treaties to effectively stop global warming" and it suggests four principles as a useful guide: reduce GHG emissions, promote energy efficiency, invest in a clean energy economy and support international action. The resolution has been submitted to **CB Richard Ellis, Limited Brands, Marriott International, J.C. Penney, Sears Holdings, Staples and TJX**.

The AFL-CIO, which originally conceived a similar campaign in 2010, has submitted only one proposal of this type for 2011. In 2010, the union withdrew its proposal requesting the adoption of a more explicit series of global warming principles at all but one of six companies where it submitted the resolution. The Principles include such provisions as "Establish a transparent and accountable market-based system that efficiently reduces carbon emissions." The union's only target this year is **CVS Caremark**.

Climate Management Report

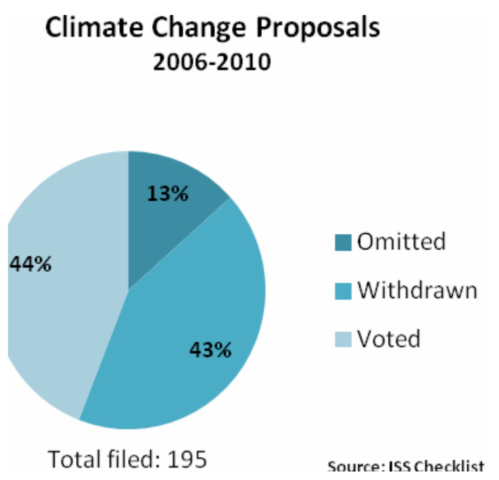
Calvert funds have a second new climate proposal this year that asks Dr Pepper Snapple and **Yum! Brands** to describe how they "will assess and manage the impacts of climate change on the corporation, with specific regard to its operations and supply chain, and plans to disclose such information through public reporting mechanisms." The resolution has already been withdrawn after an agreement at Dr Pepper when it agreed to publicly respond to the Carbon Disclosure Project and disclose climate risk information in its 10-K.

Other Climate Reporting

Several other climate change resolutions also ask for reports, using language familiar from earlier proxy season report requests, on "how the company is responding to rising regulatory and public pressure to significantly reduce greenhouse gas emissions." The Unitarian Universalist Association has proposed this resolution to **Alpha Natural Resources**, where it had withdrawn the proposal in 2010 in light of the recent merger with Foundation Coal. And the New York State Common Retirement Fund has proposed the resolution at **Arch Coal**, which is arguing to the SEC that it should be able to exclude it because its operations entail the mining of coal, rather than the burning that is associated with global warming, an argument at **Massey Energy** is also making for the version it received from the New York City pension funds. New York State has also filed the resolution at **Peabody Energy**.

A new resolution from Calvert to **Amazon** asks the company to report within six months on how it "is assessing the impact of climate change on the corporation, and the corporation's plans to publicly disclose this assessment." The resolution says that Amazon is among the 10 U.S. companies with the largest market capitalization that have not responded to the Carbon Disclosure Project survey.

In addition to the proposals at the companies listed above, a representative of the New York City pension funds told ISS that the funds had filed five resolutions, some on reporting and some on setting goals; the funds' press office is expected to release the list shortly.



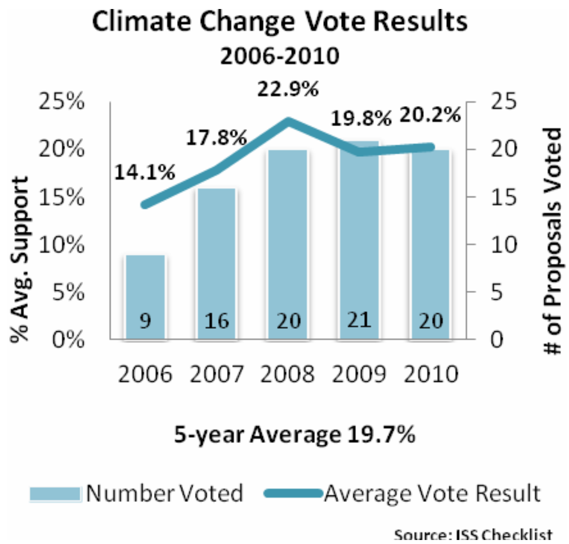
Climate Change Financial Risks

Once again, proponents are asking **Chevron** and **ConocoPhillips** to report "on the financial risks resulting from climate change and its impacts on shareholder value over time." The Christopher Reynolds Foundation and the state of Connecticut are the filers at ConocoPhillips, where the 2010 resolution got 7.5 percent support, and the Needmor Funds are filing at Chevron, where the vote was 8.6 percent. The proponents had filed those resolutions on the issue of the financial risk from climate change just in time for the 2010 proxy season. The original filing came after the SEC issued an October 2009 Legal Bulletin that legitimized social issues resolutions that request an 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 for 2011, but that has not materialized, although a new batch of environmental resolutions, discussed below, asks utilities about the risks of reliance on coal.

Subsidies and Climate Change

The Dubuque Franciscans have a new resolution at **ExxonMobil** which expresses concern that the company "fails to detail subsidies it receives to continue developing what it itself admits is a critical component to climate change" while it continues to argue against subsidizing renewable energy sources. The company is arguing that this falls into the ordinary business category.

The resolved clause asks for "a report detailing all U.S. government subsidies (federal, state and local) our company has received that effectively reduced ExxonMobil's costs of doing business--from leases and drilling to production and marketing--during each of the last three fiscal years (2008-2010), and any associated reputational risk. This report should detail the impact of all financially significant subsidies including, but not limited to: tax breaks, loan guarantees, write-offs, incentives, and natural resource extraction rights sold at below estimated free market rates."



Global Warming Skeptics

In addition to the array of resolutions from proponents looking for corporate action to combat climate change, there are again several resolutions from conservative groups that are skeptical about the existence of global warming and concerned about the costs associated with implementing climate change mitigation strategies. They have also argued that any such strategies would not have a meaningful impact on climate change, were it to exist.

A conservative group called the National Center for Public Policy Research appears as a proponent of climate skeptic proposals for the first time. The group is asking **General Electric** and **Goldman Sachs** to report on "the business risk related to developments in the scientific, political, legislative and regulatory landscape regarding climate change." The supporting statement asserts that "the quality, integrity and accuracy of global warming science has been called into question." Tom Borelli is directing the center's shareholder activity; he had previously been associated with another conservative proponent group, The Free Enterprise Action Fund/Action Fund Management, which has been sold and is no longer proposing resolutions. Both companies have challenged the proposal at the SEC, arguing as Goldman Sachs put it, that it falls into the ordinary business category because it "addresses the disclosure of the business impact of climate change on the Company and does not address in any way the environmental impact of the Company's activities on climate change or the environment."

The National Center for Public Policy Research is also the proponent on a resubmission of last year's resolution asking **Duke Energy** to report on its climate change lobbying. The resolution asks the company to list the associations it uses to "advance its goals related to global warming" and to "describe the benefit to shareholders from those activities." That resolution got 9.3 percent support in 2010.

The National Legal and Policy Center (NLPC), which sometimes collaborates with the National Center for Public Policy Research, also has submitted its own resolution to **Goldman Sachs** asking the company for a "Global Warming Science Report" that includes the studies it relied on to formulate its climate policy in 2005, along with the company's assessment of the extent to which human activity will alter the global climate and an estimate of the effects on the company of its climate policy. That resolution got 3.4 percent support last year.

The NLPC is also asking **Wal-Mart** for a climate change report. In this case, it suggests that the report disclose "the business risks of climate change, which may include: (1) Impact of Legislation and Regulation; (2) Impact of International Accords; (3) Indirect Consequences of Regulation on Business; and (4) Physical Impacts of Climate Change." The resolution indicates that the proponent is unhappy with Wal-Mart's February 2010 announcement that it would eliminate 20 million metric tons of emissions from its supply chain, "thus imposing its political agenda on its suppliers."

Other Environmental Issues

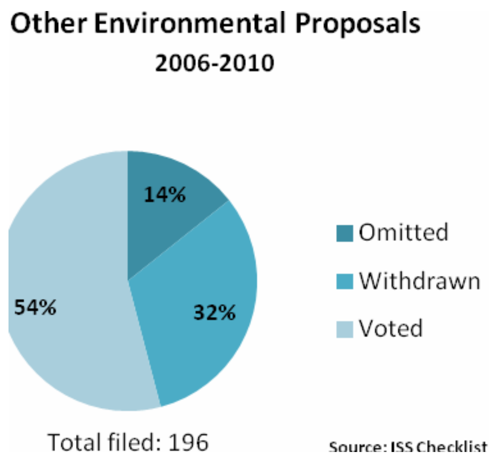
In addition to a new campaign on coal risk, this large and varied category includes a continuation of the 2010 effort on hydraulic fracturing, an array of other proposals that raise concerns about water scarcity, a new Sierra Club resolution on mountaintop mining, three resolutions on the chemical Bisphenol A (BPA) and a potpourri of proposals on other questions, most of which are similar to those seen in the 2010 proxy season.

Risks of Coal Reliance

Proponents, led by As You Sow, have gone beyond last year's new resolution on coal combustion waste to raise an array of questions at electric utilities that rely heavily on coal to generate electricity. The resolved clause of the proposal, pending at eight companies, asks for a report by September 2011 "on the financial risks of continued reliance on coal contrasted with increased investments in efficiency and cleaner energy, including assessment of the cumulative costs of environmental compliance for coal plants compared to alternative generating sources." The supporting argument cites various concerns about coal use, including pending EPA regulations on treatment of coal combustion waste, declining reserves of high quality coal and coal price volatility. The resolution takes on particular relevance since new EPA regulations took effect January 1st requiring power plants that emit more than 75,000 tons of carbon dioxide a year to use "best available control technology" before they can obtain permits.

The resolution is pending at **CMS Energy, Dominion Power, Duke Energy, Entergy, First Energy, NRG, Public Service Enterprise Group** and **Xcel Energy**.

In addition, Green Century has re-filed last year's resolution at **Southern** on the risks of coal ash waste, again asking the company to report on efforts to reduce environmental and health hazards. That resolution got 21 percent support last year; Southern is now arguing at the SEC that the proposal is moot because of its recent reporting. The School Sisters of Notre Dame have proposed the same resolution for the first time at **Ameren**. The Order is located within Ameren's service area and its familiarity with the company likely explains why they have proposed a long series of various resolutions to the utility over the years.



Hydraulic Fracturing

For a second year, a substantial batch of resolutions raise concerns about the use of hydraulic fracturing--the increasingly controversial process in which water, sand, and a mix of chemicals are blasted horizontally into tight layers of shale to extract natural gas. As this practice has become more widespread, environmentalists have been concerned that the chemicals mixed with sand and water to aid the fracturing process can harm the water supply and also cause contamination at the ground level. They are also concerned that the wastewater produced by the process can overload the waste treatment plants to which it is shipped.

The resolved clause of most of this year's proposals is similar to the 2010 version. It asks for a report summarizing: "1) Known and potential environmental impacts of [the company's] fracturing operations; and, 2) Policy options for our company to adopt, above and beyond regulatory requirements and our company's existing efforts, to reduce or eliminate hazards to air, water, and soil quality from fracturing operations."

The 2011 resolutions are pending at **Anadarko, Cabot Oil & Gas, Carrizo Oil & Gas, Chevron, El Paso, Energen, ExxonMobil, Southwestern Energy** and **Ultra Petroleum**. Exxon is arguing that its current reporting makes the resolution moot, and Energen is raising a beneficial ownership question. The proposals come from a range of filers: New York State is the lead at Cabot and Carrizo, As You Sow at ExxonMobil and Ultra, Trillium at Anadarko, Domini at Southwestern Energy, Miller/Howard Investments at El Paso and Energen and the Sisters of St. Francis of Philadelphia at Chevron. Anadarko, Carrizo, Chevron and Southwestern Energy are first-time filings. After three withdrawals and two technical omissions, the proposal came to votes at six companies in 2010, averaging 30 percent support.

Water Scarcity

The Connecticut retirement system has submitted a new resolution to **Southern** on the implications for utilities of increasing competition for decreasing water supplies. The resolved clause asks for a report that would include a "survey of water usage in electric generation and in the fuel supply chain, identification of risks to the company from water scarcity and other water risks, and steps the company is taking to develop a plan to address those risks." Miller/Howard Investments has a similar proposal pending at **PPL** and an individual shareholder filed a water risk reporting proposal at Dominion on behalf of Ceres; the Dominion resolution has already been withdrawn after an agreement; the PPL proposal asks for discussion of the "company's plans to mitigate risks related to the use and disposal of water, including low flows, thermal impacts and emerging regulations."

Also raising issues of water scarcity, NorthStar Asset Management is continuing for a fourth year its campaign to get companies to proclaim their commitment to the "human right to water" as articulated by the United Nations. This year it is proposing its resolution to **Johnson & Johnson** for the first time and has resubmitted resolutions that got 6.9 percent support last year at **Ecolab** and 6.7 percent at **ExxonMobil**. It proposed and has already withdrawn the resolution at Green Mountain Coffee, which has promised to publish a policy by March. Exxon is arguing that the proposal is moot.

Supply Chain Standards on Water

Newground Social Investment has submitted a new resolution to **Nordstrom** asking for "a report describing the company's vendor standards as they relate to reducing supply chain environmental impacts — particularly water use and related pollution." The supporting statement lists what the proponent sees as risks to the company from its vendors related to water issues, including higher costs from water shortages and increasingly stringent regulations, price volatility for cotton supplies because of drought or flooding linked to climate change, and "reputational risk created when communities are harmed by supplier water-use practices."

Mountaintop Mining Water Pollution

For the third year, church groups have submitted a resolution asking **Massey Energy** to report on its progress in implementing reforms required by a settlement with the EPA over Clean Water Act violations from mountaintop mining at Massey coal mines in West Virginia and Kentucky. Support for that proposal fell from 39.4 percent to 33.9 percent; Massey had disclosed some of the information the resolution was seeking during the year. The resolution emanates from the Sisters of St. Joseph of Wheeling, whose order is in the area of the pollution.

Mountaintop Mining Evaluation

A new resolution to **Dominion Resources** from the Sierra Club takes on the issue of mountaintop mining directly. The resolved clause asks for a report "assessing (i) the impact of Dominion's use of coal obtained through mountaintop removal coal mining, and (ii) the impact and optimum timing of a future policy ending use of coal obtained through mountaintop removal coal mining in Dominion's energy-related operations and services." The resolution expresses concern that Dominion purchases "a large fraction" of its coal from companies that practice mountaintop mining." The proposal is part of the Sierra Club's "Beyond Coal" campaign.

Bisphenol A (BPA)

Domini Social Investments and As You Sow have resubmitted last year's then-new resolution to **Coca-Cola** on use of the chemical BPA, which is used to harden plastics and has been implicated in changes in the brain structure and reproductive systems. It has been controversial for use in plastic bottles, and a number of bottle manufacturers have pledged to discontinue its use. Now at issue with Coca-Cola is the use of BPA in can liners. The resolution asks for a report "updating investors on how the company is responding to the public policy challenges associated with BPA, including summarizing what the company is doing to maintain its position of leadership and public trust on this issue, the company's role in adopting or encouraging development of alternatives to BPA in can linings, and any material risks to the company's market share or reputation in staying the course with continued use of BPA." The resolution got 21.9 percent support last year.

A new resolution on BPA at **Dentsply** comes from Trillium Asset Management and addresses the use of BPA in the production of dental sealants and composites. The resolved clause is almost the same as the one used in the proposal submitted to Coca-Cola, but substitutes the words "dental products" for "can linings."

As You Sow also has a new resolution pending at **Yum Brands** on toxic hazards that includes, in part, a new angle on the BPA question. The proposal asks the company to adopt principles for chemical policy reform, saying the principles should "protect retailers by ensuring that manufacturers: 1) Know and disclose product chemistry; 2) Assess and avoid hazards; and 3) Commit to continuous improvement." The resolution's supporting statement cites reports that cash receipts that are coated with BPA easily rub off onto fingers and may penetrate the skin.

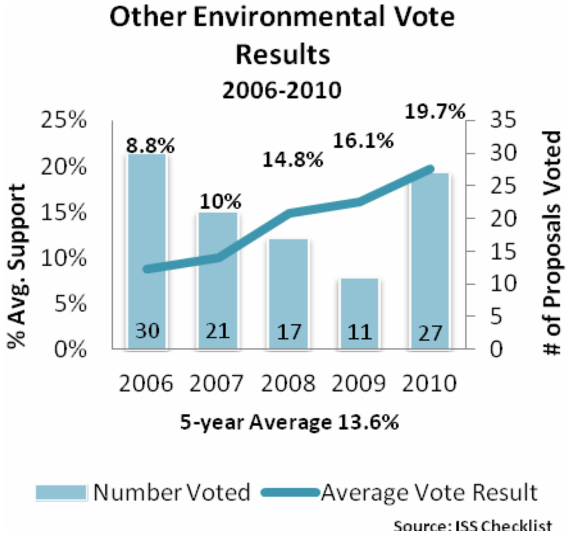
A new resolution from an individual shareholder, David Brook, to **FMC** asks for an immediate withdrawal from the market of Furadan or any other FMC pesticide "where there is documented misuse of products harming wildlife or humans, until FMC effectively corrects such misuse." FMC is countering in a lengthy filing at the SEC that the resolution is moot given its withdrawal of the pesticide from the market after its use in Africa was featured on a "60 Minutes" program several years ago.

Palm Oil

Once again, palm oil production — an issue of increasing concern to some social responsibility activists — will not come before shareholders in the form of a resolution because companies have been cooperative in working toward satisfactory solutions with proponents. The Nathan Cummings Foundation has already withdrawn a new resolution at Avon Products asking the company to "adopt and implement a comprehensive procurement policy for sourcing 100 percent sustainable palm oil," and the Adrian Dominican Sisters withdrew the same resolution at Hershey. Palm oil comprises about 30 percent of the world's oil and is particularly controversial because of the rainforest destruction and consequent GHG effects of its production. Those agreements follow earlier ones by General Mills, Nestle and Unilever.

Sustainable Forestry

Domini Social Investments continues its campaign to get paper companies to purchase raw materials from sustainably managed forests. In recent years it has reached agreements with companies including Kimberly-Clark and International Paper, but it continues to press **R.R. Donnelley** on the issue. This repeat filing from 2010, which received 10 percent support, asks the company to "develop a sustainable purchasing report" by November. It suggests that the report include a definition and standards for identifying sustainable paper, the yearly quantity of virgin and recycled paper procured, and the yearly quantity of paper purchased, broken down by certification schemes.



Community Hazards

The Capuchins are returning to an issue they raised many years ago — the siting of toxic waste dumps in minority communities. A resolution to **Waste Management** asks the board "to oversee an independent review of Waste Management's treatment, storage and disposal facilities (TSDFs) vis-à-vis their proximity to communities of economically depressed and racial minority peoples as well as any significant negative impact these sites may have on such peoples' health" and to report the findings to the shareholders with recommendations. The Capuchins resumed shareholder activity on this question after publicity in a Los Angeles Times article focused on health problems near the company's site in Kettleman City, Calif., in the San Joaquin Valley.

Trillium Asset Management has resubmitted its resolution to **PPG Industries**, which among other things, also raises the issue of health effects on poor communities. It asks for a report on: 1. how the corporation makes available reports regarding its emissions and environmental impacts on land, water, and soil--both within its permits and emergency emissions--to members of the communities where it operates; 2. how the corporation integrates community environmental accountability into its current code of conduct and business practices; and 3. the extent to which the corporation's activities have negative health effects on individuals living in economically poor communities. That resolution got 7.1 percent support last year.

Bart Naylor of Capital Strategies Consulting has a new resolution at **ExxonMobil** asking for a report "on the community and environmental impact of its logistics decisions, using guidelines from the Global Reporting Initiative." Naylor notes that a road Exxon is building through Idaho and Montana to Canada has prompted controversy and litigation and "raises questions as to the rigor that ExxonMobil applies in its assessment of the community and environmental impact of its logistics decisions." The company is arguing that it should be able to omit the resolution on grounds that it is vague and misleading.

Oil Sands

Activists are continuing to prod **ExxonMobil** and **ConocoPhillips** on the ramifications of their oil sands development projects in Canada. This year the resolution to ConocoPhillips, which last year asked for an assessment of environmental damage, has been modified to match the resolved clause of the resolution pending at Exxon. Both now ask for a report discussing "possible long term risks to the company's finances and operations posed by the environmental, social and economic challenges associated with the oil sands." The proposal got 26.4 percent support in its first time up at Exxon last year. The vote at ConocoPhillips, where it was in its fourth year, was 27.1 percent.

Genetically Modified Plants

Genetic engineering (GE), one of the hottest environmental topics on the shareholder scene 10 years ago, has pretty much fallen off the radar. But the Sisters of Charity of St. Elizabeth, which has a long relationship with **DuPont**, is asking the company for a report on "its internal controls related to potential adverse impacts associated with genetically engineered organisms." The resolution asks that the report discuss: the adequacy of current post-marketing monitoring systems; the adequacy of plans for providing alternatives to GE seed should circumstances so require; the possible impact on all DuPont seed product integrity; and the effectiveness of established risk management processes for different environments and agricultural systems.

Energy Sustainability

The Capuchins have a new resolution at **ExxonMobil** asking the company to establish a committee of independent and company experts to make recommendations on how the company "can become the recognized industry leader in developing and making available the necessary technology and products to become an environmentally sustainable energy company at every level of its operation." The resolution says the proponents "see energy sustainability as involving a kind of 'Golden Rule' wherein we do not use up the earth's non-renewable resources in ways that will jeopardize its future."

Recycling

As You Sow has a new resolution at **Target** on the recycling of electronics equipment. The proposal asks the company to report on policy options "to minimize the environmental impacts of its electronics recycling activities by promoting reuse of working equipment and preventing export to non-OECD countries of hazardous e-waste and untested or non-working equipment or components." The resolution notes that Target is the fourth-largest U.S. retailer of consumer electronics and that electronics waste (e-waste) is the fastest growing component of the municipal waste stream.

As You Sow, which has published considerable research on container recycling, also has a new proposal at **McDonald's** on the issue. It asks for a report on implementing the company's environmental policies "such as incorporating a comprehensive container recycling strategy, including recycled content goals and container recovery goals, and considering relative environmental impacts of different types of beverage containers." The resolution notes that the company still uses polystyrene-based beverage cups 20 years after phasing out use of polystyrene clamshell food containers.

As You Sow has also resubmitted its 2010 resolution to **Starbucks** asking the company to adopt a comprehensive recycling strategy, including aggressive recycled content goals and container recovery goals. The resolution got 11.2 percent support last year.

Nuclear Power

Nuclear power, once a prominent shareholder topic, has largely disappeared from the proxy scene. There is one resolution from an individual shareholder at **Dominion Resources** expressing opposition to a planned new nuclear unit by asking for a report on the risks involved in the project and asking that the company "stop wasting shareholder money by pursuing the increasingly costly and unnecessary risky venture of a new nuclear unit." The company is arguing that it should be able to omit the resolution as vague and misleading.

Renewable Energy

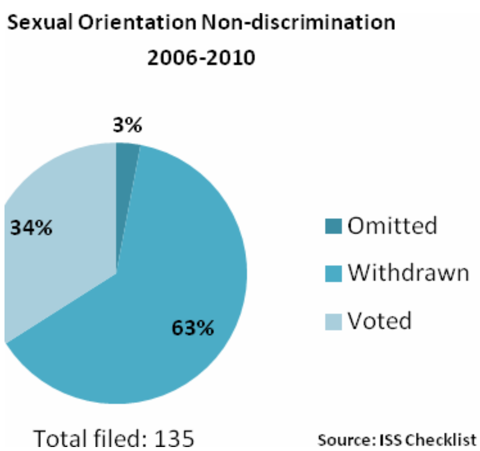
Several resolutions on the use of renewables have turned up in the challenge files at the SEC. **Dominion Resources** is asked to finance solar and wind units; **Pepco Holdings** is asked to pursue the solar market; and **CSX** is asked to convert its locomotive fleet to fuel cell power. All of these resolutions are from new proponents, who often do not know the ins and outs of the shareholder proposal rule, and the companies are challenging them on technical issues such as failure to provide proof of stock ownership. A resolution asking Great Plains to study wind and nuclear energy feasibility has already been omitted.

Environmental Expert on the Board

The New York State Common Retirement Fund is resubmitting resolutions asking **Chevron** (26.8 percent support in 2010) and **Freeport McMoran** (34 percent) to appoint a board member with environmental expertise. It has also proposed this resolution at **Occidental Petroleum** for the first time. The company is arguing at the SEC that it should be able to omit the resolution because the request is moot as the board already has an environmental expert — John Feick who is a chemical engineer and former CEO of Matrix Systems.

Equal Employment

Sexual orientation-related proposals continue to dominate this category, but there is a new resolution on discrimination against minority broadcasters in advertising that is facing challenge at the SEC.



Sexual Orientation Nondiscrimination

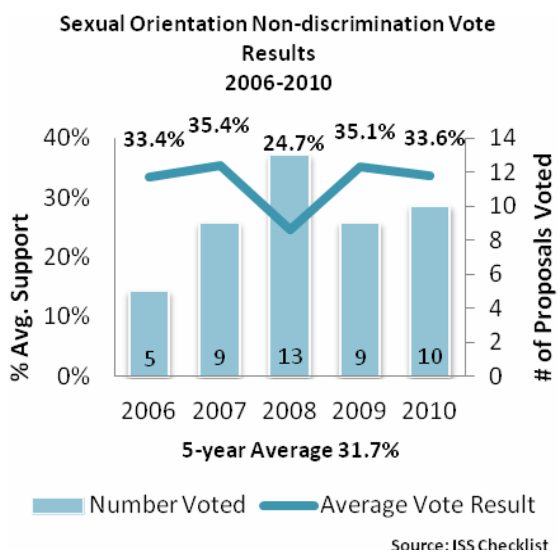
Prohibition of workplace discrimination based on sexual orientation and gender identity is again the major EEO issue of the proxy year. The New York City pension funds, which began leading the campaign on this issue more than 10 years ago, on Dec. 2, 2010, issued a press release saying that they have re-filed resolutions on the issue at five companies. The companies, with last year's vote results, are: **Anadarko** (39.3), **Crosstex Energy** (22.4), **KBR** (48.7), **Leggett & Platt** (40.4) and **Teco Energy** (34.4). New York's standard resolution asks each company to "amend its written equal employment opportunity policy to explicitly prohibit discrimination based on sexual orientation and gender identity and to substantially implement that policy." One of the targets, **Anadarko**, already prohibits discrimination on grounds of sexual orientation but has declined to add gender identity, arguing that the second request to specifically prohibit discrimination on grounds of gender identity is implicit in its corporate values and need not be spelled out.

In addition, the New York State Common Retirement Fund is the lead filer on the proposal at **ExxonMobil**, where it is now in its 13th year. Support for that resolution dropped to the 22.2 percent mark in 2010 from 39 percent the year before. While it did not significantly alter its proxy statement response opposing the resolution between the two years, 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. New York State is becoming more active as a proponent on this issue; after Patrick Doherty moved from the city funds to the Common Retirement Fund to handle social issues proxy engagement at the beginning of 2010, the fund surveyed its portfolio companies EEO policies. As a result of its findings, it has filed nondiscrimination proposals at 12 companies but has already withdrawn several and is pursuing more agreements before it releases its list.

The resolution is also coming from other quarters. Walden has already withdrawn the same resolution after agreements at Ambassadors Group, eHealth and SouthSide Bancshares. Trillium has resubmitted the proposal at **Gardner Denver**, where it just missed getting a majority vote last year.

The Unitarian Universalist Association has resolutions at several companies that prohibit discrimination on grounds of sexual orientation but not gender identity, asking them to take the latter step as well. Those proposals are pending at **ConocoPhillips** and **Dr Pepper Snapple.** It has been omitted at Verizon because the proponent failed to provide proof of beneficial ownership. Trillium has proposed the same resolution to **Lowe's**.

In contrast to the vast majority of the resolutions in this area, **PG&E** has two resolutions pending from individuals who are unhappy with the company's decision to contribute to campaigns promoting gay marriage in California. One asks it to change its employment policy to eliminate reference to sexual orientation. The other more generally addresses company contributions. The company is challenging both as ordinary business.



EEO Reporting

So far for 2010, ISS has found only one of the once-common proposals asking companies to report on its statistics and policies on advancement of women and minorities. That is a resolution at **Home Depot** that has appeared on the ballot since 2006, after the company reversed itself on a pledge to provide the information. Now sponsored by Trillium, with many co-sponsors from the religious and social activist communities, it got 26.7 percent support in 2010.

Minority Business Advertising

The New York City pension funds have a new proposal spurred by allegations that advertisers have refused to place ads with minority broadcasters. They are asking **AT&T, Ford, Kraft Foods** and **Sprint Nextel** to publish "a non-discriminatory/diversity policy regarding the placement of ads with minority broadcasters." All of the companies have asked the SEC for the go-ahead to omit the proposal on ordinary business grounds and AT&T has already been given the go-ahead to do so; the SEC has always considered corporate advertising to be an ordinary business issue.

Executive Pay

Shareholder activists who specialize in social issues have been devising resolutions linking these issues to executive pay practices for more than a decade, having found that certain issues that the SEC considers ordinary business questions would slip by if tied to executive compensation. For 2011, labor unions are using the mechanism to ask companies to link pay to performance on sustainability metrics. In addition, as in past years, a resolution asks for an exploration of how layoffs affect executive pay.

The labor-affiliated Amalgamated Bank LongView Fund has a new resolution asking three companies 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 is pending at **ExxonMobil, Hess** and **Marathon**. Exxon is arguing at the SEC that it should be able to omit the resolution because its current practices make the proposal moot.

The Laborers Union has a very similar proposal, which it filed at **CB Richard Ellis, Chevron, Equity Residential, FirstEnergy, Loews** and **Sempra Energy**. Equity Residential is arguing that it should be allowed to omit the proposal on grounds that it is moot. The Laborers also filed at MDU Resources but withdrew it after the company agreed to the request.

The Nathan Cummings Foundation revised a proposal that got 5.5 percent in 2010 at **Goldman Sachs** on comparative pay levels. This year's version asks for a report that would include:

1. An evaluation of whether our senior executive compensation packages (including, but not limited to, options, benefits, perks, loans and retirement agreements) are "excessive" and should be modified.
2. An exploration of how sizable layoffs and the level of pay of our lowest paid workers impact senior executive pay.
3. An analysis of the way in which fluctuations in revenues impact: a) the Company's compensation pool; b) the compensation of the Company's top 25 senior executives; and c) the Company's shareholders.

The company is arguing that it should be able to omit the resolution because Part 3 relates to ordinary business matters in the form of "general compensation matters and impact of fluctuations in revenues on shareholders."

Health

After a break of several years, shareholders are returning to the issue of drug price restraint with a revived campaign, and also are approaching insurance companies with proposals on premium price restraint. Also, a resolution to McDonald's on childhood obesity, withdrawn after an agreement last year, is again pending.

Drug Price Restraint

A coalition of church groups has a resolution at four drug companies inspired by what they consider skyrocketing prices for brand name drugs. The resolved clause asks the companies to "create and implement a policy of price restraint on branded pharmaceuticals, utilizing a combination of approaches to keep drug prices at reasonable levels, such as an increase that would not exceed the previous year's Consumer Price Index." It asks for a report on changes to policies and pricing by September 2011. This resolution is pending at **Abbott, Bristol-Myers Squibb, Johnson & Johnson** and **Pfizer**.

In addition, the Capuchins have their own resolution at **Merck** asking for an independent study of how its price-setting practices can be aligned with the recommendations of the December 2010 report from the Deloitte Center for Health Solutions, "Showdown over Drug Pricing: Get Ready for Another Round." The resolution says the study concluded that pricing reform should address three problems: "misaligned views on product value, international pricing variability and lack of price transparency." The proponent would like the company to discuss these problems.

Resolutions on drug price restraint appeared in the proxies of most of the same companies periodically between 2000 and 2007. They passed muster at the SEC, where the staff concluded that they could not be omitted on ordinary business grounds because they related to "fundamental business strategy," but the vote results have been meager.

Insurance Premium Price Restraint

Another new batch of health-related resolutions also comes from church-affiliated proponents. This group asks for a report "on how our company is responding to regulatory, legislative and public pressures to ensure affordable health care coverage and the measures our company is taking to contain the price increases of health insurance premiums." The resolution calls health reform legislation "a major achievement" but points to ongoing concerns "as to its long-term affordability and accountability for controlling costs." This resolution has been proposed to **Aetna, Cigna, UnitedHealth** and **WellPoint**. So far challenges from three of those — Aetna, Cigna and WellPoint — have shown up in the SEC's no-action request files. Cigna is arguing that it should be omitted on ordinary business grounds because it deals with "management of marketing and other administrative expenditures, and compliance with laws," a point Aetna echoes. WellPoint makes the ordinary business argument as well, and also says the proposal is moot. Insurance companies have traditionally had an easier time than other types of corporations in getting resolutions omitted as ordinary business.

Childhood Obesity

A coalition of church shareholders decided to resubmit their 2010 proposal to **McDonald's** on childhood obesity, which was withdrawn last year. The resolution asks 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. Such report should include an assessment of the potential impacts of public concerns and evolving public policy on the company's finances and operations." The resolution quotes a November 2009 report from the Center for Science in the Public Interest, which it says demonstrated "that 88 percent of the products that our company had deemed appropriate to market to children under the industry's voluntary marketing initiative, the Children's Food and Beverage Advertising Initiative, met no third-party nutrition standard."

Asked about why the proponents decided to re-file the resolution after having reached a withdrawal agreement following many meetings with the company last year, Tom McCaney of the Sisters of St. Francis of Philadelphia wrote to ISS:

> "Our decision to file again came down to three factors: 1) With the incidence of childhood obesity in the United States approaching 20%, we question whether McDonald's can do more in its efforts to educate parents and provide nutritious meals. 2) A new study by Cornell health economist John Cawley found that the annual cost of treating obesity is approximately $168 billion, or 16.5% of the country's total medical care costs. 3) Two communities in California have passed ordinances banning the distribution of toys with the purchase of children's meals that fail to meet prescribed nutritional criteria."

Human Rights

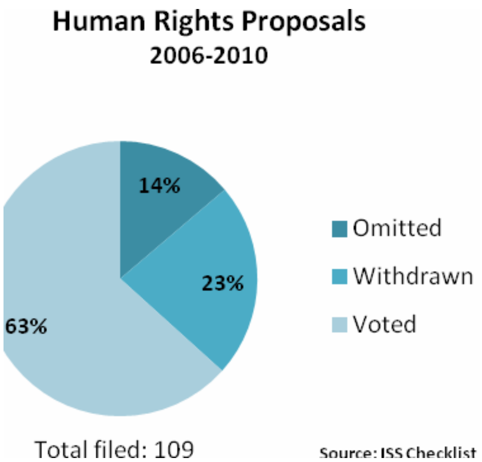
The human rights category this year features 13 general requests for adoption or modification of human rights policies. Many of the human rights policy requests come at defense companies that have in prior years received proposals from church groups related to the sale of military weapons; these resolutions have gotten consistently low vote results. . The human rights roster also includes a new stab at trying to get resolutions on Internet neutrality past the SEC staff, as well as a proposal on sexual exploitation of minors at a cruise ship company. At this point, the human rights category, with 22 resolutions, is slightly smaller than last year's, but this is an area in which resolutions often show up unexpectedly during the proxy season from individual shareholders.

Comprehensive Policies

Church groups have new resolutions asking companies to review and amend their human rights policies and to publish the results of the reviews at **Corrections Corp. of America, General Dynamics, GEO Group, ITT, Lockheed Martin, OM Group** and **Raytheon. Boeing** is also receiving a human rights policy proposal after an absence of several years, which it is arguing is moot. Mercy Investment and the Sisters of St. Elizabeth have also withdrawn a human rights policy proposal after extensive discussions at United Technologies.

Church groups have also re-filed resolutions on general human rights policies at **Halliburton, Caterpillar, KBR** and **Motorola.** The resolutions got 36.9 percent support at Halliburton, 42.2 percent at KBR, 24.7 percent at Caterpillar but only 11.2 percent support at Motorola last year. The resolution at Caterpillar is sponsored by Jewish Voice for Peace and inspired in part by concerns about the use of Caterpillar bulldozers to raze Palestinian homes.

The resolved clauses of those resolutions all ask for a general review of human rights policies. In addition, the supporting statements of the resolutions to General Dynamics, KBR, Lockheed Martin and Raytheon suggest that "trafficking-related concerns, particularly in its extractive minerals supply chain, are being addressed." In addition, several supporting statements particularly point to the potential for human rights abuses in specific countries where the companies operate, such as Democratic Republic of the Congo and China in the case of OM Group. The resolutions to GEO Group and Corrections Corp refer to the potential for human rights abuses in their prisons and immigrant detention centers.



Most of the requests for comprehensive human rights policies list among issues of concern the vendor standards in developing countries. That question is broached more directly in several resolutions on global labor standards discussed below in the section on Labor Practices.

Sexual Exploitation of Minors

The Presbyterian Church has a new proposal asking **Carnival Corporation** to "adopt a human rights policy that includes prohibiting the sexual exploitation of minors and to report on the policy's implementation. The resolution says that more than 2 million children are exploited in the commercial sex trade and notes that Carnival "conducts cruises to ports in some problematic countries where tourism areas may be a source for aggravated demand for child prostitution, and is therefore exposed to potential risks to its reputation." Church-affiliated shareholders have filed this resolution periodically with hotel chains over the last five years, and it has always been withdrawn after agreements.

Criteria for Investment

The Teamsters have resubmitted their resolution that asks **Chevron** to publish its criteria for investment in and withdrawal from specific countries. The proposal was inspired by Chevron's 2005 acquisition of Unocal, which has major operations in Burma; it got 24 percent support last year.

Tobacco Harvester Safety

Church groups have resubmitted a resolution to **Reynolds International** that asks the company to implement core human rights conventions and to ensure that its suppliers do so as well. The supporting arguments indicate that the proponents' particular concerns are that workers harvesting tobacco may contract acute nicotine poisoning through skin absorption. Compliance with human rights conventions, they believe, will ensure that tobacco harvesters have safe working conditions and adequate health care. This third year resolution got 10.5 percent support at Reynolds last year. It also came to a vote at Altria, where it got 20.4 percent, but the proponents are now continuing their engagement with the company through discussions rather than a resolution.

Human Rights Committee

An individual shareholder, Jing Zhao, has a resolution at **Intel** asking the company to "establish a Human Rights Committee with the responsibility to review and approve all policies and actions taken by the company that might affect human rights observance in countries where it does business. The Human Rights Committee should develop and put in place a comprehensive oversight and compliance system, consistent with the good business practice standards set out in the U.S. compliance guidelines, to monitor, identify and evaluate potential negative human rights impacts of its business in China and other repressive countries." Intel is challenging the proposal on grounds that it is vague and also involves matters of ordinary business. The same proponent submitted this resolution to other companies last year; it was omitted at Boeing as vague, but came to votes at Chevron (6.8 percent) and News Corp (2.2 percent), which did not challenge, and it is possible that it will pop up at other 2011 targets. John Harrington of Harrington Investments has proposed a similar resolution this year to **Chevron**, asking it to amend its bylaws to establish a board committee on human rights; the company is challenging that one on several grounds, including arguing that the bylaw mechanism would force it to violate Delaware state law, where the company is incorporated.

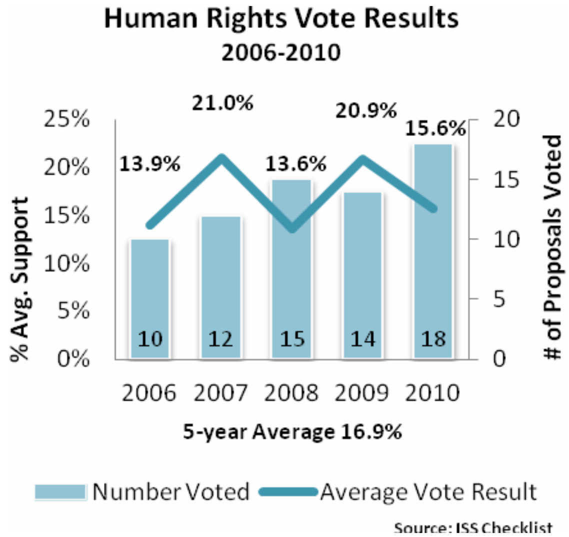
Immigration

NorthStar Asset Management has a new resolution to an Arizona company, **First Solar,** motivated by the fact that the company has not taken a stance on the state's stiff new anti-immigration law. The resolution asks it to identify risks to "brand reputation and shareholder value caused by the boycotts and public outrage caused by SB 1070."

Internet Neutrality

Human rights implications resulting from questions on how to manage Internet use are once again at issue in shareholder resolutions proposed for the 2011 proxy season, but it is not clear that the proponents can get the issue past the SEC review. The majority of those proposals focus on concern about the ability of Internet service providers (ISPs) to control access to information in the United States by prioritizing content on the Web. Avoiding that practice has become commonly known as "net neutrality."

For the last two years, the SEC staff has allowed companies to omit all of the proposals on net neutrality that they have chosen to challenge. Last year, in issuing a no-action letter, the staff said bluntly that the proposals do "not raise a significant social issue" and therefore can be omitted as "ordinary business matters" outside the purview of shareholders.



Nevertheless, Trillium, one of the main shareholder actors on this issue, is trying again this year with proposals to **AT&T, Comcast** and **Verizon** asking the company "publicly commit to market and sell only wireless broadband products which abide by Internet network neutrality principles — i.e. operate a neutral network with neutral routing along the company's wireless infrastructure such that the company does not privilege, degrade or prioritize any packet transmitted over its wireless infrastructure based on its source, ownership or destination." All three companies have challenged the resolution, arguing that the 2011 version is not significantly different from the earlier proposals that were judged ordinary business and that it falls into that category as well.

Trillium has re-filed a different net neutrality proposal at **CenturyLink**, which put resolutions in its 2009 and 2010 proxies without challenging them; last year's vote was 28.4 percent. Trillium again is asking for a report on "the effects of the company's Internet management practices in the context of the significant public policy concerns regarding the public's expectations of privacy and freedom of expression on the Internet."

Labor Practices

The number of resolutions raising questions about international vendor standards continues to shrink, but a new proposal on domestic safety at oil companies helps bump up the numbers in the labor category.

Safety Management

The AFL-CIO has a new resolution at six companies asking for a report on the steps it "has taken to reduce the risk of accidents. The report should describe the board's oversight of process safety management, staffing levels, inspection and maintenance of refineries and other equipment." The supporting statement references BP's Deepwater Horizon explosion and asserts "that OSHA's National Emphasis Program for petroleum refineries has revealed an industry-wide pattern of non-compliance with safety regulations.

The resolution is pending at **Chevron, ConocoPhillips, ExxonMobil, Marathon** and **Tesoro**. Chevron, Conoco and ExxonMobil are all arguing that they should be able to omit the resolution because their existing reporting makes it moot. The proposal has been withdrawn at Sunoco after an agreement in which the company promised to enhance its Corporate Social Responsibility report with information on the tracking of Process Safety Management events, disclosure on the number of pressure vehicles overdue for scheduled inspections and disclosure and discussion of the worker fatigue policy.

In addition to the AFL-CIO proposal, **Chevron** has a second safety proposal. This one comes from James Hoy, who is associated with Harrington Investments. It asks the company to publish a report that includes: a) The numbers of all offshore oil wells (exploratory, production and out-of-production) that Chevron Corporation owns or has partnership in b) Current and projected expenditures for remedial maintenance and inspection of out-of-production wells c) Cost of research to find effective containment and reclamation following marine oil spills.

In asking the SEC for permission to omit the AFL-CIO safety proposal, Chevron says it plans to include the Hoy proposal, which is received first, arguing that the proposals are "substantially the same."

Global Supply Chain Issues

The number or resolutions on international labor issues continues to shrink. ISS has found only four pending for 2011; 10 years ago there were 46.

One of the few pending for 2011 is a new proposal from the Presbyterians at **Time Warner**, asking the board to conduct a thorough review of the company's Ethical Sourcing Guidelines and amend them where appropriate. Noting that the company is one of the world's leading licensing and retail merchandising organizations, the resolution says "reports of human rights violations at vendors and suppliers of U.S.-based corporations have increased public awareness of the problems of poor health and safety conditions, long working hours, use of child labor and problems of denial of basic workplace rights."

The Capuchins have a new resolution at **Boeing** asking it to "implement independent third-party monitoring of its supply chain to verify compliance with its existing 'Basic Working Conditions and Human Rights' and to regularly share with concerned shareholders its findings, along with the company's own findings." The Capuchins have submitted a series of resolutions to Boeing over the years because of the company's relationship with China, and the supporting statement indicates that the company's sourcing of parts from China is a key point of concern with this resolution.

In addition, the SEC files show that the New York State Common Retirement Fund has a vendor standards proposal at **Mohawk Industries**, asking the company to implement the International Labor Organization's code, provide for independent verification and report to shareholders. The company is arguing that it is moot.

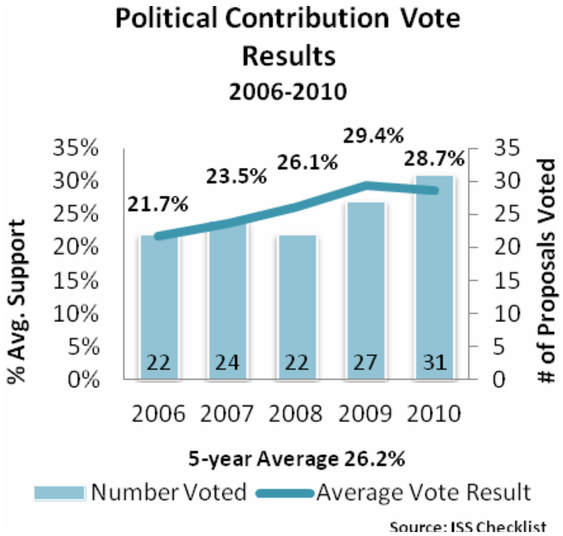
SEC challenge files also show a new resolution from the New York City funds to **Wal-Mart** requesting the company to ask its suppliers to publish "independently verifiable sustainability reports." Rather than the information requested in standard sustainability reporting, these reports would include information on traditional vendor standards issues, including information on workplace safety, human and worker rights. The company is arguing that the proposal raises ordinary business questions and is moot.

The Capuchins have withdrawn a resolution at Philip Morris International on the use of child labor in tobacco production abroad after an as-yet undisclosed agreement. The resolution asked the board to create protocols to ensure the company not buy any product from suppliers who are "in violation of their own countries' laws related to laborers or who operate in countries with consistent records of human rights violations, especially vis-à-vis egregious forms of forced child labor." The resolution got 6.4 percent support last year.

Many of the resolutions asking companies to adopt human rights policies, discussed in the section on Human Rights, above, make reference to supply chain standards, among other issues.

Political Issues

For the eighth year, a shareholder effort coordinated by the Center for Political Accountability (CPA) is driving a large campaign to ask companies to report on their political contributions and payments to trade associations. In addition, some SRI funds have filed related resolutions that aim to take on directly two specific elements of the political contributions campaign — corporate support for ballot initiatives and the implications of corporate support for the U.S. Chamber of Commerce. There is also a new batch of resolutions from labor groups on lobbying disclosure, which has seen some protest from targets at the SEC.



CPA Proposal

The basic requests of the 2011 CPA resolution are the same as those made in recent years, but the 2011 resolved clause drops references to sections of the Internal Revenue Code that had been used to identify the types of recipients the proponents were particularly concerned about — trade associations and "Section 527 organizations" that do not specifically advocate for a candidate but do advocate on specific issues. This year's version is intended to achieve the same result by simply asking for an accounting of funds used in any direct or indirect effort to influence the outcome of an election or referenda, either for or against. The resolution also differs from the earlier version in that it used to ask for identification of the persons who participated in contributions decisions, whereas the latest version asks only for those persons' titles.

As in the past, the supporting statement underlines the concern that managements often do not know how trade associations use their contributions. The language of the resolved clause requests 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."

The 2011 proposal makes reference to the major 2010 *Citizens United* Supreme Court decision, in which the justices ruled 5-4 to lift restrictions on political spending by corporations (and unions). While supporters of campaign finance reform were dismayed by the decision, the resolution notes its approval of political contributions disclosure in its language that "Disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

The CPA proposal has fared well in proxy voting in recent years. political contributions report resolutions received an average of 28.7 percent support in 2010, down a point from the year before.

Pending CPA Resolutions 2011

Allstate	JP Morgan Chase
Amazon*	Limited Brands
Anadarko	Lorillard
BB&T*	Lowe's*
Boeing*	Marriott
Caterpillar	Massey Energy
CenturyLink	National Oilwell Varco
Charles Schwab*	Northrop Grumman*
Citigroup*	R.R. Donnelley
Comcast	Regions Financial*
ConocoPhillips*	Sears Holdings
Coventry Health*	Southwestern Energy*
CVS Caremark*	Sprint Nextel*
DTE Energy*	State Street
Eastman Kodak	Valero*
EOG Resources	Wal-Mart*
Express Scripts*	Wellcare*
Ford Motor*	Wells Fargo*
Goldman Sachs*	Windstream
Halliburton*	Yum Brands
Honeywell	

Source: ISS Checklist

*Repeat resolution from 2010

The resolutions at ConocoPhillips, Goldman Sachs and State Street are narrower than the others because those companies already fulfill part of the request.

Ballot Initiative Support

In addition to the standard CPA proposal, two other groups of 2011 political contributions resolutions use much or some of the same language, but are clearly motivated by concerns about corporate support for specific ballot initiatives. One batch is pending at Minnesota companies **3M, Best Buy, Pentair** and **Target.** That resolution adds the request that the company also report on the process for assessing the "potential impacts" of its contributions "on the company's public image, sales and profitability." The supporting statement makes clear that in this case the proponent's particular concern is each company's contribution to Minnesota Forward, which had supported a Minnesota gubernatorial candidate known for opposition to gay rights, although the companies themselves had inclusive employment policies.

The other related new batch of contributions reporting resolutions was prompted by the specific concern that the target companies had spent heavily to support California Proposition 23, which would have suspended the state law requiring companies to reduce carbon emissions. Those resolutions were proposed to **Occidental,** Tesoro and **Valero.** The Nathan Cummings Foundation withdrew the resolution at Tesoro after the company agreed, among other things, to amend its Code of Conduct and related corporate policies to provide that senior members of management must approve all corporate political spending and disclose Tesoro's direct and indirect corporate political spending on its corporate website.

Those three resolutions ask for a report on the process used for determining the approval of expenditures supporting or opposing candidates; expenditures for supporting candidates, issue ads and ballot initiatives; and the oversight processes for political spending.

'Electioneering Communications'

NorthStar Asset Management has its own political contributions resolution that it has submitted only to **Home Depot**, on expenditures for electioneering contributions, which it defines as "spending directly, or through a third party, at any time during the year, on printed, Internet or broadcast communications, which are reasonably susceptible to interpretation as in support of or opposition to a specific candidate." The resolved clause asks that the proxy statement for each annual meeting contain a proposal describing:

- the company's policies on electioneering contributions,
- any specific expenditures for electioneering communications known to be anticipated during the forthcoming fiscal year,

- the total amount of such anticipated expenditures,
- a list of electioneering expenditures made in the prior fiscal year, and
- providing an advisory shareholder vote on those policies and future plans.

Home Depot is arguing that its existing reporting makes this resolution moot.

Chamber of Commerce Contributions

Another related batch of resolutions are a new entry in an effort intensified by one of the major controversies of the 2010 political cycle: corporate support for trade associations that may take different public stances from those the companies have publicly professed. In a campaign led by Walden Asset Management, an array of proponents are asking companies with executives that serve on the board of the U.S. Chamber of Commerce to review and report on their political expenditures, especially — as the resolved clause makes clear — those made through trade associations such as the Chamber. They are particularly concerned that the Chamber takes stances on environmental issues, notably climate change, that they see as contrary to the company's position and interests. The concern about the disconnect between stated company policies and trade association lobbying activities has been an element of the political contributions reporting proposal used in the CPA campaign for several years, but this new proposal takes it on more directly and prominently.

The resolution initially was proposed at Accenture, AT&T, IBM, JPMorgan Chase, PepsiCo, Pfizer and UPS. The resolution has already been withdrawn after an agreement at UPS. Walden also withdrew at Pfizer after extensive discussions with the company, which promised to update its political contributions policy, although Walden wrote in the withdrawal letter that "we continue to be concerned about Pfizer's unwillingness to state publicly where Pfizer differs from the Chamber of Commerce on issues like the environment and climate change or partisan political contributions." Walden withdrew at Accenture after it learned that the resolution had been filed too late for the company's February 2011 annual meeting, but plans to file for 2012 as soon as the 2011meeting takes place. It also withdrew a late filing at AT&T and withdrew at JPMorgan Chase because of overlap with the CPA proposal also filed there. That leaves only the proposal at **IBM** and **PepsiCo** at this point, but this is an issue the proponents are likely to pursue.

The resolved clause of the resolution asks for the following:

- Review and disclosure of any direct and indirect expenditures supporting or opposing candidates, or for issue ads designed to affect political races, including dues and special payments made to trade associations, such as the U.S. Chamber of Commerce, or political and other organizations that can hide any contributions.
- Risks and responsibilities associated with serving on boards of and paying dues to trade organizations when positions of the trade association contradict the company's own positions.
- Management and board oversight processes for all political spending, direct or indirect.

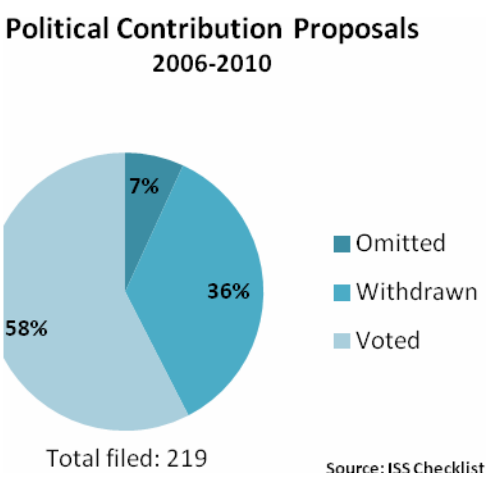
Shareholder Advisory Vote

The state of Connecticut has proposed resolutions to two health care firms, **WellPoint** and **United Health,** asking board of directors to adopt a policy that "shareholders be given the opportunity, at each annual shareholder meeting, to vote on an advisory resolution, proposed by management, to ratify" the companies' political spending program for the previous fiscal year. The fund argues that such a device would provide needed accountability to the political contributions process. WellPoint is arguing that it can omit the proposal because of a procedural deficiency. The New York State Common Retirement Fund offered a similar proposal at AIG in 2010, but, since the federal government held a nearly 80 percent voting stake in the company, the proposal received just 0.5 percent support.

In addition, the SEC open correspondence file shows that an individual shareholder named James A. Mackie submitted a resolution to several companies requesting that they make no political contributions without the approval of 75 percent of the shareholders. Mackie seems not to have been familiar with the requirements of the shareholder proposal rule, either filing late or failing to provide proof of beneficial ownership, and the resolution has been withdrawn or omitted at Avery-Dennison, Becton-Dickinson, Dominion Resources and ExxonMobil. SEC open correspondence now redacts shareholder addresses, and ISS has not been able to contact Mackie to ask about his program, so it is possible that this resolution will still pop up at other companies.

Lobbying

The American Federation of State, County and Municipal Employees has a new resolution asking eight companies to report on their direct and indirect grassroots lobbying payments. The text of the resolved clause is modeled on the CPA political contributions disclosure proposal, but the lobbying resolution asks for identification of the persons who participated in the decisions to make both direct contributions and grassroots lobbying expenditures, not merely that person's title as the CPA resolution now does.



The resolution has been submitted to **Bank of America, Citigroup, ConocoPhillips, IBM, Lockheed Martin, Prudential Financial, Occidental Petroleum** and **Raytheon**. ISS has found challenges from four of those companies at the SEC. IBM has already been told that it cannot omit the resolution on ordinary business grounds; the SEC staff Jan. 24 wrote, "In our view, the proposal focuses primarily on IBM's general political activities and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate." Bank of America has also filed a lengthy challenge on ordinary business grounds, which is still pending. The company makes an argument that IBM had not raised, contending that the section asking for identification of the employees who make the lobbying expenditure decisions raises an ordinary business privacy question and "may be detrimental to not only their safety but also that of their families." The other SEC challenges come from two companies that also received the CPA political contributions proposal, which the proponents had filed first. Citigroup and Occidental are arguing that they should be permitted to omit the lobbying resolution under i-11 of the shareholder proposal rule, which allows companies to drop a proposal if it is "substantially the same" as a resolution that they received first and intend to bring to a vote.

In 2010, CPA political contributions reporting resolutions at AT&T, JPMorgan Chase and United Health had added a clause asking for a report on grassroots lobbying expenses in addition to political contributions. United Health did not challenge (its resolution got 9.4 percent support) but AT&T and JPMorgan Chase argued successfully at the SEC that they should be able to omit the resolution because it did not sufficiently define grassroots lobbying. To avoid the 2010 problem, AFSCME's 2011 lobbying proposals define a "grassroots lobbying communication" as a "communication directed to the general public that (a) refers to specific legislation, (b) reflects a view on the legislation and (c) encourages the recipient of the communication to take action with respect to the legislation."

The Laborers Union has proposed a slightly different lobbying proposal to **ExxonMobil** asking for a report on the amounts it spends on lobbying and, secondly, on contributions on behalf of candidates and political parties and dues to trade associations. The resolution was drafted by Change to Win. Exxon has challenged the proposal at the SEC, arguing that its existing reporting makes it moot.

The AFL-CIO also proposed a single lobbying disclosure proposal at Cigna, which it withdrew after the company promised to publish a policy.

In addition to those lobbying proposals, the conservative group, the National Legal and Policy Center, has submitted resolutions to **PepsiCo** and **Pfizer** asking for reports on their public policy advocacy. The NLPC has proposed this resolution sporadically in the past, including at PepsiCo in 2010 where it got 5.1 percent support. PepsiCo had argued in vain that it raised an ordinary business question because it attempted to micromanage the company, but the SEC staff concluded that the proposal was not excludable because it "dealt with general political activities"; this year PepsiCo is trying an ordinary business challenge again on grounds that internal evidence shows that the proponent is concerned about a specific lobbying question — carbon dioxide cap-and-trade legislation.

Evelyn Davis Proposals

ISS has not received a full list of pending proposals submitted by perennial shareholder activist Evelyn Y. Davis, who usually proposes a handful of resolutions asking companies to publish their political contributions in national newspapers, asking them to affirm their political nonpartisanship or asking them to identify employees who had previously served in the government. A Davis political contributions proposal is pending at **Ford**, where the company is arguing at the SEC that it should be able include it and omit its CPA proposal, which was submitted after the Davis proposal, because the two resolutions are "substantially the same." This is an argument that the SEC has accepted on CPA and Davis political reporting proposals in earlier proxy seasons. A few other Davis resolutions are likely to show up in proxies.

Sustainability

The number of resolutions asking companies to file reports on their sustainability efforts appears to be dropping as fewer obvious large targets for resolutions remain.

Pending Sustainability Resolutions 2011

Boston Properties*	**Revlon**
BRE Properties	**St. Jude Medical***
C.R. Bard*	**Scana**
Consol	**Southern Union**
Covanta Holding	**Southwest Gas**
Energen	**Southwest Energy**
Gentex*	**SunTrust Banks***
Layne Christensen*	**Tesoro**
Macerish	**Williams-Sonoma**
Northwest Natural Gas	

Source: ISS Checklist

*Repeat resolution from 2010
Emerson Electric proposal voted on Feb. 1

ISS so far has identified 20 that have been proposed for 2011. In 2010, a range of proponents submitted 46 sustainability reporting resolutions, and as has been typical of that campaign, 28 of those were withdrawn after agreements. Support for the 2010 report requests averaged 30.8 percent support; a handful of resolutions on sustainability board committees fared much less well.

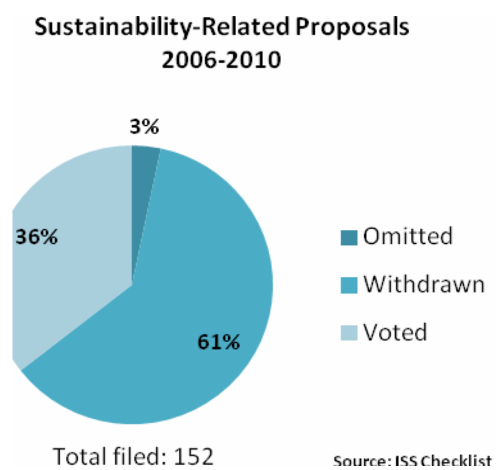
This year's filings follow a recent trend in which the resolved clause of sustainability report requests propose that the report discuss particular subjects, most frequently climate change. While the resolved clauses vary a bit depending on the proponent, the following, a proposal from Calvert to **Southern Union**, is fairly typical:

> "Shareholders request that the Board of Directors prepare a sustainability report describing corporate strategies to reduce

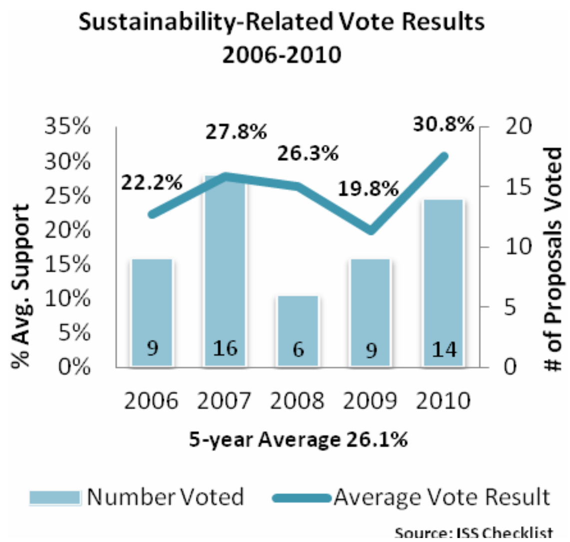
greenhouse gas emissions and addressing other environmental and social impacts such as resource use (water and energy), as well as employee safety."

Most of the supporting statements ask that the report include the company's definition of sustainability and a company-wide review of company policies, practices, and metrics related to long-term social and environmental sustainability. The resolutions specify various publishing dates for the reports, often targeting months in the following autumn. Many of the resolutions suggest that companies follow the sustainability-reporting format of the Global Reporting Initiative (GRI), an offshoot of a joint project by the Ceres environmental group and the United Nations Environmental Program. (In the early days of the sustainability shareholder campaign, eight years ago, proponents attempted to incorporate use of GRI in the resolved clause of the sustainability proposals, but that was knocked down at the SEC.)

In addition, the Capuchins have submitted a resolution to **ExxonMobil** on a committee on environmental sustainability, which is described in the section of this preview on environmental resolutions. And new resolutions from labor unions described in the Executive Compensation section - above ask for a link to sustainability performance in setting executive pay levels.



The California Teachers Retirement System has already withdrawn a proposal at National Oilwell Varco and says it is likely to reach agreement at Consol. New York pension funds are also sponsoring one more sustainability report resolution, at a target it has yet to identify; they are the sponsor of the resubmitted resolution at Boston Properties, which the company this year is challenging as moot.



Tobacco

Tobacco has continued to diminish as an issue for shareholder activists and proxy-voting committees as anti-smoking activists have racked up successes on the legislative front. In 2010, only five tobacco resolutions came to votes and the results were meager, averaging 3.4 percent. So far for 2011, ISS has found only three pending proposals directly relating to tobacco concerns.

The Capuchins, who have led anti-tobacco shareholder campaigns from the outset, have a new resolution to **Altria** and **Reynolds American** asking them to stop the production and distribution of any of their tobacco products with added flavoring "unless and until it can be proven by independent and evidence-based research that such added flavors do not contribute to youth initiation of tobacco use."

Trinity Health has a new resolution at **Philip Morris International** (PMI) along the lines of the proposals seen last year at Altria and Reynolds that failed to receive enough support for resubmission, asking for a report on the effect of marketing practices on the purchasing practices of the poor. In the case of PMI, the proponents are particularly concerned about the recruitment of young smokers in developing countries.

In addition to those proposals, a resolution asking **Reynolds American** to develop human rights policies, discussed in the Human Rights section of this preview, is motivated by concerns about the health effects of tobacco harvesting on farm laborers.

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