



Director Notes



Social Issues in the 2013 Proxy Season

by Thomas Singer

This report looks at the content of shareholder proposals on social issues that went to a vote at Russell 3000 companies during the 2013 proxy season, provides details about the topics that received the greatest overall support from shareholders, and offers examples of shareholder proposals and company disclosure on topics that were the subject of the voted proposals.

As documented in the forthcoming *Proxy Voting Analytics* report by The Conference Board, the volume of shareholder proposals on social and environmental issues has grown significantly over the past several years, accounting for more than one-third of shareholder proposals submitted at companies that held meetings during the first half of 2013, up from 28 percent in 2009.¹ Social and environmental policy proposals now represent the second-largest category of the four subject categories tracked, both in terms of total shareholder proposals filed and total voted proposals.

This report looks specifically at social proposals submitted at companies in the Russell 3000 that held their annual general meetings during the first half of the year. During

the period between January 1 and June 30, 2013, 179 shareholder proposals on social issues were filed, 104 of which (or 58.1 percent) went to a vote, constituting 21.1 percent of all voted shareholder proposals during the January—June period.² The commentary and analysis in the following pages focuses on these voted proposals.

Data for shareholder proposals on social issues appeared in company proxies from January 1 to June 30, 2013. Proposals are grouped into topics according to the content of the proposals. Additional details, including the text of sample proposals, are provided for the topics most frequently voted on by shareholders.

¹ Matteo Tonello, Melissa Aguilar, and Thomas Singer, *Proxy Voting Analytics (2009–2013)*, The Conference Board, Research Report 1532, forthcoming.

² FactSet data for Russell 3000 companies that held annual meetings during the period from January 1 to June 30, 2013.



Top Social Issues by Proposal Volume

The vast majority of social proposals during the 2013 season related to political issues, specifically those urging companies to disclose details of their political contributions and/or their lobbying activities. As shown in Table 1, 64 proposals on this topic were voted on during the January—June period, representing 61.5 percent of all social proposals that went to a shareholder vote. The next four most frequently voted topics each had less than 10 voted proposals during the period. These proposals urged companies to consider the following: amend their

equal employment opportunity (EEO) policy to prevent discrimination based on gender and sexual orientation; adopt a policy to prohibit the use of treasury funds for political contributions; require incorporation of company values in political and electioneering contribution decisions, or establish a board committee on human rights. Other notable topics included proposals asking companies to disclose the breakdown of workforce by race and gender, and proposals requesting companies review and amend their human rights policies.

Table 1 Voted shareholder proposals on social issues, by topic (2013)

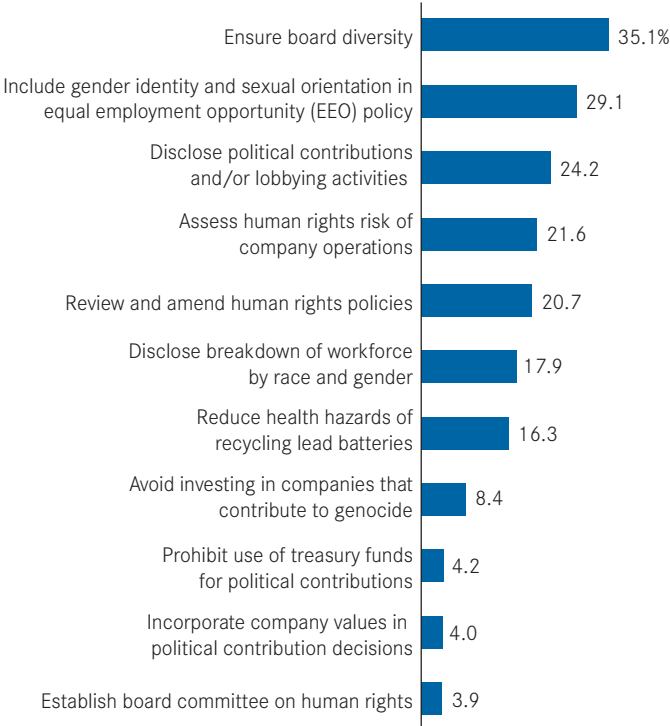
Topic	Number of voted proposals
Disclose political contributions and/or lobbying activities	64
Include gender identity and sexual orientation in equal employment opportunity (EEO) policy	7
Prohibit use of treasury funds for political contributions	6
Incorporate company values in political contribution decisions	5
Establish board committee on human rights	4
Disclose breakdown of workforce by race and gender	3
Review and amend human rights policies	3
Assess human rights risk of company operations	2
Ensure board diversity	2
Avoid investing in companies that contribute to genocide	2
Reduce health hazards of recycling lead batteries	2
Label products containing genetically engineered ingredients	1
Report how company policies support network neutrality	1
Report on privacy and data security risks	1
Review interrelation of charitable and political contributions	1

Source: The Conference Board/FactSet, 2013.

Top Social Issues by Average Shareholder Support

In 2013, the social proposals receiving the highest levels of shareholder support related to board diversity, equal employment opportunity (EEO) policies, disclosure of political contributions and/or lobbying activities, and human rights risks or policies. As shown in Chart 1, each of the top five social topics with highest support levels received average shareholder support of more than 20 percent of votes cast. Proposals related to ensuring board diversity received the highest average *for* votes (35.1 percent for the two proposals voted during the examined period), followed by proposals asking companies to amend their EEO policies to prevent discrimination based on gender identity and sexual orientation (29.1 percent for the seven voted proposals). The most frequently voted proposals—those requesting companies disclose their political contributions and/or lobbying activities—received the third-highest support with an average of 24.2 percent of *for* votes. In fourth places were proposals asking companies to assess the human rights risk of their operations (21.6 percent of *for* votes), followed by proposals asking companies to review and amend their human rights policies (20.7 percent of *for* votes).

Chart 1
Average support for social issues proposals, by topic (2013)
For votes as a percentage of votes cast



Note: Vote results shown only for topics with more than one voted proposal.
 Source: The Conference Board/FactSet, 2013.

Overview of Top Social Issues Topics

Disclosure of political contributions and/or lobbying activities

Shareholder proposals urging companies to disclose their political contributions and/or lobbying activities were by far the most frequently voted social proposals during the 2013 period. Proposals on this topic ranked third among voted social proposals in terms of support, receiving on average slightly less than one-quarter of *for* votes as a percentage of votes cast.

This topic represents an extension of continued and increasing shareholder efforts focused on expanding disclosure of corporate political spending. A growing number of shareholders view transparency of corporate political activities as an essential practice in evaluating whether a company's political activities are serving the interests of the company and helping manage potential risks, particularly when political activities may be at odds with stated company values.

Proposals on this topic also address indirect lobbying through membership in organizations such as trade associations. Shareholders are increasingly targeting companies' indirect lobbying activities, especially as corporate contributions to trade associations can amount to significant sums and are often unreported. This lack of transparency can make risks, including reputational risks, difficult to evaluate. The U.S. Chamber of Commerce, for example, reported in July total lobbying expenditures since 1998 of more than \$1 billion—a substantial figure considering that the next highest spender, General Electric, spent less than \$294 million over the same period.³

The following is an example of a proposal requesting greater disclosure on lobbying activities:

“Resolved: Shareholders of Peabody Energy Corporation (‘Peabody’) urge the board of directors (the ‘board’) to authorize the preparation of a report, updated annually, disclosing: 1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications. 2. Payments by Peabody used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient. 3. Peabody’s membership in and payments to any tax-exempt organization that writes and endorses model legislation. 4. Description of the decision-making process and oversight by management and the board for making payments described in section 2 above.

For purposes of this proposal, a “grassroots lobbying communication” is a communication directed to the general public that (a) refers to specific legislation or regulation, (b) reflects a view on the legislation or regulation and (c) encourages the recipient of the communication to take action with respect to the legislation or regulation. “Indirect lobbying” is lobbying engaged in by a trade association or other organization of which Peabody is a member. Both “direct and indirect lobbying” and “grassroots lobbying communications” include efforts at the local, state, and federal levels. The report shall be presented to the audit committee of the board or other relevant oversight committees of the board and posted on Peabody’s website.”⁴

³ Center for Responsive Politics, July 23, 2013 (www.opensecrets.org/news/2013/07/billion-dollar-baby-us-chamber-is-first-to-hit-lobbying-milestone.html).

⁴ Peabody Energy Corporation proxy statement, filed March 20, 2013, p. 62 (www.peabodyenergy.com).

Example of Company Disclosure of Trade Association and Policy Group Memberships and Contributions

PepsiCo is an example of a company that provides public disclosure on its website of its contributions to trade associations and policy groups that lobby at the federal and state level.

2012 Trade Associations and Policy Groups

PepsiCo discloses contributions to U.S. trade associations and policy groups of which PepsiCo is a member and which lobby in the U.S. at the state and federal level. The contribution ranges reflect total giving – not only annual dues, but often sponsorships for events and programs which are not affiliated with lobbying. This is especially true of associations in which PepsiCo participates due to customer relationships. For organizations over \$100,000 in contributions, PepsiCo has provided the percentage of the amount which is not deductible for business expenses because it is utilized for lobbying.

Contributions \$25,000 - \$50,000

California Chamber of Commerce
Coalition for U.S.-Russia Trade
Colorado Beverage Association
Democratic Governors Association
International Franchise Association
Iowa Beverage Association
Juice Products Association
Kansas Beverage Association
Kentucky Beverage Association
Maine Beverage Association
Massachusetts Beverage Association
Missouri Beverage Association
National Association of Manufacturers
National Yogurt Association
North Carolina Beverage Association
Oklahoma Beverage Association
Republican Governors Association
Republican State Leadership Committee
Republican Attorney Generals Association
Rhode Island Beverage Association
School Nutrition Association*

Sweetener Users Association
U.S. Council of International Business
Virginia Beverage Association
Washington Beverage Association
Wisconsin Beverage Association

Contributions \$50,000 - \$100,000

Arkansas Beverage Association
(California) Plastics Recycling Corporation
Florida Beverage Association
Hoosier (Indiana) Beverage Association
Illinois Beverage Association
Maryland/Delaware/DC Beverage Association
National Association of Automated Merchandisers*
Texas Beverage Association
West Virginia Beverage Association

Contributions \$100,000-\$250,000

Association of National Advertisers (12%)
Business Roundtable (36%)
California Nevada Soft Drink Association (10%)

Food Marketing Institute (8%)
Georgia Beverage Association (39%)
Michigan Soft Drink Association (20%)
Minnesota Beverage Association (20%)
National Grocers Association** (15%)
National Restaurant Association** (100%)
New York State (Pepsi-Cola) Bottlers Association (8%)
Ohio Soft Drink Association (10%)
South Carolina Beverage Association (9%)
Snack Food Association (15%)
Tennessee Beverage Association (proxy tax paid by association)

Contributions \$250,000-\$500,000

National Association of Convenience Stores** (58%)
U.S. Chamber of Commerce*** (50%)
Contributions over \$1,000,000
American Beverage Association (43%)
Grocery Manufacturers Association (27%)

* Does not utilize any PepsiCo contributions for lobbying.

** Contributions are largely utilized for programs/sponsorships and not utilized for lobbying. Percentage is only based on dues portion of contribution.

*** Contribution above \$250,000 reflects funding earmarked to specific country business councils.

Source: PepsiCo website (www.pepsico.com).

Gender identity and sexual orientation in equal employment opportunity policies

Proposals urging companies to revise their equal employment opportunity policies to specifically include gender identity and sexual orientation were the second most frequently voted during the examined period. Proposals on this topic also received the second-highest level of support, on average, more than 29 percent of *for* votes.

Data from the Human Rights Campaign shows that the inclusion of gender identity and sexual orientation in such policies has increased dramatically among Fortune 500 companies in the last decade: In 2013, 88 percent of Fortune 500 companies included sexual orientation in their non-discrimination policies, and 57 percent included gender identity. In 2002, by comparison, 61 percent included sexual orientation and only 3 percent included gender identity as part of their non-discrimination policies.⁵

Shareholders are pressing companies to include gender identity and sexual orientation in their nondiscrimination policies both from a human rights standpoint and a business standpoint. From a human rights standpoint, for example, the exclusion of gender identity and sexual

orientation from nondiscrimination policies tacitly allows companies to offer unequal health benefits to employees with same-sex partners. From a business standpoint, the lack of an inclusive nondiscrimination policy can also expose a company to reputational and litigation risk, and can potentially reduce the company's talent pool by alienating potential applicants.

Companies not currently including gender identity in their nondiscrimination policies may need to review their policies: On April 20, 2012, the Equal Employment Opportunity Commission (EEOC) ruled that an employer who discriminates against an employee or applicant on the basis of the person's gender identity violates the prohibition on sex discrimination contained in Title VII of the Civil Rights Act of 1964.

The following text is an example of a proposal on this topic:

"Resolved: The shareholders request that Universal Forest Products amend its written equal employment opportunity policy to explicitly prohibit discrimination based on sexual orientation and gender identity and to substantially implement the policy."⁶

IBM Workforce Diversity Policy

IBM is an example of a company with an equal employment opportunity policy that includes sexual orientation and gender identity.

Business activities such as hiring, training, compensation, promotions, transfers, terminations and IBM-sponsored social and recreational activities are conducted without discrimination based on race, color, genetics, religion, gender, gender identity or expression, sexual orientation, national origin, disability, age or status as a special disabled veteran or other veteran covered by the Vietnam Era Veterans Readjustment Act of 1974, as amended.

These business activities and the design and administration of IBM benefit plans comply with all applicable federal, state and local laws, including those dealing with equal opportunity. IBM also makes accommodation for religious observances, which IBM determines reasonable. In respecting and valuing the diversity among our employees and all those with whom

we do business, managers are expected to ensure that there is a work environment free of all forms of discrimination and harassment.

To provide equal opportunity and affirmative action for applicants and employees, IBM carries out programs on behalf of women, minorities, people with disabilities, special disabled veterans and other veterans covered by the Vietnam Era Veterans Readjustment Act of 1974, as amended. This includes outreach as well as human resource programs that ensure equity in compensation and opportunity for growth and development.

Effective management of our workforce diversity policy is an important strategic objective. Every IBM manager is expected to abide by this policy and uphold the company's commitment to workforce diversity.

Source: IBM website (www.ibm.com)

5 *Corporate Equality Index 2013*, Human Rights Campaign, p. 6 (www.hrc.org/files/assets/resources/CorporateEqualityIndex_2013.pdf).

6 Universal Forest Products Inc. proxy statement, filed March 4, 2013, p. 14 (www.ufpi.com/).

Ban on treasury funds for political contributions

During the 2013 period, six voted proposals requested that companies prohibit the use of treasury funds for political contributions, making this the third-most voted topic among social proposals during the examined period. However, proposals on this topic received very low support, on average, just over 4 percent of *for* votes.

The following text is an example of a proposal on this topic:

“RESOLVED: The shareholders request that the board of directors study the feasibility of adopting a policy prohibiting the use of treasury funds for any direct or indirect political contributions intended to influence the outcome of an election or referendum, and report to shareholders on its findings by October 2013.”⁷

Incorporate company values in political and electioneering contribution decisions

The fourth-most voted social proposal sought to ensure that company values are incorporated into their political contribution decisions. Support for these proposals was low, with average shareholder support of only 4 percent of *for* votes.

This topic is in many ways related to the previously discussed issue of transparency in lobbying activities. Shareholders are increasingly sensitive to contradictions between publically stated company values and corporate support of political organizations and candidates who do not share the same values. Disclosure of political contributions can help determine whether a company’s support of organizations and political candidates is in line with overall company values, including environmental and social policies.

For example, over the last few years, several companies that are members of the U.S. Chamber of Commerce have found their company policies and initiatives regarding climate change to be at odds with the Chamber’s lobbying efforts to defeat regulation of greenhouse gases. As a result, some companies chose to distance themselves from the Chamber or, in some cases, discontinued their membership.⁸ Similarly, several donor companies with well-established sustainability efforts decided in 2012 to discontinue funding the Heartland

Political Contributions, Reputation, and Company Values

Target is an example of the potential reputational risk of misaligning political contributions with company values.

In 2010 Target experienced a blow to its reputation as the company faced protests and negative publicity associated with a particular political contribution. The company donated \$150,000 to MN Forward, a nonprofit which backed a pro-business candidate who opposed gay rights. Target, which itself had a progressive policy and was lauded in the past by gay rights advocates for its stance on gay and lesbian issues, faced angry customers and calls for boycotts.

In 2011, Target reviewed and revised its policy on political contributions, prohibiting trade associations from using Target contributions to support candidates or to influence elections or ballot initiatives. However, a number of shareholders have urged Target, as well as other companies, to go a step further and prohibit the use of its corporate funds for political campaigns.

Source: Devin Dwyer, “Retailers Revamp Political Giving Policies Ahead of 2012 Campaign,” ABC News, March 14, 2011 (<http://abcnews.go.com/Politics/retailers-target-best-buy-revise-political-spending-policies/story?id=13118553>).

Institute after the institute ran an ad campaign comparing climate change believers to a serial killer.⁹

The following text is an example of a proposal urging a company to incorporate its values into its political contribution decisions:

“Resolved: Shareholders request that the board of directors create and implement a policy requiring consistent incorporation of corporate values as defined by Ecolab’s stated policies (including our equal opportunity policy, and statements such as those in “Our Principles” and “Our Purpose and Values”) into company and [Ecolab Inc. Political Action Committee] ECOPAC political and electioneering contribution decisions, and to report to shareholders at reasonable expense and excluding confidential information on a quarterly basis regarding any electioneering or political contribution expenditures occurring during the prior quarter, identifying any contributions that raised an issue of incongruency with corporate values, and stating the justification for any such exceptions.”¹⁰

7 ExxonMobil Corporation proxy statement, filed April 12, 2013, p. 68 (www.exxonmobil.com).

8 David A. Fahrenthold, “Apple Leaves U.S. Chamber over Its Climate Position,” *Washington Post*, October 6, 2009 (http://articles.washingtonpost.com/2009-10-06/news/36883170_1_greenhouse-gas-emissions-climate-legislation-climate-policy).

9 Suzanne Goldenberg, “Big donors ditch rightwing Heartland Institute over Unabomber billboard,” *Guardian*, May 9, 2012 (www.theguardian.com/environment/2012/may/09/heartland-institute-donors-lost-unabomber-ad).

10 Ecolab Inc. proxy statement, filed March 15, 2013 (www.ecolab.com).

Addressing Human Rights Issues at the Board Level

NIKE's Corporate Responsibility Committee Charter offers an example of how the company addresses human rights issues at the board level.

The corporate responsibility committee shall be composed of at least two members of the board of directors. The committee shall review NIKE's significant activities and policies regarding labor and environmental practices, community affairs, charitable and foundation activities, diversity and equal opportunity, and environmental and sustainability initiatives, and make recommendations to the board of directors.

More specifically, the responsibility and duties of the corporate responsibility committee shall include:

- 1 Review the activities of the NIKE Foundation and community involvement by NIKE on a regular basis.
- 2 Review and provide guidance to management on environmental impact, and sustainability issues.
- 3 Review, provide guidance to management, and report to the board of directors on NIKE's labor practices, and review reports of the NIKE's internal labor and environmental compliance audits.
- 4 Review, provide guidance to management, and report to the board of directors regarding the involvement of significant corporate responsibility issues in major business decisions, to protect NIKE's valuable goodwill, and human and intellectual capital.
- 5 Review and report to the board of directors regarding NIKE's engagement of environmental or labor auditors, and NIKE's work with industry organizations and non-governmental organizations concerning corporate responsibility.
- 6 Review and make recommendations to management on reporting to shareholders and other communities regarding corporate responsibility activities.
- 7 Perform such other duties and functions as may, from time to time, be assigned to the committee by the board.

Source: NIKE Inc. website (www.nikeinc.com)

Establishment of board committee on human rights

The fifth-most voted social proposal topic during the 2013 period urged companies to establish a separate board committee on human rights. These proposals received average support of 3.9 percent of *for* votes, the lowest support level among social proposals.

Company responses to proposals on this topic indicate that, in many cases, issues related to human rights are often covered within the charters of existing board committees, making these proposals unnecessary and redundant. This, for example, was the response by HP's board of directors, which recommended voting against a proposal brought by Jing Zhao asking the company to establish a human rights committee to review, assess, disclose, and make recommendations to enhance the company's corporate policy and practice on human rights.¹¹

The following text is an example of a proposal requesting a company establish a board committee on human rights:

"Resolved: Shareholders recommend that Goldman Sachs Group establish a human rights committee to review, assess, disclose, and make recommendations to enhance the company's corporate policy and practice on human rights. The board of directors is recommended, by resolution, in its discretion and consistent with applicable laws to: (1) adopt Goldman Sachs human rights principles, (2) designate the members of the committee, including outside relevant human rights experts, (3) provide the committee with sufficient funds for operating expenses, (4) adopt a charter to specify the powers of the committee, (5) empower the committee to solicit public input and to issue periodic reports to shareholders and the public, on the committee's activities, findings and recommendations, and (6) adopt any other measures."¹²

11 Hewlett-Packard Company proxy statement, filed January 31, 2013, p. 53 (www.hp.com).

12 Goldman Sachs Group, Inc. proxy statement, filed April 12, 2013, p. 62 (www.goldmansachs.com).

Conclusion

Shareholder proposals on social issues accounted for a significant portion of proposals during the 2013 proxy season—comprising more than one-third of the total proposals filed during the examined period, and more than one-fifth of proposals that went to a vote at the annual meeting.

This proxy season confirmed shareholders' growing interest in wider disclosure of corporate political activities, as proposals related to the disclosure of political spending and lobbying activities accounted for well over half of all voted social

proposals. Company directors can expect shareholders to continue to push for greater disclosure and transparency on corporate political contributions. Proposals requesting more inclusive equal opportunity policies and proposals related to human rights issues are also likely to gain traction in future proxy seasons. Directors may be increasingly urged to review and/or amend existing company non-discrimination policies, and to addresses issues related to human rights, including operational risks.



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