



Shareholder Activism and Litigation in the United States

PATHS FOR GOVERNANCE REFORM



Shareholder Proposals

SHAREHOLDER PROPOSALS ARE A COMMON ROUTE PURSUED BY INVESTORS SEEKING CHANGE, BUT PASS RATES ARE LOW

Shareholder Proposal Pass Rate, by Index (2022-2018)

Percent of voted proposals receiving majority support

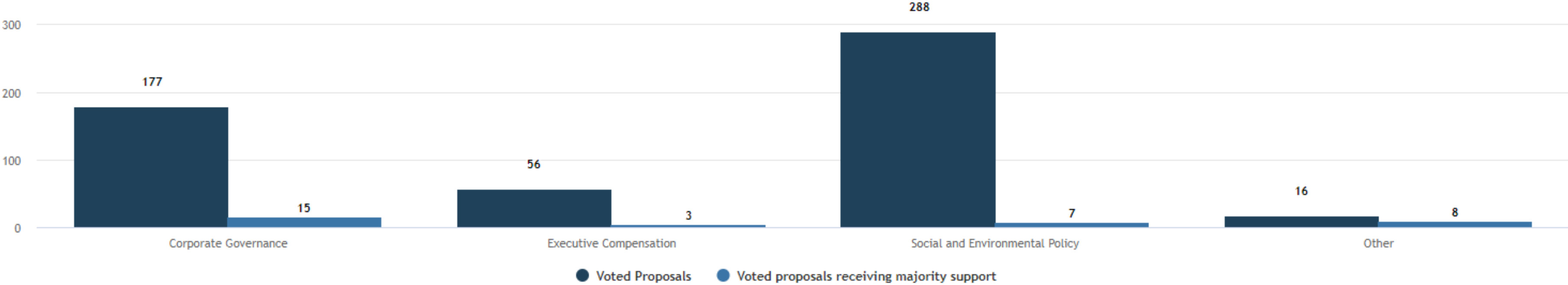
	S&P 500			Russell 3000		
	Voted proposals	Voted proposals receiving majority support	Percent of total	Voted proposals	Voted proposals receiving majority support	Percent of total
2022	437	46	10.5%	555	82	14.8%
2021	359	59	16.4%	480	113	23.5%
2020	354	36	10.2%	463	68	14.7%
2019	326	30	9.2%	443	67	15.1%
2018	328	22	6.7%	442	60	13.6%

Source: ESGAUGE, 2022.

Shareholder Proposals

IN 2023, PASSAGE RATES ON SOCIAL AND ENVIRONMENTAL PROPOSALS WERE UNDER 3%

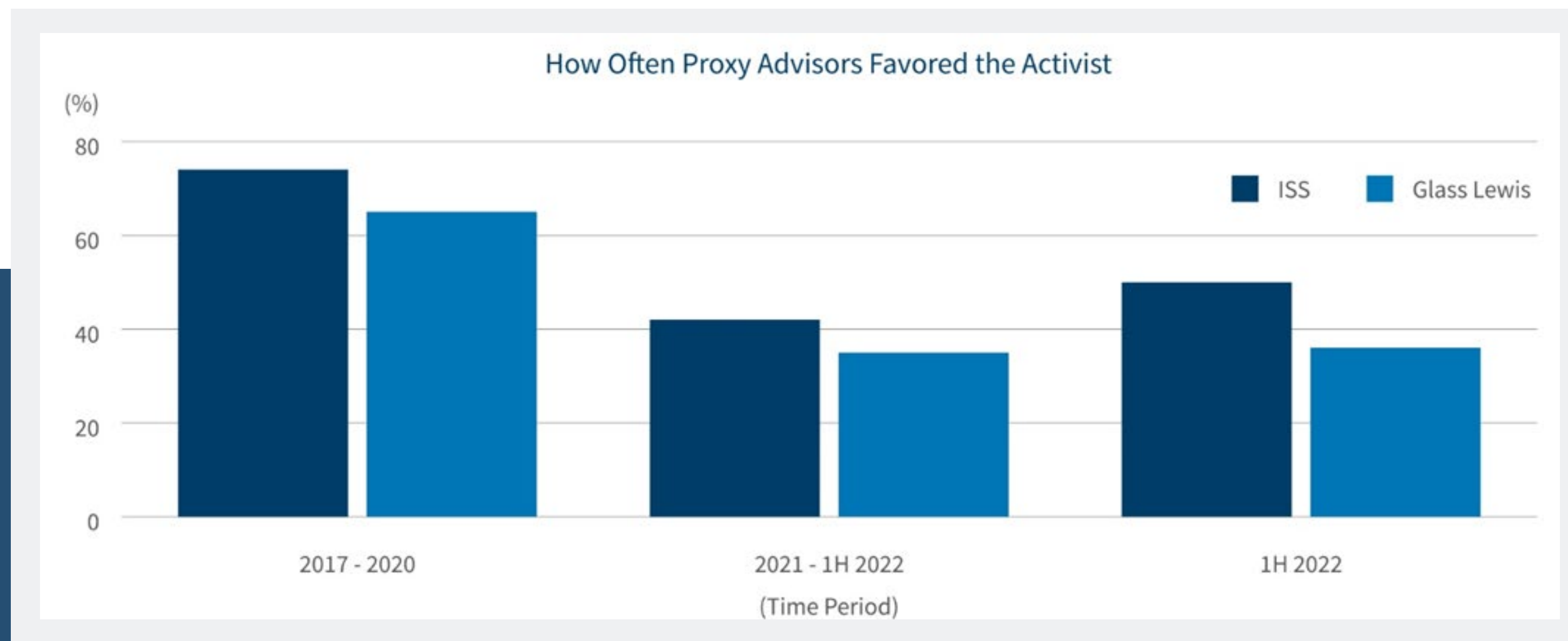
SHAREHOLDER PROPOSAL PASS RATE
Russell 3000, 1/1/2023-6/30/2023, By Subject



Source: The Conference Board and ESGAUGE

Proxy Fights

AN ACTIVIST ALMOST ALWAYS NEEDS BOTH ISS' AND GLASS LEWIS' SUPPORT TO WIN A CONTEST, BUT THE ADVISORS' SUPPORT HAS LESSENERED IN RECENT YEARS

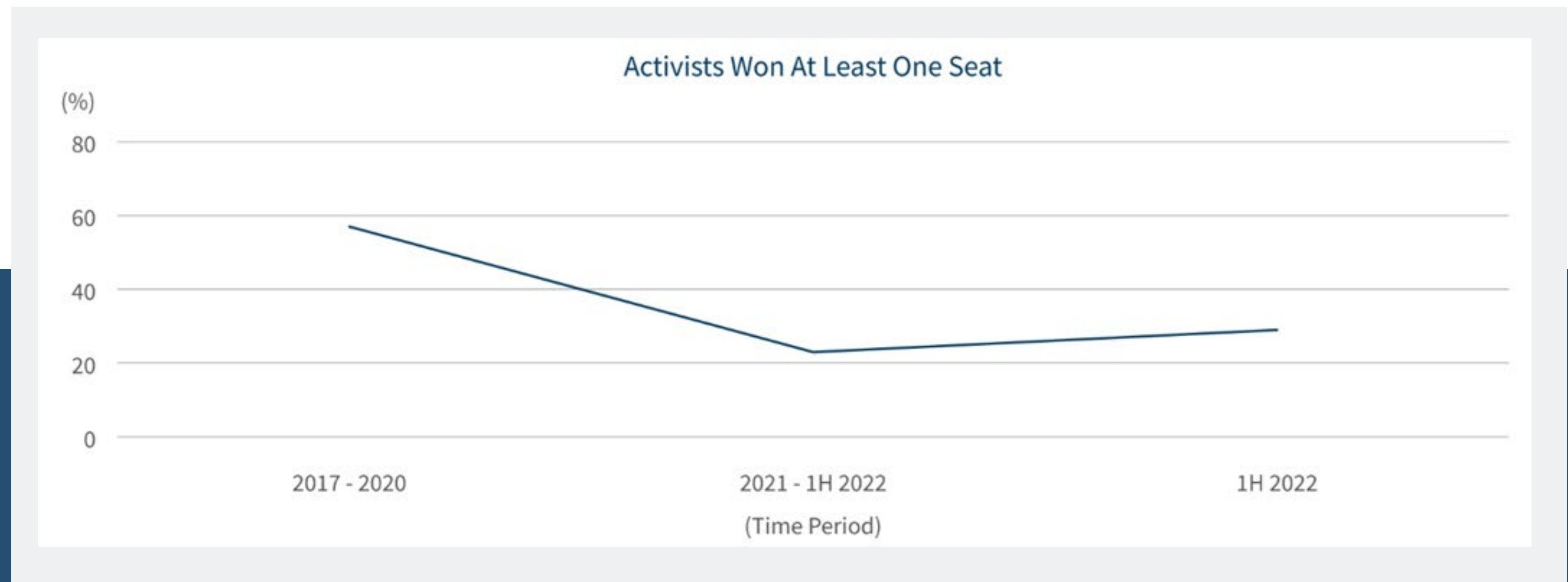


Proxy Fights

UNSURPRISINGLY, SUCCESS HAS BEEN ON THE DECLINE

PROXY CONTESTS
SEEKING BOARD
SEATS, OUTCOMES
2017-2022

U.S. COMPANIES,
MARKET CAP \$100
MM+,
*RECOMMENDATIONS
PUBLISHED BY ISS AND
GLASS LEWIS*



Proxy Fights

FURTHERMORE, COSTS ARE OFTEN SIGNIFICANT FOR BOTH ACTIVISTS AND COMPANIES

- *Proxy solicitation accounts for a relatively small share of the total cost*
- *Companies and activists spend more on attorneys, bankers, public relations, consultants, and other advisors*
- *As of [November 2021](#), an activist must now intend to solicit enough shareholders to reach votes of 67% of the outstanding shares*

PROXY CONTEST COSTS (\$MM)
2017-2020

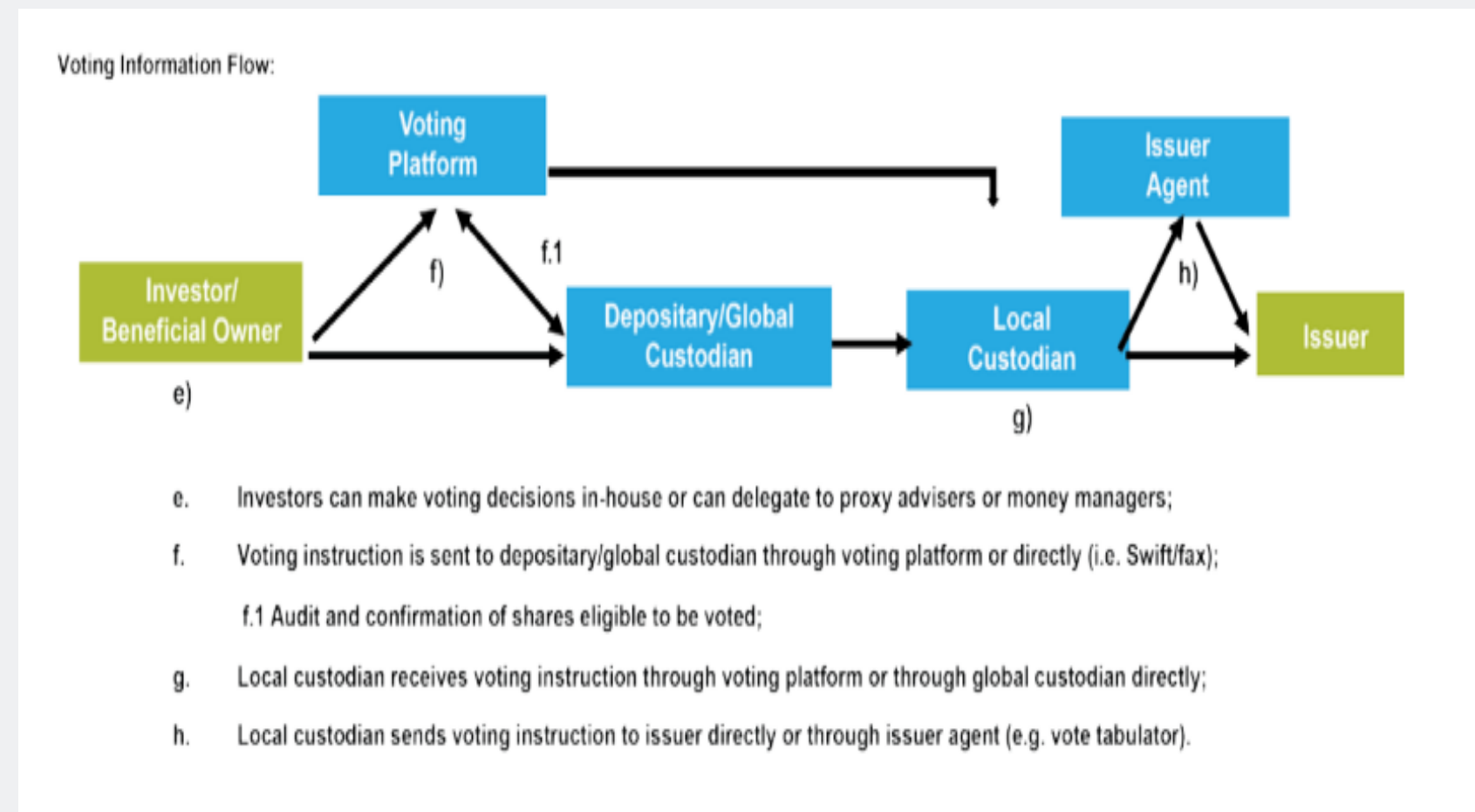
	Average	Low	Median	High
Total cost				
Company	3.9	0.06	1.7	35
Activist	1.8	0.02	0.8	25
Proxy solicitation cost				
Company	0.5	0.01	0.3	3.5
Activist	0.3	0.01	0.1	2.5

SHAREHOLDER PARTICIPATION

- *Among non-required voters, the shareholder participation rate in the US tends to hover around 73% to 77%.*
 - *<https://corpgov.law.harvard.edu/2017/06/16/what-determines-participation-in-corporate-voting/>*
- *Small retail investors typically handle their shares through the proxy voting system. Retail investors and index fund investors are much more likely to default to the recommendations given by ISS/GL. It seems like this is where ISS/GL get a lot of the weight behind their recommendations.*
 - *<https://corpgov.law.harvard.edu/2025/05/05/testimony-in-house-hearing-exposing-the-proxy-advisory-cartel-how-iss-glass-lewis-influence-markets-2/>*

INTERNATIONAL PARTICIPATION

- When it comes to the US, international shareholders typically vote via proxy (49% of the time), or in house (41% of the time), as opposed to delegating their voting power to money managers (16% of the time).
- Typically, the process for voting for international investors looks like this:



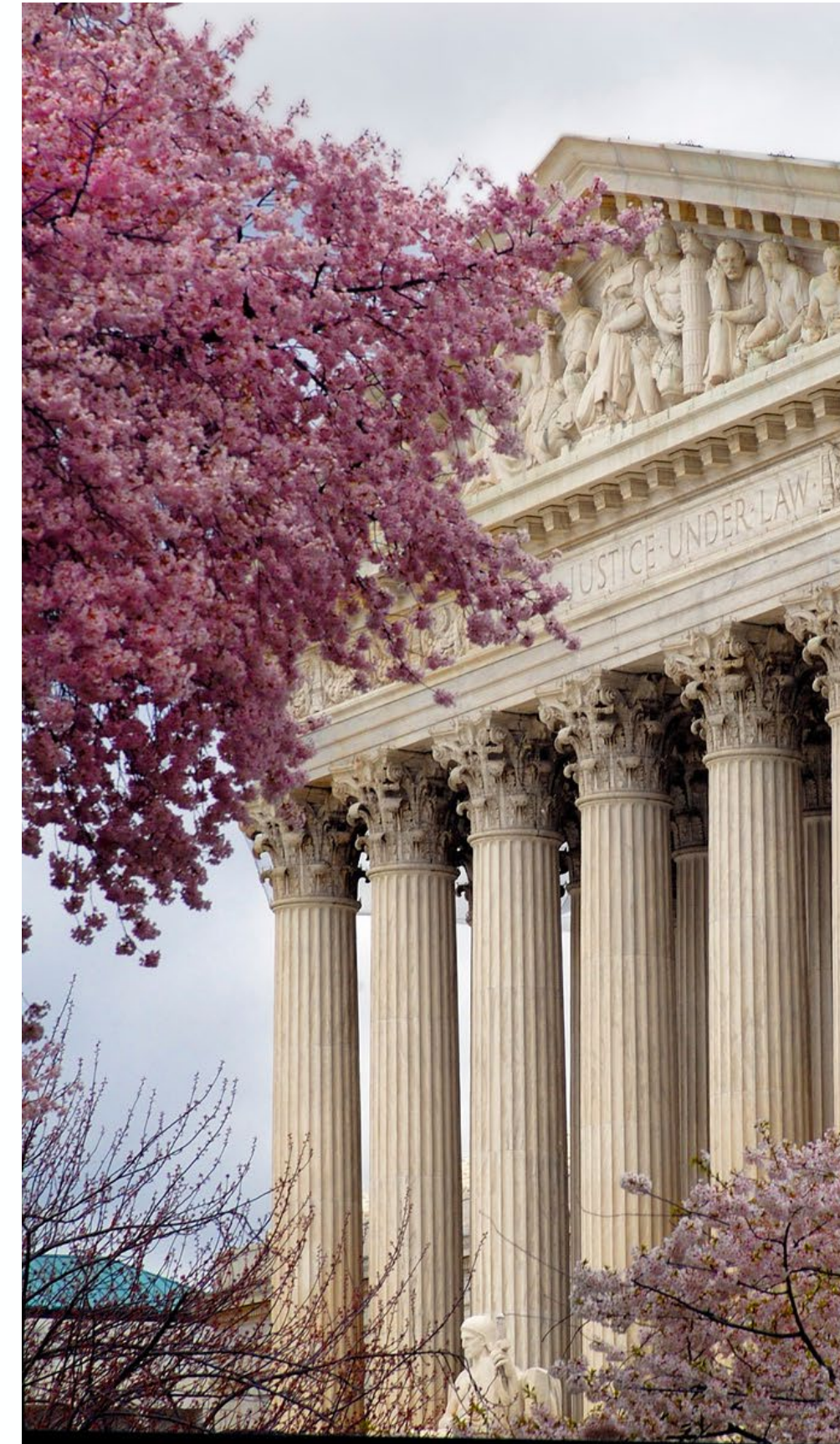
2025 THEMES – LARGE ACTIVISTS

- *If regulatory and market conditions become more favorable for M&A in 2025, activists may once again increase their focus on event-driven M&A outcomes, and also increase their interest in break ups.*
- *Activists privately submitting nomination notices at companies, sometimes naming individuals from the activist's fund as director nominees, often without any intention of actually running for election.*
- *A new 2025 Compliance and Disclosure Interpretation and revised an existing C&DI, providing guidance on what can lead to loss of Schedule 13G eligibility for institutional investors.*
 - *expands the types of engagement that could be deemed to have the “purpose or effect of changing or influencing control.”*
 - *unintended asymmetry if institutional investors have more detailed discussions about their interests and voting intentions with activist funds, but not with companies*

A Safe Environment for Investment

THE U.S. SECURITIES AND ANTITRUST
LAWS STILL PROVIDE THE STRONGEST
INVESTOR PROTECTIONS IN THE
WORLD

Sophisticated investors domiciled around the globe are increasingly availing themselves of the recourse offered in U.S. courts



Derivative Litigation as a Resource

PENSION FUNDS HAVE BEGUN TO LEVERAGE THEIR POWER AS SHAREHOLDERS TO EFFECT CORPORATE CHANGE THROUGH DERIVATIVE LITIGATION



**\$735 MILLION
SETTLEMENT PLUS
CORPORATE
THERAPEUTICS**

TESLA
**final settlement approval pending*



**\$237.5 MILLION
SETTLEMENT PLUS
CORPORATE
THERAPEUTICS**

BOEING



**\$50 MILLION
SETTLEMENT PLUS
CORPORATE
THERAPEUTICS**

PINTEREST



**\$240 MILLION
SETTLEMENT PLUS
CORPORATE
THERAPEUTICS**

WELLS FARGO



"We pushed for these sweeping reforms to support Pinterest's employees with a fair and safe workplace, and to strengthen the company's brand and performance by ensuring that the values of inclusiveness are made central to Pinterest's identity."

- Rhode Island Treasurer Seth Magaziner



Committed \$50 million to a series of reforms to increase diversity, equity, and inclusion across the company, including:

- Requirement that a board member act as a co-sponsor with the chief executive on diversity, equity, and inclusion initiatives
- Release of former employees from nondisclosure agreements
- Creation of an external ombudsman office for employees
- Requirement of external audits that review performance ratings, promotions, and compensation across gender and racial categories
- Creation of a dedicated inclusive product team
- Diversity reports distributed to shareholders describing progress made in implementing pay equity and DEI goals

Propelling the Change We Need

FUNDS HAVE FOUND SUCCESS
SECURING CORPORATE GOVERNANCE
REFORMS AS PART OF SETTLEMENTS



- Inclusion of BP's operational health, safety, and environmental performance in the principles used to calculate performance pay to executives
- Implementation of annual meetings with members of the 20 largest shareholders, including investors of ADRs
- Improvement of shareholder access to company management by broadcasting the annual shareholder meeting
- Withdrawal of a portion of ex-CEO Lord John Browne's multimillion-dollar severance package

TOOLS FOR CHANGE



- Creation of an Aerospace Safety Committee responsible for all airplane safety issues
- Modification of senior executive compensation incentives to include specific consideration of adherence to and promotion of safety initiatives
- Replacement of many board members serving during 737 MAX crashes with individuals with ~~a~~ safety and aviation industry experience
- Appointment of an independent ombudsman for at least five (5) years to receive internal employee concerns, conduct independent investigation of such concerns, and report on findings
- Amendment of Boeing's bylaws to require separation of CEO and board chair positions
- Require Boeing to provide an annual public report on safety related enhancements implemented since the 737 MAX air disasters



- Board members agreed to:
 - collectively return \$735 million in past compensation
 - permanently forgo compensation for 2021-2023
 - to have future compensation examined by an independent consultant
- Non-director stockholders will be given a chance to vote on future board compensation

*final settlement approval pending

"Private lawsuits promote public and global confidence in our capital markets and help to deter wrongdoing and to guarantee that corporate officers, auditors, directors, lawyers, and others properly perform their jobs."

- *The Private Securities Litigation Reform Act*

Recent Changes to Delaware Law

AMENDMENTS TO DELAWARE GENERAL CORPORATION LAW SECTION 144 AND SECTION 220 WILL AFFECT THE RIGHTS OF SHAREHOLDERS

1

Expands safe harbors applicable to transactions and acts involving interested directors and officers and controlling stockholders, lessening the risk of liability for such individuals and entities.

The amendment makes several reforms, such as providing a definition of “controlling stockholder”; allowing “single-trigger” cleansing (using either a board/committee vote or a stockholder vote) of most interested-party transactions other than a controller take-private and pares back some recent case law developments.

2

Dramatically limit the universe of obtainable books and records for stockholder inspection.

The biggest legislative change involves restricting documents that stockholders may access to a statutory list: largely board materials, minutes, financial statements, and the charter and bylaws, largely eliminating the possibility of securing directors’ and officers’ communications.

Delaware Law Changes: Takeaways

10B-5 CASES WILL REMAIN AN AVENUE FOR GOVERNANCE REFORM

investors should:

1

Not panic.

The changes largely address interested-party transactions, which are but one part of the corporate law universe. The changes are material and will limit corporate and D&O liability in important ways that will have important consequences -- and no doubt encourage potentially questionable interested-party transactions -- but they will not turn all of Delaware law on its head. Delaware remains by far the strongest venue for shareholder derivative claims in the United States, if not the world.

2

Lean on securities class action lawsuits as avenues for governance reform.

The new restriction of documents available to shareholders via books and records requests -- a cornerstone of shareholder derivative lawsuits -- could materially limit the ability of these lawsuits to serve as avenues for governance change. Discovery via books and records requests provides the evidence that shareholders need to bring derivative lawsuits. Limiting discovery means limiting evidence means limiting recourse. However, the proposed reforms do not impact the federal securities laws, and suits brought under those laws continue to offer strong opportunities for governance reform, both through deterrence and during settlement negotiations.

Shareholder Proposals and the Trump Administration

THE SEC IN FEBRUARY REINSTATED MORE LENIENT STANDARDS FOR EXCLUSION

The February 2025 Guidance pertains to “no action” requests, an informal process through which the SEC evaluates a security issuer’s claim that a shareholder proposal should be excluded from its proxy statement. The Guidance provides updated interpretations on a range of bases for exclusion, all of which generally tilt the analysis in favor of excluding shareholder proposals.



The Role of Whistleblowers

THE SEC INCENTIVIZES WHISTLEBLOWERS TO BRING FORWARD INFORMATION ABOUT MARKET MISCONDUCT – RECEIVING A BOUNTY OF 10%-30%

In 2024, the SEC was using information from whistleblowers for a large percentage of its investigations.

Whistleblowers have been very effective in helping reveal problems in the US securities markets.

Whether they continue to be used and effective under the new administration remains to be seen.





Thank You



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