



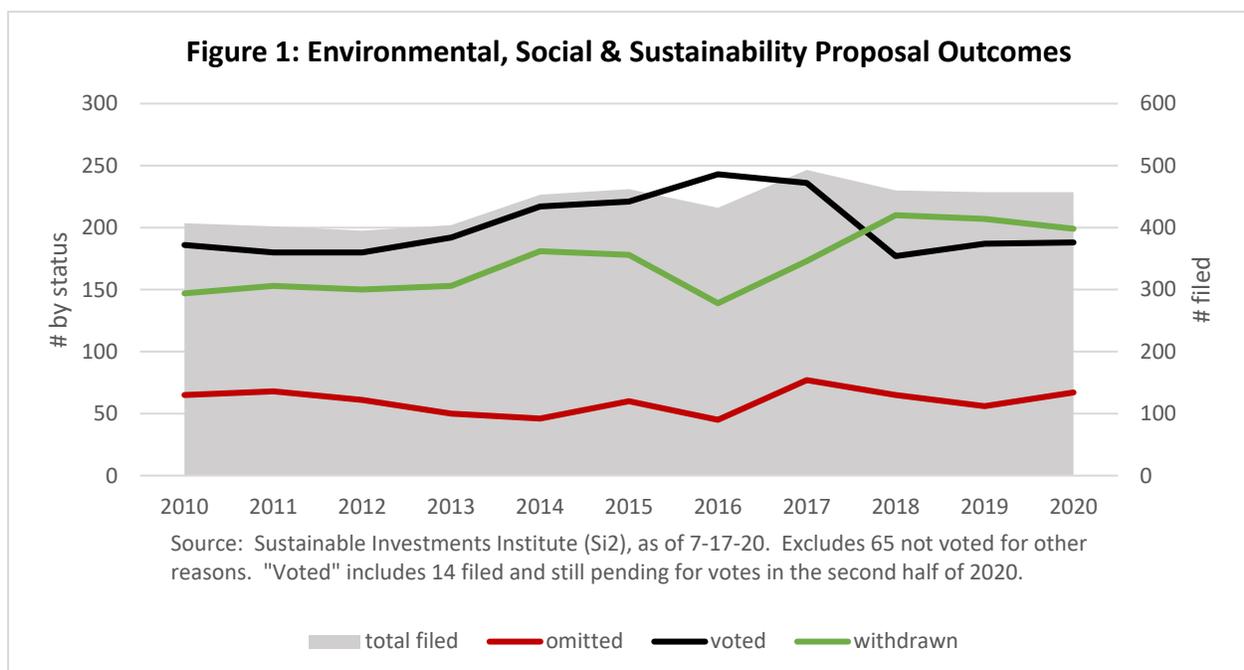
Comparative Impact of Proposed Rule 14a-8: Social and Environmental Policy Shareholder Resolutions

July 28, 2020

Building on the analysis submitted as a comment to the Securities and Exchange Commission on February 3, 2020, the Sustainable Investments Institute (Si2) has examined the impact the proposed changes to Rule 14a-8 would have on resubmission eligibility for resolutions voted on in 2020. Si2 provides impartial research to leading institutional investors about shareholder engagement issues, particularly those raised in shareholder proposals. The analysis in this report is focused on shareholder proposals about social and environmental issues and related corporate governance matters. Updated contextual information for filings trends and outcomes through mid-July 2020 is included in this report.

As of mid-July, investors had voted on 172 resolutions in 2020, while at least 14 more proposals were pending for additional votes through the end of the year. As shown below, the number of resolutions withdrawn has exceeded the number voted upon for the last three years, while the number omitted after company challenges under Rule 14a-8 has shifted slightly but remained fairly consistent.

Filings trend: Overall filings (*shown on the secondary, right-hand axis in Figure 1, in gray shading*) have grown 12 percent since 2010; 2017 saw the greatest number (493) and 2011 the least (402). The number of proposals going to a vote rose to a high of 243 in 2016 and has dropped since. Withdrawals have

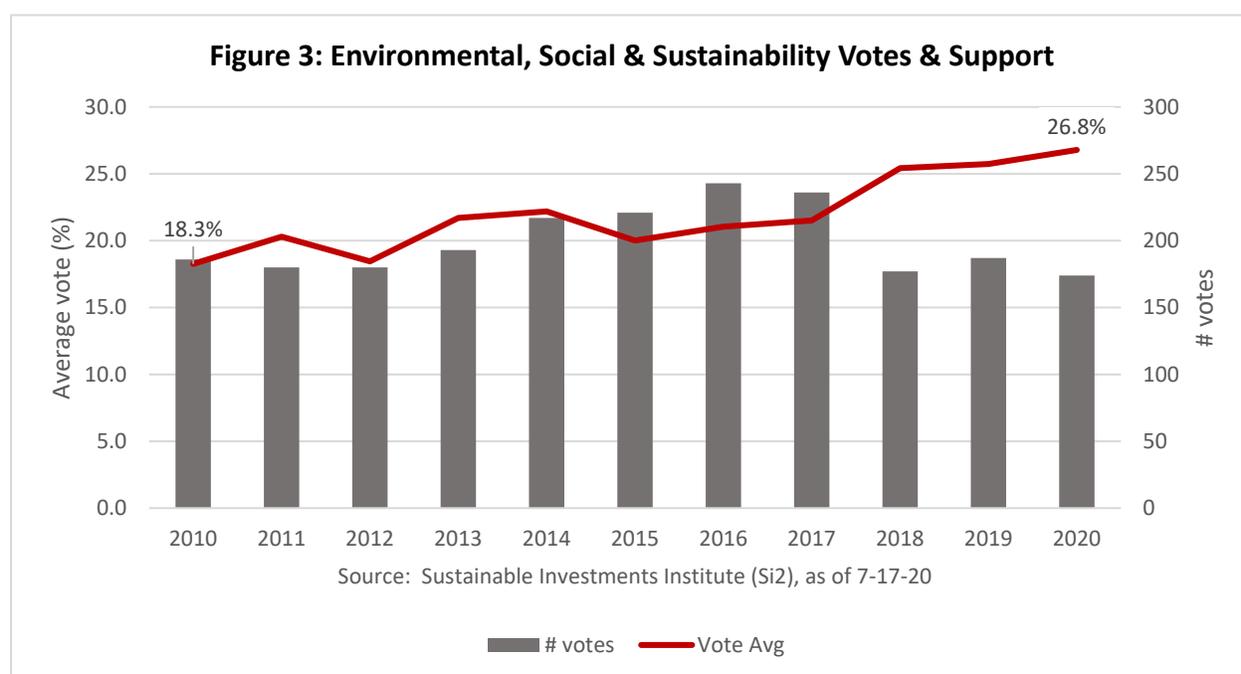


increased in number, up 35 percent since 2010, generally because of a growing likelihood companies will agree to investor requests for more disclosure. Nearly all proposals seek additional disclosure. Investors have voted on almost 2,200 shareholder proposals since 2010.

Issues: Just over one-third of proposals voted have asked for oversight and disclosure about corporate political spending and lobbying. Other leading issue categories voted on relate to climate change and human rights and—increasingly in 2019 and 2020—decent work (fair pay and working conditions). Human capital management issues that include both decent work and workplace diversity have significantly increased in the last three years, accounting for one-fifth of all votes in 2020. (Figure 2.)

Figure 2: Social and Environmental Topics Voted, 2010-20									
Topic	2010-15	2016	2017	2018	2019	2020	Total	% All Votes	% 2020 Votes
Social (Political Spending/Lobbying)	438	79	73	60	62	56	768	35%	32%
Environment (Climate Change)	198	55	46	26	18	16	359	16%	9%
Social (Human Rights)	111	32	26	17	24	20	230	10%	11%
Governance (Sustainability)	94	25	22	22	13	15	191	9%	9%
Other Environment	122	14	16	14	11	8	185	8%	5%
Governance (Board Diversity/Oversight)	66	14	14	13	17	14	138	6%	8%
Social (Decent Work)	26	11	20	7	29	25	118	5%	14%
Social (Workplace Diversity)	62	7	14	7	8	11	109	5%	6%
Other Issues	60	29	32	37	35	39	39	2%	22%
Total	1177	243	236	177	187	174	2194		

Support: Average shareholder support for social and environmental issues has steadily increased, from 18.3 percent in 2010 to 26.8 percent so far in 2020, but the number going to votes in the last three years is much lower than the all-time highs between 2014 and 2017. (Figure 3.)



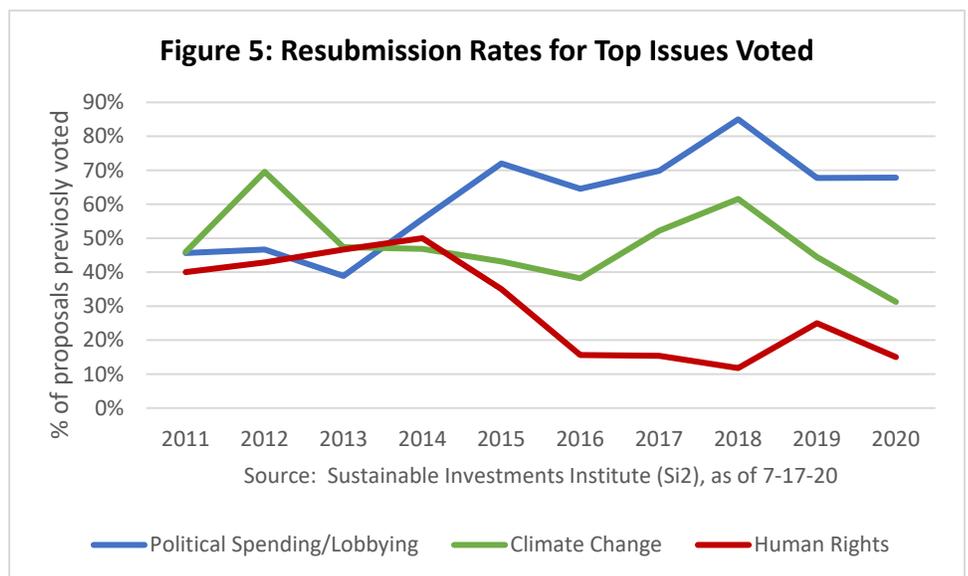
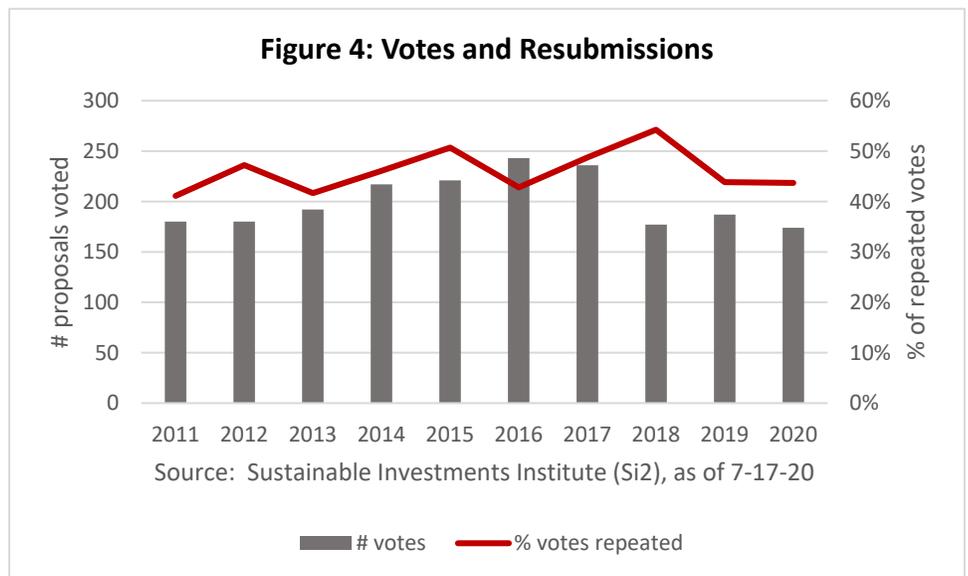
Resubmissions

To understand the impact of the proposed changes to Rule 14a-8, one must know the extent to which proposals are resubmitted, what happens when proposals go to a vote again, and the number of such proposals that would not qualify for resubmission. Knowing these figures enables evaluation of the main premise for any need for an increase in resubmission requirements—that shareholder proponents repeatedly refile resolutions on issues of no concern to most investors, taking up too much time on immaterial concerns. In other words, the argument goes, there are “zombie” proposals. A fact-based analysis reveals this premise is flawed.

Si2 reached this conclusion by carefully testing the requirements of the current rule and those proposed by the Commission, using our issue taxonomy developed after observing SEC staff interpretations of Rule 14a-8(i)(12) determinations of “sameness” over the last three decades.

Issues vary: Less than half of proposals are voted on repeatedly. (Figure 4.) But proponents have been more likely to re-propose some issues. The withdrawal rate (nearly always based on agreements) influences the chance that a resolution will be resubmitted.

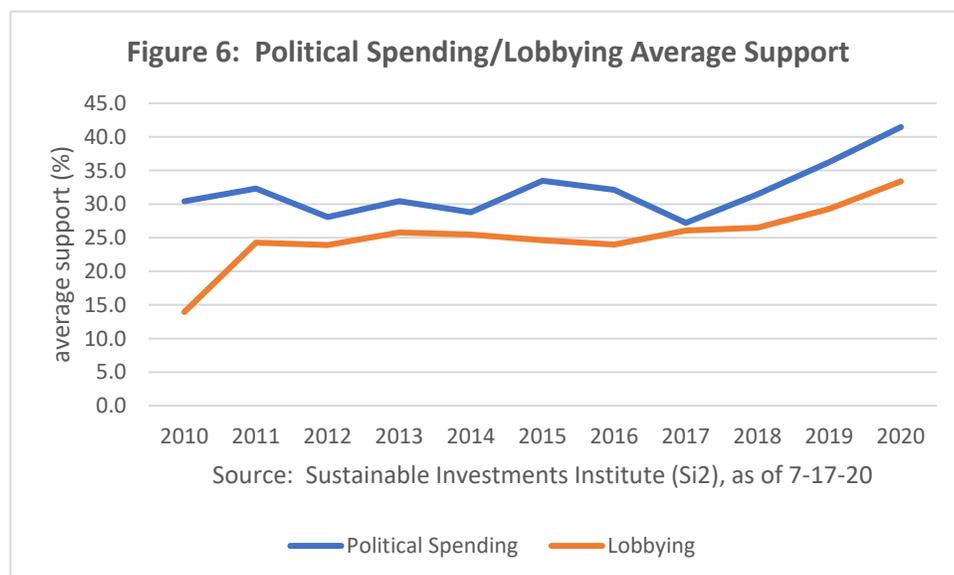
Figure 5 illustrates the different resubmission rates for the three issues most commonly voted on—corporate political spending/lobbying, climate change, and human rights. Proponents and companies have reached more agreements on climate change, resulting in a fall in resubmissions alongside fewer votes. On human rights, proposals have changed, producing fewer resubmissions, while the rate over the last five years has been relatively constant.



In contrast, while many companies have adopted the oversight and disclosure models sought by proponents of political spending and lobbying proposals, some have not, and proponents have persisted. There have been relatively fewer withdrawals. The result is that 60 percent or more of resolutions that have gone to votes on this have been voted on previously.

Rather than rejecting these

resubmissions, however, investors have evinced growing support. In 2020, the average vote for repeated political spending resolutions was 41.1 percent (including three majorities) and for lobbying resubmissions it was 32.3 percent. These are all-time highs. (Figure 6.) Yet as discussed below, it is lobbying proposals that are most likely to be excluded by the proposed rule change.



Comparison of Resubmission Eligibility

The proposed rule will significantly cut the number of proposals that are eligible for resubmission, affecting some issues more than others. The tables below illustrate this point, first for all proposals voted since 2010 (Figure 7) and then for the 2020 proxy season (Figure 8).

All voted since 2010:

- **Political spending and lobbying** proposals were the most common type of proposal to go to a vote—35% of all votes (767 proposals); 25 percent of those voted would have missed the new thresholds (193). The new third-year 25 percent threshold would have affected more political spending/lobbying proposals than any other topic. The new momentum failure provision also would affect these proposals more than any other subject.
- **Climate change** proposals were the second most common—16 percent of all votes (359 proposals); 22 percent of those voted on this topic would have missed the new thresholds (81). The proposed thresholds would have resulted in proposals ineligible at each of the new thresholds.
- **Human rights** accounted for the third largest number of votes—11 percent of all voted (230 proposals); 39 percent of those voted on this topic would have missed the new thresholds (90). Human rights were more likely to miss the first-year eligibility threshold of 5 percent.
- Proposals asking for specific types of board experts and committees (“**board governance**”) would be most affected by the proposed thresholds and 46 percent would have been ineligible for resubmission—almost all in their first year.

- The "**momentum failure**" test affects a tiny number of proposals (16 out of 2,193 voted, or 0.7% of all votes). As noted, more than half (9) of these resolutions dealt with corporate political activity.
- Overall, 31 percent of the proposals that have gone to votes over the last 10 years would not have been eligible for resubmission under the proposed new threshold requirements. If the new rules had been in place, companies could have excluded an additional 673 proposals.

Comparison of current and proposed rule for 2020:

- **Current rule:** Under the current rule, 9 percent of resolutions voted in 2020 would be ineligible. **New rule:** Under the proposed rule, 27 percent of those voted in 2020 would either have been ineligible for inclusion by the new rule this year (11 proposals) or could have been omitted this year because they missed the new resubmission thresholds in previous years.
- Nearly half the **decent work** proposals would be ineligible in 2021 under the new rule, up from one-quarter under the current rule.
- For **political spending/lobbying**, eight would be ineligible for 2021. Five could have been omitted this year because they did not achieve at least 25 percent support in earlier years (all five met the 10 percent requirement of the current rule) and three would be ineligible for 2021. This again illustrates how the proposed rule would have a targeted impact on proposals on this issue.

Figure 7: Impact of Proposed Changes to Rule 14a-8 (i) (12) on Proposals Voted from January 1, 2010 to July 17, 2020

Topic	# Voted	% All Voted	Missed Threshold						Momentum Failures		# Eligible for Resubmission	Not Eligible for Resubmission	
			Year Voted			Earlier Year			Year Voted	Earlier Year		#	%
			15%	25%	5%	15%	25%	5%					
Social (Political Spending/Lobbying)	767	35%	41	27	42	23	40	11	7	2	574	193	25%
Environment (Climate Change)	359	16%	25	17	20	5	7	3	2	2	278	81	22%
Social (Human Rights)	230	11%	18	4	55	7	2	4			140	90	39%
Governance (Sustainability)	191	9%	14	2	19	4		1	1		150	41	21%
Other Environment	185	8%	21		40	11		2			111	74	40%
Governance (Board Diversity/Oversight)	138	6%	8	2	45	1	3	5			74	64	46%
Social (Decent Work)	118	5%	14	5	8	5	2	2			82	36	31%
Social (Workplace Diversity)	109	5%	2	6	11		9	3	1	1	76	33	30%
Other	96	4%	9	1	41	3		7			35	61	64%
Total voted	2193		151	64	281	59	63	38	11	5	1521	673	31%

Figure 8: Impact of Proposed Changes to Rule 14a-8 (i)(12) on Proposals Voted in the 2020 Proxy Season

Topic	# Voted	Current Rule			Proposed Rule		
		Eligible for Resubmission		% Not Eligible	Eligible for Resubmission		% Not Eligible
		No	Yes		No*	Yes	
Social (Political \$/Lobbying)	56	1	55	2%	8	48	14%
Social (Decent Work)	25	6	19	24%	12	13	48%
Social (Human Rights)	20	1	19	5%	3	17	15%
Environment (Climate Change)	16		16		3	13	19%
Governance (Sustainability)	15		15		6	9	40%
Governance (Board Diversity/Oversight)	14	3	11	21%	5	9	36%
Social (Workplace Diversity)	11	4	7	36%	5	6	45%
Other Issues	17		17		5	12	29%
Grand Total	174	15	159	9%	47	127	27%

*Includes proposals ineligible for inclusion in 2020 because they did not meet the new threshold requirements in previous years.