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Investors Vigorously Endorse Rule 14a-8 to SEC

The preponderance of comment letters in the Securities and Exchange Commission's rulemaking on proxy access reflect strong views on a tangential issue—whether the SEC should revise its shareholder proposal rule (known as 14a-8) to make it harder for shareholders to get non-binding proposals in corporate proxy statements. When the deadline for comment closed Oct. 2, more than 15,100 letters had been submitted, according to a count of the submissions in the rulemaking file, some 14,700 of which were form letters of 10 types. (Activists working to derail the rulemaking put the submission figure much higher, including letters sent to members of Congress as well.)

All of the form letters stressed the value of the existing proxy process, as did many individual submissions from pension funds, social investment groups, labor funds and religious organizations. There were some strong differences with this stance, though, most notably from the Business Roundtable, but even corporations showed little interest in a proposal to allow companies to set up their own systems that would take them out from under the purview of 14a-8.

Somewhat obscured by the brou-

haha over 14a-8 was the original purpose of the rulemaking—consideration of two competing proposals, the “short” proposal, which would reinstate an SEC policy giving shareholders no say in the nomination of directors, and the

Only a handful of companies submitted their own comments on the long proposal, apparently leaving it to the Business Roundtable to speak in their behalf.

“long” proposal, which would enable shareholders to propose bylaw amendments to company charters setting out circumstances under which they could nominate directors. Corporations have vigorously opposed giving shareholders access to the proxy to nominate directors, while activists, though they have been pressing for proxy access for

several years, found even the long proposal much too restrictive. (For detailed background on all this, see the lead story in the August-September *Corporate Social Issues Reporter*.)

Ironically, after this outpouring of comment, it appears that the issue may be dead for the 2008 proxy season. Democratic Commissioner Roel Campos left the commission in September, and the second Democrat, Annette Nazareth, has announced her intention to leave by the end of the year. While the two GOP commissioners, Paul Atkins and Kathleen Casey, have pronounced themselves strongly against proxy access, Chairman Christopher Cox has a reputation as a conciliator, and it seems highly unlikely that he would press ahead on such a controversial issue without a full complement of commissioners.

Long Proposal's Questions

Nevertheless, a review of the comment letters, especially as they illuminate views on the value of shareholder proposals, gives interesting insights into the current health of the proxy process. This article takes a look at some of those comment letters as they relate to questions raised in the long proposal about 14a-8—

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Institutions Discuss Votes on Human Rights Proposals –Institutional investors are hesitant to ask companies to divest themselves of stocks in other companies that are operating in Sudan, according to the Social Issues Service’s annual study of proxy voting. Sudan divestment was one of three human rights issues the Social Issues Service asked participants about in the 2007 survey. In contrast to the divestment issue, proposals requesting general human rights policies got strong support from the voting pool, as did proposals on Internet privacy, especially given that they raised a new issue that proxy committees hadn’t struggled with before. **11**

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RiskMetrics Group Publications
1350 Connecticut Ave., NW
Suite 1101
Washington, DC 20036
Telephone: (202) 833-0700
Fax: (202) 833-3555

www.issproxy.com

Editor:
Meg Voorhes

Reporters:
Doug Cogan
Peter DeSimone
Carolyn Mathiasen
Heidi Welsh

Assistant to the Editor:
Carolyn Mathiasen

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whether companies and shareholders should be able to propose bylaws that would replace the SEC mediation of the shareholder proposal process for non-binding resolutions; whether the thresholds for resubmitting shareholder resolutions should be raised from the current levels of 3 percent the first year, 6 percent the second, and 10 percent thereafter; and whether proponents should be required to hold more than the current \$2,000 worth of a companies' stock to propose a resolution. The rulemaking also asked for comment on other possible changes in the shareholder proposal rule, an invitation that a few commentators accepted, and also for views on the use of electronic petitions, or "chat rooms," as substitutes for, or adjuncts to, the 14a-8 process.

Business Roundtable

In contrast to most of the letters in the comment file on the long proposal, the Business Roundtable is highly skeptical about non-binding shareholder proposals, asserting that they "require substantial management and board time and effort, as well as other costs to the company and its shareholders, and, of course, the resources of the commission and its staff."

On the core question of whether the commission should adopt rules for non-binding proposals that would allow corporations to adopt bylaw amendments that would enable them to bypass the SEC-supervised shareholder resolution process, the Roundtable concludes that "in limited instances it may no longer be necessary for the commission to dictate the procedures for non-binding proposals." Its submission does not spell out what those limited instances might be, though it cautions that if shareholders are permitted to propose bylaws governing non-binding proposals, they should have to satisfy "heightened

ownership requirements." The Roundtable appears to endorse an end to 14a-8 in more than just limited circumstances in those states where companies can adopt bylaws without shareholder approval, saying that in those cases "the board of directors should be permitted to adopt a bylaw establishing a procedure for non-binding shareholder proposals that would supersede the provisions in 14a-8 relating to non-binding shareholder proposals." The group does not support an electronic petition model for non-binding resolutions in lieu of 14a-8 "in light of the many practical difficulties" discussed during SEC open meetings in May that led up to the current rulemaking. (See the lead story in the May issue of the *Corporate Social Issues Reporter*.)

On the narrower questions about 14a-8 raised in the rulemaking release, the Roundtable backs a "significant increase" from the current \$2,000 in the value of shares a proponent should hold in order to propose a resolution, but is no more specific.

As for raising the resubmission thresholds, the Roundtable points out that average votes have increased significantly since the thresholds were put in place in 1954 and proposes new thresholds of 10 percent, 25 percent and 40 percent rather than the 10-15-20 percent posited in the long proposal. It also advocates excluding a resolution for five years if it fails to meet the thresholds, as opposed to the current three.

The release also asked for suggestions on other changes and clarifications that might be made to 14a-8. The Roundtable proposes that the commission alter the interpretation of the most commonly used exclusion under the shareholder proposal rule—the ordinary business clause—to stipulate that henceforth resolutions could be omitted as ordinary business even if they raise a matter of "significant social policy," a change that in itself would appear to wipe most social issues pro-

posals off the books. The Roundtable also proposes that the commission change the interpretation of the exclusion for proposals that have been "substantially implemented" to ensure that the staff permit exclusion of a proposal when a company has implemented its essential objective, "even when the manner by which the company implements the proposal does not precisely correspond to the actions sought by the shareholder proponent." The staff has been too lenient in interpreting this provision in recent years, the Roundtable feels.

Other Business Groups

The Chamber of Commerce of the United States devotes most of its 25-page submission to the proxy access issue, finding the proposal in the long release "unnecessary, overreaching and potentially disruptive and harmful to companies and shareholders." It does, though, comment on 14a-8 generally when it echoes the Roundtable in supporting an increase in resubmission percentages to 10-25-40 percent. It argues that "due to increased shareholder activism, greater institutional investment and a sharpened focus on corporate governance, it is common for proposals that lack broad investor support to nevertheless obtain a 'protest' vote of significantly over 10 percent," and that continued resubmission of such proposals imposes needless costs on companies and most shareholders.

The Chamber proposes an increase from \$2,000 to \$10,000 in the amount of stock a proponent must hold to submit a resolution, "to give greater assurance that proposing shareholders are motivated by a desire to protect their investment rather than to merely advance an agenda."

The submission of the American Society of Corporate Secretaries is dated Oct. 5, after the comment deadline, and does not show up in the SEC file. It does, however, include some

interesting observations on 14a-8. On the thresholds for shareholdings, it backs a “significant” hike, and suggests that the SEC consider adopting a mechanism whereby the eligibility threshold is periodically adjusted.

On resubmission thresholds, it endorses an increase to 10-15-20 percent, as suggested in the Notice of Rulemaking, rather than the higher levels endorsed by the Roundtable, Chamber and some corporations. In backing increases in the thresholds, it points out that “proposals require the issuer to devote the time and attention of internal legal and investor relations staff, senior management and the board of directors, as well as costs of outside securities and state-law counsel. An issuer and its shareholders should not be required to bear the costs of responding to a proposal that was rejected by 90 percent of shareholders.”

Like the Roundtable, the ASCS discusses the “significant policy” exception to the ordinary business exclusion. Unlike the Roundtable, it does not propose at this point that the exception be eliminated, but rather that the commission “review its application.” It elaborates:

There is no standard by which to determine when an issue has become one that raises a ‘significant social policy’—and thus, it has fallen to the staff to become the arbiter to determine if these types of proposals may or may not be excluded from the proxy. The result is that proposals that are—or are not—excluded from an issuer’s proxy statement have shifted over time at the discretion of the staff. The distinction in treatment between ordinary business and significant social policy has no basis in state corporation law, and it serves to undercut significantly the “relevance” and “ordinary business operations” exclusions which were intended by the commission to reflect the fact that state corporation law generally grants to the board of directors and

management the authority to run the business and operations of the company.

The ASCS joins the Roundtable in urging that the commission staff interpret the “substantially implemented” exclusion to allow omission of proposals “even if the company has not adopted the precise procedures or taken exactly the same approach with respect to the issue as is being proposed by the shareholder.”

Individual Corporations

Only a handful of companies submitted their own comments on the long proposal, apparently leaving it to the Business Roundtable to speak in their behalf. Of those individual submissions, none directly took on the question of whether corporations should adopt bylaws setting up their own substitutes for the SEC’s regulation through 14a-8—a system that activists have said would allow companies to “opt-out” of the shareholder resolution process entirely.

One company that submitted its own comments was **Chevron**, which strongly supported increases in the eligibility and resubmission thresholds. It pointed out that it had received 72 shareholder resolutions in the last five years, “each of which has consumed significant time and attention of senior management and directors. We believe that requiring stockholder proponents to have more than a *de minimis* economic interest would help ensure that this time and attention is focused on issues of interest to a reasonable group of stockholders.” The company did not propose a specific level of holdings. On the question of resubmission thresholds, Chevron noted that it had supported increases to 10-15-20 percent suggested in a 1997 rulemaking that largely died in midstream. It pointed out that it had recently received shareholder resolutions on animal welfare and Ecuadorian operations that received less than 10 percent support for three years running and asserted that

“It is difficult to justify the significant amount of time and resources that a company’s management and board spends on proposals that receive so little support.”

General Motors made similar arguments, also bypassing the issue of replacing 14a-8 but supporting amendments to the rules that would enable companies to “reduce the time and resources spent on non-binding proposals.” It reported that it had received 19 resolutions in 2007, “most” from persons who owned fewer than 100 shares, and also backed a “significant” increase in ownership requirements. It suggested increases in resubmission thresholds to the 10-25-40 percent advocated by the Business Roundtable, and suggested that if the commission changes the language of 14a-8 exclusions it should “place high value on transparency and predictability.”

By contrast with the measured tones of the Chevron and GM letters, **Apache Oil** submitted a combative letter, asserting that proxy access would “place U.S. energy interests at an even greater disadvantage against their international competitors; would promote special interest group agendas that are harmful to the health of the U.S. economy and the investment community; and would undermine long-term investment by U.S. public companies.” On the question of 14a-8, Apache says: “Non-binding proposals should not be permitted at all. They have no legal standing under the corporate laws of Delaware and other states, are an inefficient and ineffective method of communication between shareholders and companies, and distract attention from the genuine business issues presented for shareholder votes at shareholder meetings.” It also proposes raising resubmission thresholds to 33-40-45 percent.

TIAA-CREF

By contrast with the business world, TIAA-CREF comes down firmly in support of 14a-8, arguing that “all share-

holder resolutions, whether binding or not, should continue to be uniformly regulated” under the rule. It asserts that the suggestions for replacing the rule broached in the long proposal “would increase uncertainty about the exercise of shareholder rights under Rule 14a-8 and would create obstacles to communication and engagement between companies and shareholders with little, if any, additional protection for either party.”

Recounting its own experience as a shareholder proponent, TIAA-CREF sees Rule 14a-8 not as a way “to force change on a company, but to get the attention of its board and senior management, promote dialogue and, when appropriate, conduct a shareholder referendum on issues of concern.” It says that in about half the cases where it has submitted shareholder proposals it has been able to withdraw them before a vote because the target company has agreed to change a policy.

On the question of raising the resubmission percentages, TIAA-CREF doesn’t make a specific suggestion, but opposes an “arbitrary increase” to 10-15-20 percent as suggested in the long proposal. It suggests that before it proposes changes in the thresholds, the commission undertake a comprehensive study of voting results, including looking at “the historic gestation period for new or innovative proposals to gain traction through the Rule 14a-8 process.”

Partly in this connection, TIAA-CREF resurrects an SEC proposal that was shot down by corporations during an aborted overhaul of the shareholder proposal rule in 1997. That proposal would have allowed groups of shareholders holding more than 3 percent of a company’s stock to override a decision by the SEC staff to allow a company to omit a resolution as ordinary business (i-7 of the shareholder proposal rule) or as not sufficiently relevant to a company’s operations (i-5). That suggestion, which TIAA-CREF

Oxfam America Initiates Largest Share of Letters to SEC

Among the 14,700-plus form letters submitted in support of the current shareholder proposal process in response to the proxy access rulemaking were 9,234 submissions of this letter initiated by Oxfam America and addressed to SEC Chairman Christopher Cox:

I’m writing to request that you protect the right of investors to file shareholder resolutions and urge you to take no action on the proposed initiatives that would curtail or eliminate this essential right.

Shareholder resolutions are an invaluable tool for investors who want to make their voices heard with regard to the direction of their companies. Shareholder resolutions have helped to promote transparency and improve corporate governance and performance. They have

called attention to critical issues, including global warming, nuclear power, sweatshops, executive compensation, natural resource extraction, and other major societal and environmental problems that, when not addressed, often end up costing shareholders and their companies as a result of lawsuits, damaged reputations, consumer boycotts, public protests, and low staff morale.

The many corporate scandals of recent years highlight how important it is to have more, not less, corporate transparency and accountability. Shareholder resolutions have proven effective in holding companies accountable to their owners. I ask that the commission safeguard, not undermine, their use.

Thank you for your attention to my comments.

strongly supported at the time, made companies apoplectic, and by many accounts getting rid of it was the tradeoff through which the corporate world agreed to back off its support for higher thresholds and other changes that would have made it harder for activists to get resolutions in proxy statements. TIAA-CREF now proposes that the commission institute an override mechanism, and that an evaluation of its effect be one element in any decision of exactly how much to raise the resubmission thresholds.

Council of Institutional Investors

The Council of Institutional Investors also comes down hard in support of the current process. Noting that the commission had rejected a system under which companies would establish their own alternative procedures to govern

the shareholder proposal process back in 1982-83, CII argues that the objections that prevailed at that time are still relevant. It recalled that: “The commission ultimately concluded that...the proposals would create serious problems of administration as there would be no uniformity or consistency in determining the inclusion of proxy proposals.” Pointing out that 14a-8 creates a single set of standards for all companies, CII argues, “It is difficult to imagine how things would work and how Council members, other shareholders and the long-term performance of companies would benefit if the commission were to permit significantly more complex, less uniform procedures” for non-binding resolutions.

The Council notes that its own members file non-binding resolutions for many reasons, the most important being that “they have been an ex-

tremely effective tool for having a dialogue with management about important corporate governance issues.” It does not respond to the request for comment on higher thresholds, saying only that “Council members generally are comfortable with Rule 14a-8, including the existing substantive bases for exclusion of resolutions.” It does, however, like TIAA-CREF, suggest that the commission revisit the override mechanism that was proposed and dropped in 1997. It also sees electronic shareholder forums as “a valuable supplement to the current Rule 14a-8 process” as a means “to determine the level of interest with regard to various governance issues and gauge support for potential proposals and initiatives” but says it would strongly oppose them as a substitute for the 14a-8 process at this stage.

Individual Pension Funds

While public pension funds are represented by CII, a number of them also filed their own comments, and the comment letter file also includes a memo stating that Representatives of the California Public Employees’ Retirement System and the systems of Colorado, Connecticut and Washington State met with Chairman Cox to discuss the rulemaking Aug. 29.

In its individual filing, Calpers, the largest U.S. pension fund, opposes adoption of rules that would permit companies and shareholders to adopt their own procedures for handling non-binding proposals. It also endorses the 14a-8 system:

The current shareholder proposal process is the product of over 50 years of rulemaking, judicial guidance and industry practices. Shareowners and companies alike benefit from the predictability and relative consistency of the staff’s interpretive positions under Rule 14a-8, as well as the experience that the federal courts have with the rule. While there is always

room for improvement, Calpers is concerned that the body of Rule 14a-8 precedent would be lost if companies and shareholders were left completely to their own devices. Instead of adopting such rules, Calpers recommends that the SEC continue its current practice of periodically reexamining and adjusting Rule 14a-8 and other proxy rules.

Calpers does not comment on the question of raising eligibility and resubmission thresholds. It says it does not support an electronic submission substitute for 14a-8, but that “it is worth considering whether technology can be utilized to improve Rule 14a-8 or better effectuate the public policy purposes that led to the adoption of Rule 14a-8.”

It closes by urging that the commission not to act on the rulemaking until all vacancies on the commission have been filled.

The state of Connecticut, similarly, argues that any limitation of shareholders’ ability to file non-binding resolutions under 14a-8 “could pose a major setback in the more than 65-year history of communications between shareholders and management.” It and other funds, which either make similar statements or sidestep the 14a-8 issue, also do not get into the issue of whether resubmission and eligibility requirements should be raised.

LongView Funds

Among the filings from many labor-affiliated groups was one from Amalgamated Bank’s LongView Funds, which proposes 25 to 30 shareholder resolutions a year. LongView argues that its proposals have served “a useful way to have a dialogue” with companies and asserts that the same results could not have been achieved by writing letters or calling the investor relations department. Describing its problems when it has tried those approaches, it says: “Sometimes companies will respond, but some do not.

Also, it is all too easy for a company to write a polite response that says very little and commits to no change affecting the policy in question.”

LongView also challenges the SEC’s argument in the Notice of Rulemaking on the long proposal that the time has come to revisit the 1982 notion of having companies set up their own substitutes for 14a-8 process because of developments that have “diminished the concerns about shareholders’ ability to act as a group.” LongView counters: “The problem is not now (and was not then) an inability of shareholders to act as a group, as the Notice posits. What has changed over the past two decades is the willingness of shareholders to buck management recommendations and to support shareholder proposals to the point where many proposals (at least on some topics) now command a majority. That is not a valid reason to let companies shield themselves from accountability to their shareholders.” Any proposal to permit companies to avoid shareholder votes on non-binding resolutions, LongView concludes, “would appear to be a solution in search of a problem.”

Social Investment Forum

In addition to the many comments received from individual social investing groups and their members, the national membership organization for the social investing industry, the Social Investment Forum, filed its own statement.

The forum is particularly concerned that, if companies would allowed to adopt their own bylaws substituting for the 14a-8 process, “the most unresponsive companies would be likely to opt out because resolutions are an important mechanism to strengthen corporate accountability.” SIF is also concerned about the lack of uniformity that would result if each individual company had its own rules. It questions the notion that the deci-

sion to opt out of 14a-8 would be accomplished through a vote of current shareholders, asserting that would disenfranchise future shareholders and that “The logic for allowing a company to withdraw from the resolution process is not explained and the motives of the commission in presenting this option are unclear.”

SIF argues that fewer than 20 percent of companies receive shareholder resolutions, and that the corporate community “is not burdened significantly by the resolution process.” It acknowledges that 14a-8 decision-making represents “a seasonal pressure” for the SEC, but notes that many of the decisions involve pro forma issues such as missed filing deadlines, and asserts that “there may be no practical substitute for a lengthy and somewhat burdensome no-action process.”

On the question of specific resubmission thresholds, SIF notes that in 2006, 81 percent of shareholder resolutions received enough support for resubmission under the existing rule, and that that figure would have dropped to 36 percent if the percentages were raised to the suggested 10-15-20 percent, which it argues would “stifle this engagement that we believe is in the long-term interests of companies and their shareholders.” It objects that “the SEC has not made a case for why this change is warranted, what the impact on shareholder proposals would be and how such a change would advance the public interest. The new threshold numbers are presented without any discussion of the criteria used to select them.”

Like most commentators, SIF is unhappy with the idea of replacing 14a-8 with an electronic chat room. “Assuming this forum hosted valuable discussions—a debatable assumption considering the current electronic forums that exist—technologically savvy investors, or those with a large staff to monitor these exchanges, would be placed at an advantage over other

Wachtell, Lipton Rips Proxy Advisors, Academics, in SEC Submission

Among the avalanche of comment letters in the SEC file on the proxy access rulemaking is a dyspeptic 16-page submission from the New York law firm of Wachtell, Lipton, Rosen & Katz (dated Sept. 19) strongly opposing the long proposal to facilitate proxy access for shareholders to nominate directors.

The letter complains that “for the past 20 years, the activist governance lobby, primarily made up of ISS [now RiskMetrics]-type advisors, short-term hedge fund ‘activists’ and academics, and emboldened since 2002 by the Enron-WorldCom scandals and the legislative and regulatory aftermath, has been seeking to destroy the director-centric model of corporate governance. This lobby seeks to replace the director-centric model with a simplistic rule that the shareholders at any given moment own everything and therefore have the power to decide everything in their own interests.” In Wachtell, Lipton’s view:

The moving forces behind these attacks—for-profit corporate governance advisors and tenured academics—have no direct stake in the success or failure of American business or American capital markets. These two groups have the least real-world experience of anyone involved with corporate governance, and are the

least accountable players in the corporate governance arena. Paradoxically, they have made a prominent place for themselves by calling attention to the supposed lack of accountability of directors and CEOs—persons who are subject to market discipline, government regulation, judicial oversight and press scrutiny.

These activist groups are driven by their own rational self-interest. If you are in the business of selling advisory services to passive investment vehicles, it makes sense that you would create a perceived demand for your product by emphasizing the supposed ills that your advice can cure. If you are a tenured academic (or an academic seeking tenure) who desires professional recognition, leading the charge for “reform” is more likely to draw recognition than analyzing the strengths of the current system. The motivation of these groups is easily understood, and there is no good reason to accept their positions at face value. No real-world crisis has shown that the current system needs radical revision. Five years after Enron and WorldCom, the capital markets are well into a cycle of unprecedented vigor, and no one seriously argues that shareholder activism, governance grandstanding or the Sarbanes-Oxley Act deserves the credit.

shareholders,” it says in its submission. While it credits the SEC with taking a look at new electronic communications, it again faults the rulemaking release for not spelling out a clear rationale behind the idea.

House Finance Hearing

SIF Board Chairman Timothy Smith was among those who testified at a House Committee on Financial Services hearing Sept. 27, entitled “SEC Proxy Access Proposals: Implications

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Few U.S. Firms Have Set Carbon Reduction Targets

Taking action on climate change, while a formidable challenge, can set off the greatest economic boom in America since World War II, President Bill Clinton told companies and investors on Sept. 24 in New York City as he launched the survey results of the fifth round of the Carbon Disclosure Project (CDP5). He said action needed to curb carbon emissions and transform the economy in a carbon-constrained world must begin by “keeping score,” as CDP does by collecting data on emissions and climate change policies from the world’s biggest companies at the behest of institutional investors that collectively own or manage \$41 trillion.

But RiskMetrics found, in its report on CDP responses from S&P500 firms, that while 81 percent of the respondents see risks from climate change, and two-thirds are tracking their emissions, fewer than a third have set greenhouse gas reduction targets. Nearly 70 percent see commercial opportunities presented by climate change, however, anticipating Clinton’s remarks at the launch.

Undisclosed Risks

RiskMetrics found that the material effects of climate change remain largely undetermined and undisclosed, even though most companies clearly perceive regulatory and physical risks. Many of the 219 companies that told CDP they face risks characterized these as “substantial” or “significant.” Yet aside from the utility sector, disclosure in securities filings was limited.

Underlining this part of the CDP study’s findings, on Sept. 18 a broad coalition of investors, state officials and environmental groups formally asked the Securities and Exchange Commission to require fuller climate risk disclosure. The 22 petitioners included

leading institutional investors in the United States and Europe who manage more than \$1.5 trillion in assets. “The SEC needs to do more to protect investors from the risks companies face from climate change, whether from direct physical impacts or new regulations,” said Mindy Lubber, president of the Ceres coalition and director of the Investor Network on Climate Risk. More information is available on the Ceres website (www.ceres.org).

Focus on Energy Efficiency

When big U.S. companies look for ways to address climate change, programs that drive energy efficiency improvements usually top their list. Of the 282 S&P500 firms responding to the CDP5 survey, 78 percent indicated that they were engaged in energy efficiency initiatives to drive down their greenhouse gas (GHG) emissions. By comparison, 37 percent of the respondents said they were involved in renewable energy projects or had set targets for renewable energy purchases. Likewise, 36 percent said they were considering or were actively engaged in carbon emissions trading programs.

Respondents across all 10 sectors of the S&P500 have embraced energy efficiency programs to abate their GHG emissions and achieve cost savings at their firms. Among CDP5 respondents, consumer-oriented and telecommunications firms were the most likely to cite such initiatives. By contrast, firms in the energy and health care sectors cited the least activity.

Sector-level results do not tell the whole story, however. Several large health care firms—including **Baxter International**, **Johnson & Johnson**, **Merck** and **Pfizer**—have become partners of the U.S. Environmental Protection Agency’s Climate Leaders program and have set targets to control their energy use and GHG

emissions. For example:

- **Baxter International** set a goal to reduce its energy use and associated GHG emissions by 30 percent per unit of product value between 1996 and 2005, and achieved a 27% reduction over that time frame. Baxter set a new goal in 2006 that commits it to reduce its GHG emissions intensity by 20 percent between 2005 and 2010, indexed to sales.
- **Pfizer** aims to reduce its GHG emissions intensity by 35 percent between 2000 and 2007, relative to sales.
- **Johnson & Johnson** expects to achieve a 7 percent reduction in its absolute carbon dioxide emissions below 1990 levels by 2010, mainly through energy efficiency improvements.

Among other S&P500 respondents to the CDP5 survey, only firms in the consumer discretionary sector (ranging from auto manufacturers to department stores and apparel makers) had a greater percentage of firms that have set energy efficiency targets. This includes **General Motors**, which has a goal to reduce energy use at its global facilities by 25 percent by 2010, and CO₂ emissions by 21 percent, using a 2000 baseline.

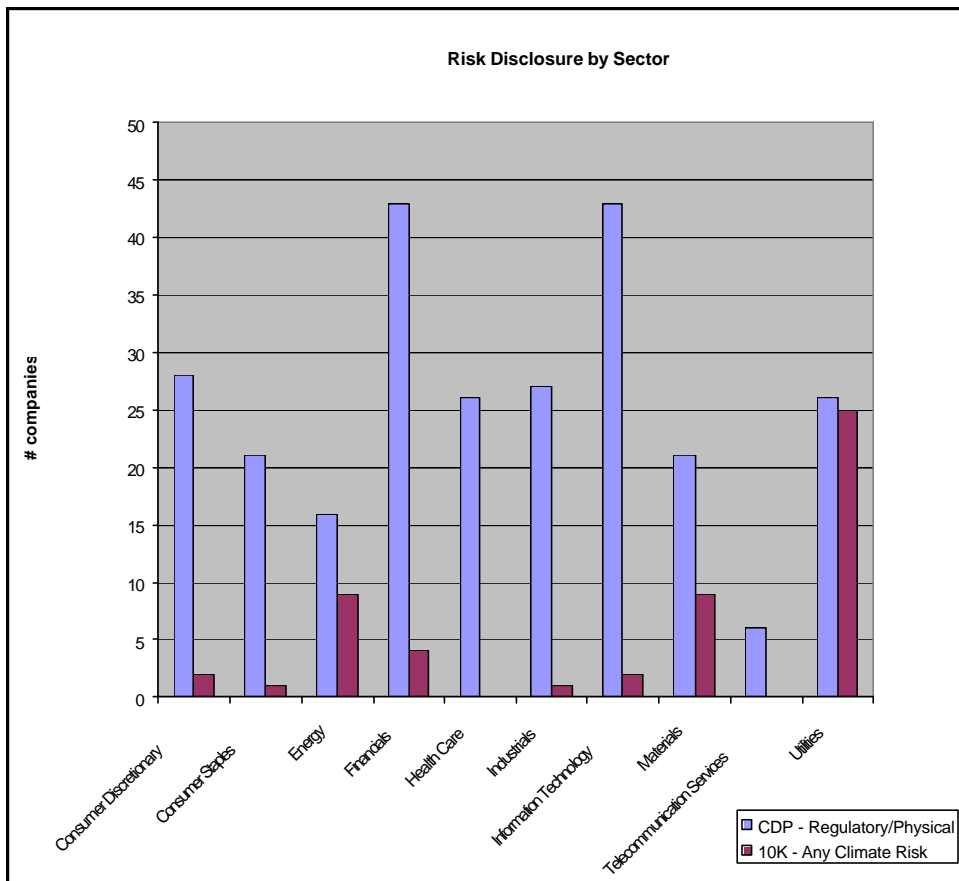
Ford Motor is also aiming for further energy efficiency improvements. Following a 12 percent improvement in 2000-2004 (normalized for production changes), it is looking for an additional gain of 1 percent per year at its North American facilities. Through 2006, Ford cut its total GHG emissions from these facilities by 10 percent relative to a 1998-2001 baseline. Four Ford plants—in Chicago, St. Paul, Norfolk and Claycomo, Mo.—were among 17 U.S. manufacturing plants recognized by ENERGY STAR in September 2006 for superior

energy efficiency. The EPA named Ford an ENERGY STAR Partner of the Year in 2006 and 2007, the first time an automaker has received this recognition in consecutive years.

Johnson Controls is among a small cadre of firms that is aiming to achieve carbon neutrality within the next 10 years. To get there, it says it will rely on internal process and energy efficiency improvements, as well as on emissions credits obtained for delivering energy efficiency improvements to its customers. Both GM and Johnson Controls are partners in the Climate Leaders programs. These firms also rank highly in a "Climate Governance Index" used in the CDP5 study to gauge companies' disclosure practices and emissions reduction programs (see tables).

Several policy experts who submitted commentaries for the report stressed the importance that energy efficiency will play in finding credible, long-term solutions to GHG emissions. William Moomaw, Professor of International Environmental Policy and Director of the Center for International Environment and Resource Policy at the Fletcher School, Tufts University, pointed out that up to 80 percent of emissions come from cities, with half of that from buildings and the electricity to power them. "Given the large amount of underperforming buildings already in existence, a massive effort to upgrade their performance and standards for new construction can reduce energy requirements by half to two-thirds," he said.

"Doubling and tripling the efficiency of electrical appliances is well within economic and technological capabilities," Moomaw added. "Over the next half-century most existing electrical power plants will have to be replaced, and the need for new ones can



be dramatically reduced through improved efficiency in lighting and appliances." Moomaw is the lead author of several reports by the Intergovernmental Panel on Climate Change addressing energy and energy efficiency issues.

Wal-Mart Initiative

One of the companies that ranked highly in RiskMetric's assessment model is **Wal-Mart Stores**, the world's largest retailer. Wal-Mart has committed \$500 million annually to invest in sustainable technologies and innovations to achieve a 20 percent improvement in energy efficiency in its existing stores by 2013 and cut annual electricity use by 3.5 million megawatt-hours. It has also pledged to design and open a viable prototype store within three years that is 25-30 percent more energy efficient and will produce up to 30 percent fewer GHG emissions. At

the same time, Wal-Mart plans to double the fuel economy of its trucking fleet by 2015, saving 60 million gallons of diesel fuel a year. And it is also trying to get its customers to buy more energy-efficient products, like compact fluorescent light bulbs. If each of its 100 million-plus customers bought just one of these long-lasting bulbs, Wal-Mart estimates it would reduce electric bills by \$3 billion and conserve \$50 billion tons of coal.

In a major announcement timed with the release of the CDP5 report, Wal-Mart Chief Merchandising Officer John Fleming said his company would also be looking upstream at its supply chain to achieve greater energy savings and GHG reductions. In partnership with CDP, Wal-Mart will encourage some 60,000 suppliers to disclose GHG emissions data and set reductions targets. "We are working to-

gether to measure our global supply chain footprint and to encourage our suppliers to reduce greenhouse gas emissions,” Fleming said at the CDP5 report launch. Wal-Mart’s use of the CDP questionnaire in eliciting this information will extend the survey’s reach exponentially and help retailers like Wal-Mart measure indirect emissions throughout their supply chain.

Another major retailer, **JCPenney**, is reaching out to its 150,000+ associates to reduce energy consumption at home and at work. The program began in 2004 with measures to drive basic behavioral changes, such as turning off lights in unoccupied rooms and measuring the reduction in monthly utility bills. The program was extended in 2006 to measure savings over six-month increments and now encompasses employees at company headquarters in Plano, Texas. JCPenney said in its CDP5 response that it has joined EPA’s ENERGY STAR program “to make our energy awareness program a bigger success than in the past.”

Assessment Model

The most carbon intensive sectors performed the best according to RiskMetrics’ assessment model, which

CDP response rate	1 st survey	2 nd survey	3 rd survey	4 th survey	5 th survey
S&P500 index	47%	56%	(2008)	(2009)	(2010)
FT500 index	47%	59%	71%	72%	77%

gave the most weight to targets for using renewable energy, cutting energy use and greenhouse gas emissions reductions. More credit was given to companies that have set absolute emission reduction targets than to companies with intensity targets tied to production or sales. This weighting assumes that companies setting absolute targets will be better positioned for regulations that compel emissions reductions or the purchase of offsets through emissions trading programs.

The model also took into account governance, risk and emissions disclosures and actions taken to seize market opportunities posed by climate change. Half the companies studied are paying attention to climate change through board and management oversight, the study concluded.

The CDP assessment was adapted from a scoring approach that RiskMetrics developed in conjunction with Ceres, an investor and environmental coalition, and the Investor Network on Climate Risk, a U.S. investor group for which Ceres serves as the

secretariat.

Response Rate Lags FT500

While only 56 percent of the S&P500 companies surveyed responded to CDP in 2007, three-quarters of the FT500 did so. The CDP5 survey marks the second time that S&P500 companies have been approached directly to complete this detailed annual questionnaire. The response rate for U.S. companies increased across all industry sectors, and nine of the 10 sectors had a response rate of greater than 50 percent. The growing response rate is in line with historical trends for the CDP survey of FT500 companies; this survey has sampled the opinion of the world’s largest companies (based on market capitalization) on climate change since 2003 (see table).

—Doug Cogan and Heidi Welsh

Cogan and Welsh were the lead authors of the study, which is available on the CDP website (www.cdproject.net).

(SEC, continued from p. 7)

for Investors.” Also testifying were John J. Castellani, president of the Business Roundtable, and representatives from the Council of Institutional Investors, the state of Connecticut and the mutual fund trade organization, the Investment Company Institute. All of these representatives made many of the same arguments as they did in their filings on the rulemaking. (All of those are discussed above except for ICI, which did not comment on 14a-8 issues other than proxy access; its filing

was, however, notable as coming from an organization that actually rather liked the long proposal—though it took the opportunity to argue that all institutions, not just mutual funds as under current rules, should be required to publish their proxy votes.)

What was new about the hearing for those who had already read the SEC comment file was the chance to hear Financial Services Committee Chairman Barney Frank (D-Mass.) on the subject of proxy access. Castellani stuck firmly to the argument that giv-

ing shareholders an opportunity to nominate a few directors would burden corporations with fractious, single agenda special interest board members, despite the insistence of Smith and the representatives from CII and Connecticut that the Roundtable was setting up a straw man. Frank, clearly out of sympathy with the Roundtable’s view, pressed Castellani repeatedly to define special interest, and after getting nowhere, adjourned the hearing in frustration.

—Carolyn Mathiasen

Institutions Discuss Votes on Human Rights Proposals

Institutional investors are hesitant to ask companies to divest themselves of stocks in other companies that are operating in Sudan, despite the human rights implications, according to the Social Issues Service's annual study of proxy voting. Sudan divestment was one of three human rights issues the Social Issues Service asked participants about in the 2007 survey; the others were the adoption of general human rights policies and Internet privacy. In contrast to the divestment issue, the human rights policy proposals got strong support from the voting pool, and the Internet privacy proposals fared well, especially given that they raised a new issue that proxy committees hadn't struggled with before.

Participants

The Social Issues Service compiled the information from responses to a four-page questionnaire and from public websites on which institutions voluntarily post votes and voting guidelines. Thus far, the Social Issues Service has collected voting information from 22 institutions—six public pension funds, a private pension fund, six educational institutions, a foundation, three social investment funds, two traditional investment funds and three religiously affiliated institutions. (A number of other social investment groups also voluntarily publish their votes, but either have not yet posted their 2007 votes or did not hold any of the stocks in question.)

Fourteen of the participants agreed to be listed by name; the remainder are identified by institution type. Those on the record were four of the public funds (the California Public Employees' Retirement System, the California State Teachers' Retirement System, the Connecticut

Retirement Plans and Trust Funds and the Florida State Board of Administration). Three educational institutions are on the record—Dartmouth College, the University of Wisconsin and Harvard University—although Harvard will not publish the rationales behind its voting decisions until later in the year. All three of the social investment groups (the Calvert Social Index Fund, Domini Social Investments and Walden Asset Management) are on the record, as is one of the traditional investment funds—F&C Management—as well as the Nathan Cummings Foundation, Christian Brothers Investment Services and the General Board of Pensions of the United Methodist Church.

Sudan Divestment

U.S. law bars domestic companies from operating in Sudan, and as a result there had never been a shareholder resolution on corporate activity there, despite rising public outrage about the continuing genocide. But in 2007 an individual shareholder, Judith Porter, came up with a way to approach the issue of genocide in Sudan through a resolution asking Berkshire Hathaway to divest from foreign firms that operate in countries that U.S. companies are barred from entering under U.S. law. The resolution was aimed at Berkshire's portfolio investment in PetroChina, whose parent company is deeply involved in Sudan. Berkshire Hathaway Chairman Warren Buffett decided to include the resolution in the proxy statement even though the SEC staff said it could be omitted under its shareholder proposal rule as "vague and indefinite."

The proposal was one of the most discussed of the 2007 proxy season, though it ultimately received only 2.4

percent support in the overall voting. (The Wall Street Journal Oct. 12 reported that Berkshire Hathaway had sold off "most" of its investment in PetroChina. It said that Buffett was "keeping mum on the reasons," but that "even some longtime Berkshire watchers suspect that the controversy over Darfur, particularly in light of the coming Beijing Olympics, had some impact on Mr. Buffett's decision to sell.")

The Social Issues Service asked institutions how and why they voted as they did on the proposal. The first finding was that an unusually large percentage of respondents didn't hold Berkshire Hathaway stock, including five of the six educational institutions, the Cummings Foundation, the state of Florida and two of the social investment funds.

Of the 13 with standing to vote, only three supported the proposal, three abstained and seven were opposed.

The three supporters were Walden Asset Management, which wrote that it "has a strong Sudan policy which was consistent with the request in the resolution," Christian Brothers Investment Services and a state pension fund.

The abstainers were a university, a state pension fund, and the private pension fund. The university's proxy committee was itself unanimously in favor of the proposal, but the final arbiter, its trustees, chose to abstain. It wrote:

Having divested from companies doing business in Sudan—including PetroChina, the company at issue in the Berkshire Hathaway proposal—last spring, the Committee strongly believed that favoring this proposal was consistent with its own policy. However, the Trustees Subcommittee

ultimately voted to abstain on the proposal. The reasoning behind the abstention was that the resolved clause of the proposal in fact requires a broader divestment policy than that which the university has enacted; also, the Trustees felt that while they stood behind our divestment policy, they couldn't impose a divestment policy on any of our holdings.

The private pension fund had more reservations. It wrote:

The issue is of grave concern but we found the proposal to be too prescriptive. Despite our strong support for good human rights practices and the adoption of human rights policies, we do not feel it is our position, as an institutional investor, to prescribe specific steps on how companies should deal strategically with the risks faced by their businesses with reference to human rights. These issues should be carefully analyzed by the board and management of each company in the context of its own business and competitive positions, and its decisions should be disclosed to shareholders. We did write a letter to Berkshire Hathaway encouraging them to use constructive engagement to influence PetroChina regarding Sudan.

The opponents were the two California funds, the state of Connecticut, F&C Management, the other traditional investment fund, the General Board of Pensions of the United Methodist Church and another religious institution. The state of Connecticut wrote, "CRPTF encourages Berkshire Hathaway to carefully monitor the impact its investments may have on the company's reputation and operating success, but do not believe divestiture is in shareholders' best interest at this time." Calpers noted on its website that it voted against because it concluded that the proposal could cause long-term harm to Berkshire Hathaway. The Methodist pen-

sion board said it had voted against because "The General Board's voting guidelines have not yet been modified to address this issue," and the other religious institution also attributed its vote to the lack of a formal policy. F&C Management explained its vote in opposition as follows:

This is what we wrote to the company following the vote: "We voted against this proposal because, while we agree with the spirit of the resolution that indirect investment in Sudan presents heightened risks, including those associated with human rights violations, we recognize that divestment may not always be the most appropriate solution to promote stability and development in the long term."

The other traditional investment fund explained: "We hate to micromanage another company's investments; have some doubts about PetroChina's responsibility for its parent company (CNPC); and in any case have doubts about the effects if CNPC were to leave Sudan, in that it seems plausible, as the company argued, that CNPC may sell at a bargain price to the Sudanese government."

General Human Rights Policies

Religious investors re-filed proposals asking Boeing, Chevron and Halliburton to adopt comprehensive human rights policies, all of which received support in the mid-20 percent range in the overall voting. The Social Issues Service asked survey participants how and why they voted as they did on those proposals, and found strong support. Three participants didn't hold any of those stocks—two of the social investment funds and the Cummings Foundation. Of the remaining, only two opposed all the proposals, three varied their votes and the rest voted in favor.

Supporters: The institutions voting consistently in favor were all six educational institutions, four of the six public pension funds (Calpers, Calstrs, Connecticut and one other), all three religiously affiliated institutions and Walden Asset Management.

Dartmouth, which owned Chevron and Boeing, gave details explaining why its Advisory Committee on Investor Responsibility voted to support those resolutions:

With regard to the Chevron resolution, ACIR discussed the company's operations in Nigeria, Burma and Angola, as well as the recent controversies surrounding environmental and human rights issues. ACIR also discussed the company's potentially enormous liabilities in connection with environmental damage in Ecuador as a result of Texpet's operations there decades ago. ACIR discussed whether the resolution was seeking a risk assessment for the company's operations in various countries. Although several members were uncomfortable with the language of the resolution, a majority of the committee disagreed with the company's position that regulating harm to the environment and human rights abuses was the responsibility of the host country. A majority of the committee also agreed that shareholders had a right to know if Chevron was operating in countries that shared their beliefs as to regulating environmental damage and human rights abuses.

With regard to the Boeing resolution, ACIR noted and approved the proponents' concerns regarding the failure of the company's existing human rights code to apply to the company's suppliers. ACIR also expressed concern about the company's extensive operations in China, a country known

for its weak respect for and enforcement of human rights laws. In addition, the committee agreed to recommend support for the resolution for many of the reasons it supported the Chevron resolution discussed above.

A university said its proxy advisory committee had unanimously supported the proposal to Chevron, the only one of the three stocks it held. It wrote:

The Advisory Committee has a precedent of supporting proposals calling for adoption of internationally recognized human rights principles & labor standards, such as those espoused by the UN Declaration of Human Rights. Paying close attention to several controversies plaguing Chevron's record on human rights – namely, allegations of company complicity with local forces in human rights abuses and violence in Nigeria and Burma (through Chevron's acquisition of Unocal) – members felt that Chevron was particularly well-targeted and needed to think carefully about these issues. Some members of the Advisory Committee observed that Chevron's current human rights statement is extremely short and vague (one page – versus, for example, Shell Oil's 31-page human rights primer), and does not specifically commit to the norms of the UN Declaration on Human Rights and does not address any specific policies or strategies for dealing with problematic regimes or security situations. Members felt that a higher bar is set for Chevron and any and all oil companies with operations in environments with oppressive regimes, lax human rights standards, or other security issues. The Committee agreed with proponents' position that Chevron's current policy was insufficient and not

transparent, and felt Chevron had a responsibility to adopt a comprehensive and transparent policy to ensure that human rights abuses do not occur.

A college said it had voted in favor of the resolutions because it “Supported a comprehensive policy and the need to protect the essential human rights of employees.”

Calpers, which often describes its reasons for supporting resolutions simply by saying that it judges that they will cause no long-term harm to the corporation involved, explained in the case of the general human rights resolutions that it “recommends that the corporations adopt maximum progressive practices towards the elimination of human rights violations in all countries or environments in which the company operates.”

Varied votes: The institutions that varied their votes were F&C Management, the private pension fund and the state of Florida.

F&C held all three stocks, voting for at Chevron and Halliburton, and abstaining at Boeing. It reported on its votes as follows:

Boeing—We abstained because we recognized that the company has made certain steps towards strengthening its human rights policy through the adoption of a new set of principles. However, the policy does not adequately elaborate human rights standards expected of suppliers. Therefore we recommend that the company adopt a comprehensive human rights policy which addresses both the company's operations and that of suppliers. We also urge the company to disclose how such policies are implemented by way of a comprehensive annual sustainability report.

Chevron—We voted in favor of the report because, although Chevron adopted a new human rights policy in 2006, its com-

munication on human rights has become very poor. In particular, the company has refused repeatedly to answer questions about its plans for assets in Burma. Halliburton—We voted for the shareholder proposal because we support the development of a comprehensive human rights policy that addresses a company's operations and suppliers. Such policies provide important guidance for employees on corporate and individual performance expectations. We also believe that the company would benefit from conducting a human rights risk assessment across its global operations. We noted that a substantial number of shareholders supporting the proposal in 2006 of over 25% is quite significant for a resolution on human rights and should provide further incentive for the company to take action.

The private pension fund also voted to support the resolutions at Chevron and Halliburton and abstained at Boeing. It explained that its policy statement provides that “We will generally support reasonable shareholder resolutions seeking a review of a company's internal labor standards, the establishment of global labor standards or the adoption of codes of conduct relating to human rights. Adoption and enforcement of human rights codes and fair labor standards can help a company protect its reputation, increase worker productivity, reduce liability, improve customer loyalty and gain competitive advantage.” But it said that it had abstained at Boeing because “The current code of conduct meets the majority of the requirements; it could be more clearly defined, however—various issues are implied rather than stated.”

The state of Florida held Chevron and Halliburton. It said, “We felt

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is was prudent to support the proposal at Halliburton as they did not have an established, publicly available code of conduct applicable to human rights issues. Chevron did have a Human Rights statement available, although it did not address all of the aspects listed in the shareholder proposal. We voted against the shareholder proposal at Chevron due to the availability of this statement.”

Opponents: One of the two consistent opponents of the human rights policy resolutions, a state fund that held all three stocks, said, “Our policy does not support shareholder proposals for a business code of conduct.” The other opponent, a traditional investment firm, said: “We believed that policies in this area should be a management responsibility, and that shareholders have limited insight and day-to-day familiarity to reshape these policies. Each of the companies has policies that address human rights and labor rights, and operate in an array of market contexts such that we are wary of shareholder micro-management.”

Internet Privacy

New York City filed new resolutions requesting that Google and Yahoo take various steps to protect Internet users’ privacy and access to information in China and other countries. The resolutions got 17.6 percent support at Yahoo and 3.8 percent at Google, where directors and officers control 72.5 percent of the voting power.

Yahoo has been the subject of intense negative publicity as a result of the role of its Chinese subsidiary in the arrests of at least four individuals accused of using Yahoo e-mail or newsgroup services to disseminate criticisms of China’s government. Google was the subject of considerable negative publicity in early 2006, when the company introduced its

Chinese search engine, Google.cn, which was designed to produce search results that would exclude sites censored by the Chinese government. Representatives of the company said that Google.cn would allow Chinese users to use Google’s superior search technology to perform nearly all searches, a better alternative than Google’s simply leaving the Chinese market altogether. Google printed the proposal in its proxy statement without explaining the reasons for its opposition and also refused to discuss the resolution with the Social Issues Service for its company report.

Five of the voting pool did not hold stock in either Yahoo or Google; these were four of the educational institutions and the Cummings Foundation. Among the rest of the pool, nine voted in favor, three varied their votes, two abstained and three were opposed.

Supporters: The nine supporters were three pension funds (Calstrs, Connecticut and Florida); Christian Brothers and the Methodist pension board; all three social investment funds; and a college. Most of the supporters gave little detail about their thinking, but the state of Florida said: “We voted for these proposals because we would like to see additional reporting from companies on how they handle Internet privacy, human rights issues and the specific challenges of operating in markets with legally binding censorship. Both Google and Yahoo could face significant reputation risk, to the extent that we believe the underlying intent of this proposal is necessary. Neither company currently discloses policies that significantly address the proposal’s main concerns.” Connecticut wrote that it had “basically supported the resolutions because of the companies’ lack of disclosure on policies related to Internet monitoring and censorship as well as the impact these issues may have on the compa-

nies.”

A college, which held only Google, said its vote in favor was driven by the fact that the company didn’t include an opposition statement in its proxy, though it was also concerned about Google’s activities in China. Walden Asset Management said it felt that Google’s failure to publish an opposition statement showed a lack of transparency, but that it would have voted in favor of the resolution even without that concern.

Varied votes: The institutions that varied their votes were a religious organization, which voted in favor at Google and abstained at Yahoo; a public pension fund that voted for at Yahoo but abstained at Google after a split on its proxy committee; and F&C Management. F&C told the Social Issues Service it had written to Google to say:

We abstained because this proposal is too prescriptive and the company is already involved in a multi-stakeholder effort to develop a set of industry Principles for Free Expression and Privacy on the Internet. We might have voted against; however, we were surprised to see that the board did not disclose any information on these efforts in the proxy which is reviewed by all shareholders.

In the case of Yahoo, F&C wrote: “We voted against because, while we support the spirit of the resolution, this proposal is overly prescriptive. The company is already involved in a multi-stakeholder effort to develop a set of industry Principles for Free Expression and Privacy on the Internet, and in the interim, has taken additional steps to develop internal systems for responding to risks to free expression and privacy. We commend Yahoo for taking meaningful action to respond to these emerging human rights risks and encourage the company to continue to dis-

(continued on p. 16)

HRC Reports Unprecedented Gains in GLBT Rights

The Human Rights Campaign (HRC), the largest advocate for gay, lesbian, bisexual and transgender (GLBT) peoples' rights in the United States, reported record support last month for GLBT-friendly policies among the nation's largest employers. It gave 195 *Fortune*-rated U.S. companies its top grade in its sixth annual *Corporate Equality Index*, up from 138 companies or 41 percent in 2006 and 15 times the number winning its top accolade in its first assessment in 2001. The HRC says that these companies now guarantee a record 8.3 million GLBT workers equal employment rights not promised by U.S. law, 12 times the number protected just six years ago.

While the group is still holding out for passage of the Employment Non-Discrimination Act (ENDA), a bill pending in the U.S. House of Representatives that would guarantee GLBT employees equal employment opportunities, the HRC recognizes that corporate policies are critical in absence of protections from the U.S. government. Among the advocates of these policies, Samir Luther, director of the HRC's workplace programs, recognizes the important role public pension funds and other socially responsible investors have played in being "a major driver of improvements in companies' GLBT performance in every year of the survey, including this one." In the last year alone, RiskMetrics Group tracked 15 publicly traded companies that expanded rights or benefits for GLBT employees under pressure from shareholders.

Findings

The HRC's rating looks at whether companies address sexual orientation and gender identity in non-discrimi-

nation policies and training programs. Companies also earn points for providing same-sex partner benefits, having a GLBT employee resource group, and engaging the GLBT community in philanthropy or corporate sponsorship. Also paramount is whether a company takes actions to undermine GLBT equality, such as an advertising campaign or employment action that undermines gay rights.

Among the 57 companies earning a perfect score for the first time this year were Allstate Insurance, Electronic Arts, Esurance, J.C. Penney Co., KeyCorp, Macy's, Marriott International, Mastercard, Waste Management and Yahoo. Of the 519 employers rated, the average rating was 81 percent in 2007, up from 76 percent last year.

Financial services firms continued to be among the vanguard in the HRC's scorecard. The industry counted 32 companies with a top score, more than any other. However, improvement in other sectors won praise from the HRC. Freight services firm United Parcel Service achieved a top score, although the HRC gave its competitor, FedEx, a 55 percent in contrast, because FedEx does not provide domestic partner benefits to all employees. In the transportation and travel services industry, Travelport known for its travel sites such as Orbitz.com, and gaming company Harrah's Entertainment achieved the HRC's top grade for their respective industries. In addition, for the first time by HRC's count, a majority of firms in its study's universe—58 percent—provided employment protections on the basis of gender identity.

Companies in other industries also showed progress. Entergy, which had ended eligibility for domes-

tic partner benefits at a nuclear power plant it acquired in New York in 2003, extended partner benefits company-wide this year and participated in the HRC's survey for the first time. It showed the most improvement since last year, achieving a rating of 88 percent, compared to 13 percent last year. Four other businesses improved at least 50 percentage points from last year—Alltel, which was under shareholder pressure from New York City Pension Funds, Automatic Data Processing, J.C. Penney and KB Home. Each received ratings of 75 percent or better and extended protection for employees to include sexual orientation and gender identity.

Rationale

Companies achieving top scores by adopting policies the HRC advocates say the rationale is simple; more inclusive policies help recruit and retain the best people. For example, Brian Schipper, senior vice president of human resources at Cisco Systems, says, "Valuing all our employees isn't just the right thing to do, we know that it makes good business sense." Similarly, Jennifer Jonach, DuPont's director of human resources in the United States, says, "Equality and inclusiveness is essential so that employees may contribute to their fullest."

Rod Gillum, vice president for corporate responsibility and diversity at General Motors, agrees. "Non-discrimination policies and practices help attract and retain talented employees." He added, "The perfect HRC Corporate Equality Index score is also our way of showing GLBT customers that we support the community and appreciate their business."

Hayward Bell, chief diversity officer at Raytheon, says his company's

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perfect score “is our undeniable pathway to success for individuals and the company—for everyone, every day and everywhere.” Greater access to the GLBT community’s buying power is part of Sprint Nextel’s reasoning too. Sandy Price, senior vice president of Human Resources at Sprint Nextel, says that the company’s GLBT-friendly policies help it, “reach a broader base of customers with products and services that truly add value to their lives.” Similarly, Shelley Freeman, director of global diversity and inclusion at Starwood Hotels & Resorts Worldwide, says

that its top score validates “the importance of inclusion and respect as paramount to a 21st century business model.”

Outliers

Not every company buys the HRC’s business case. Once again, three employers received the HRC’s worst rating. Oil giant ExxonMobil—even after almost a decade of shareholder pressure, grocery chain Meijer and high-tech consulting firm Perot Systems rated a zero. None of these companies have taken positive steps toward GLBT employees in the HRC’s

opinion, and in two cases—ExxonMobil and Perot Systems—have rescinded GLBT-inclusive policies. This year, Wal-Mart Stores officially ended corporate-level funding for all GLBT groups, including those it donated to in 2006. Accordingly, Wal-Mart was one of the few major retailers to see a drop in its score. Clarification of its benefits policies, the HRC says, led to an additional reduction of 10 points, lowering Wal-Mart’s overall rating from 65 percent to 40 percent for 2008.

—Peter DeSimone

(Votes, continued from p. 7)

close it policies and procedures for protecting free expression and privacy online.

Abstainers: The two institutions that abstained on both resolutions were Harvard and the private pension fund. Harvard will publish the reasoning behind its votes in its annual report of its Corporation Committee on Social Responsibility later this fall. The pension fund told the Social Issues Service:

Despite our strong support for good human rights practices and the adoption of human rights policies, we do not feel it is our position, as an institutional investor, to prescribe specific steps on how companies should deal strategically with the risks faced by their business with reference to human rights. These issues should be carefully analyzed by the board and management of each company in the context of

its own business and competitive positions, and its decisions should be disclosed to shareholders. Our votes resulted from our view that the shareholder proposals were overly prescriptive, despite our support for the underlying concern. In addition, we recognize the steps that Yahoo has already taken in addressing this issue and commend management on these activities.

Opponents: The consistent opponents were Calpers, another state pension fund and a traditional investment firm. Calpers, which is usually inclined to support social policy resolutions as long as it judges that they will not do any long-term harm to a company, explained that it “believes strongly in the policy goals of this proposal. However, if the proposal is implemented, it would likely restrict the companies’ operations in foreign jurisdictions to the detriment of the company and its shareholders.”

The traditional investment firm said, “While we believe management should state its views on shareholder proposals and were perplexed by Google’s silence, we note that management has addressed the general issue in other venues, and believed that the resolution asked shareholders to make what should be a management decision based on complex considerations.”

—Carolyn Mathiasen

(Articles in subsequent newsletters will examine survey responses in other issue areas. A full compilation of the results of the survey will appear as Chapter 2 of the Social Issues Service’s annual book, *Social Policy Shareholder Resolutions in 2007: Issues, Votes and Views of Institutional Investors*. Institutions that have not yet filled out the questionnaire, but are interested in participating, should write to carolyn.mathiasen@riskmetrics.com)