

Reimagining Shareholder Advocacy on Environmental and Social Issues:

The promise and pitfalls of 'E&S stewardship'

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Executive Summary

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The ultimate goal is to generate real change. To achieve that rare outcome, investors must ride wider social currents, following up on pressure from the media and civil society to translate shifting sentiment into meaningful corporate action.
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E&S stewardship describes the ways investors use their ownership power to minimize corporate harms to the environment or society (our preferred approach), or to reduce material risk to firms from environmental and social controversies (the dominant US approach). Most commonly, stewards vote “yes” on E&S shareholder proposals or lobby corporate leaders for change.

Since 2021, investor support for E&S proposals has plummeted. This trend has evoked consternation because many scholars and ESG practitioners regard stewardship as a successful strategy. This report probes the basis of that assumption and reaches a more nuanced conclusion.

Academic evaluations of stewardship now define success as a steward getting what it asks for. Yet all too often, what it asks for is a dust-gathering report, an empty pledge, or an insignificant policy tweak. When Chevron signs on to embrace human rights treaties, that’s scored as a win—regardless of how the company then behaves. Stewardship efforts rarely change business models. At the end of the day, the typical deliverable is a tepid one-off report filed with the SEC that very few people read, much less act upon. The highest-profile example of supposed do-good stewardship—the election of three directors nominated by the “ESG activist” hedge fund Engine No. 1 to the Exxon board in 2021—turned out to be an embarrassing example of form over substance. In the last three years, Exxon has doubled down on its investments in fossil fuels with the blessing of these three new so-called ESG board activists.

The claim that “stewardship succeeds” typically does not reflect what the strategy actually achieves, which often is very little. A token gesture of good will should not be equated with improving society. Scholars who

proclaim victory the moment a firm agrees to a symbolic report or minor policy adjustment are like armchair generals who declare “Mission Accomplished” when a recalcitrant foe has nominally surrendered yet the resistance has barely begun.

Shareholders are especially leery of meaningful action on the social front—the S—because it is more risky and costly, and there is less public pressure for them to do so. Within the S, human rights are topics that get the least attention by companies and investors. There has been virtually no success in dealing with global labor supply chain issues or harmful online content. Ambitious initiatives to engage on the S are advancing slowly. Stewardship has typically aimed for results so modest that nearly all claims of success deserve skepticism.

Because they are not evaluated on real-world outcomes, stewards do not sufficiently focus on the actual performance of companies with respect to these issues. This state of affairs is upside down. The only measure of E&S success should be impact on the environment and society. And the only goal of engagement should be meaningful change. Stewardship needs to be fundamentally recalibrated.

Change is hindered by the preference of managers and shareholders for disclosure over action. But even what passes for “action” rarely clears the skies or eases the plight of workers.

Conversely, some types of disclosure can be solid incremental steps toward upgrading the quality of the air or the quality of workers' lives.

This report moves beyond the simplistic duality of disclosure versus action. We instead offer a framework that analyzes different forms of disclosure or action based on their social impact. We then apply our framework to examples from both the recent and distant past.

While the overall record of human rights stewardship is one of mixed effectiveness, in some important areas E&S stewardship has contributed to broad social progress, for instance

on LGBTQ rights and women in the boardroom. History shows that quiet stewardship can boost compliance with data reporting regimes, which is often an essential first step toward action. In some cases, usually after embarrassing headlines, engagement can lead to deeper reforms. Make no mistake: stewardship needs to be thoroughly reconceived. But the strategy has enough potential and occasional impact to be worth saving.

Having finally established, with many caveats, that stewardship merits our concern, we return to the current moment of retrenchment. The most influential stewards—the major US money managers—deny that they are to blame. Silly as this may sound, their

counter-narrative is so widely accepted in business circles that it deserves to be rebutted.

Genuine stewards need to learn from hard experience and aim higher. Campaigns that have real impact are often the result of collaboration and target full sectors of the economy. Many grab the firm's attention by disapproving company directors—perhaps the most neglected tool in the stewards' toolkit, but also the most robust. The ultimate goal is to generate real change. To achieve that rare outcome, investors must ride wider social currents, following up on pressure from the media and civil society to translate shifting sentiment into meaningful corporate action.

Recommendations

For Shareholder Advocates

1 Give greater priority to social issues, especially to the rights of workers in global supply chains.

Advocates have been most effective in promoting climate reporting and climate pledges. The climate crisis poses an existential threat and deserves priority attention. But this does not preclude greater attention also being paid to social issues. We recommend greater focus on three social issues in particular.

Above all, we would like investors to prioritize the treatment of outsourced workers throughout global supply chains. Though shareholders have played an important role in supporting the rights of workers to organize in the US, for example at Starbucks, there have been very few instances where conditions for workers in developing economies have improved as a result of stewardship initiatives. Investors need to heed the call of advocates in this arena, with the goal being the actual improvement of worker conditions in the supply chains of global brands and retailers.

In the realm of diversity, advocates have been effective in pushing many firms to disclose the composition of their workforce, and to raise the representation of women on corporate boards. Less progress has been made in raising the board representation of African Americans and other under-represented minorities. This should be a future priority.

Finally, we would highlight a range of human rights challenges related to information technology, such as privacy and misinformation. To date, advocates have not succeeded in affecting the actions of major technology firms (in part because their high rates of insider ownership make them challenging to influence). These issues should nonetheless be future priorities for investors, who can add to the pressure on the tech sector coming from other sources.

2 Assess the current social landscape.

A major shareholder advocacy group should undertake a comprehensive assessment of the effectiveness of social stewardship, with real-world change as the criterion of success. This type of assessment would provide a useful baseline, helping to identify areas where greater shareholder efforts are needed.

3 Set a higher bar for future engagement.

Too often, shareholder resolutions on S issues aim low in the hope of attracting majority support from large institutional investors. One popular strategy is to ask a company to commission a one-off report on its shortcomings. Few of these reports are revelatory, and they rarely lead to change. Shareholder advocates should judge success only by what alters outcomes in the real world. This means doubling down on strategies that hasten real-world change and abandoning strategies that merely secure victories on paper. S-related efforts should focus on areas like global labor rights, where the problems are most significant and widespread.

4 Support the development of newly enacted social and environmental laws and regulations.

As a new wave of mostly European ESG laws take root, investors have a key supplementary role to play. They can pressure businesses to comply fully with the requirements of the EU Corporate Sustainability directives, the German Supply Chain Act, the EU regulations on forced labor and deforestation, the US law on Uyghur forced labor, the SEC Climate Rule, California's climate disclosure laws, and the EU Digital Services Act. In addition, advocates should harness the data from such laws to press for remedial actions that the data shows to be needed. Finally, shareholders can assist governments by demanding integrity in how data is collected and independently verified. Just as with financial data, investors should demand the highest levels of attestation and assurance.

5 Where new ESG laws leave gaps, engage with responsible companies to fill those gaps.

Investors should encourage mid-size and small firms in high-risk sectors to conduct human rights due diligence—even though those firms were excluded from the EU's final Due Diligence Directive at the last moment. Similarly, investors should press companies to disclose their Scope 3 climate emissions, even though those emissions were omitted from the SEC's final Climate Rule. And they should press firms to make workforce and diversity disclosures, despite the SEC's failure to even propose a "human capital" rule. These should ideally detail employment data, wages, and workplace conditions for a firm's full global workforce, broadly defined.

6 Build ESG funds around a specific stewardship strategy.

Due to the flaws in existing ESG funds, stewardship is for now the main operative theory of ESG change. Asset managers should embrace it wholeheartedly by [designing funds whose unique strategy is to engage intensely on a certain theme](#)—for instance, on supply chain human rights.

For the US Government

7 The SEC should stop undermining shareholder activism.

The SEC should give a full statement of reasons when it effectively permits a company to remove a shareholder proposal from the proxy ballot. It should stop interpreting its own rules so as to deny investors their rights as owners to give meaningful input on corporate social or environmental policies. Restraining investors in this way is especially absurd given that proxy proposals are already subject to the support of other investors, and to the company's discretion.

1. Introduction

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Evaluations of stewardship currently define success as a shareholder advocate getting what it asks for. Yet all too often, what it asks for is a dust-gathering report, an empty pledge, or an insignificant policy tweak.
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Environmental and social stewardship describes the methods by which investors use their ownership power to try curbing corporate harm to people and the planet. E&S stewards use the same tools as hedge fund activists or governance reformers, but differ in their goals.¹ Hedge fund activists seek profit by boosting a firm's share price. Governance reformers hope to better align manager and shareholder interests (occasionally toward E&S ends). E&S stewards push firms to protect people or the planet, and many believe that doing so will lower risks to investors.

Also known as “E&S engagement,” stewardship can take several forms. First, investors may vote “yes” on non-binding proposals filed by values-driven shareholders at company meetings. Second, they may lobby for change by engaging with corporate leaders. Third, they may withhold support for management proposals, especially for the election of directors. Finally, an investor may mount a proxy fight in the name of E&S values and seek to elect its own directors over those nominated by management. In theory, an E&S proxy fight has revolutionary potential because it gives values-driven shareholders the wherewithal to impose their will on the company. Unfortunately, history presents only one example of an E&S proxy fight that proceeded to a vote—at Exxon in 2021—and it has had no meaningful effect on the firm's business practices.²

A false dawn for Stewardship

The Exxon proxy fight fed a narrative of ESG triumphalism, because it arrived in the late spring of 2021. In the proxy season that was drawing to a close, average support for diversity and climate proposals would reach an unprecedented level of 50% or higher. Over three dozen E&S resolutions would pass. To climate and diversity activists, the future seemed bright.

It was at this moment that tiny Engine No. 1, presenting itself as an ESG-driven hedge fund, won a proxy fight to pack Exxon's board with three new directors with expertise on the transition to green energy.³ The Exxon-Engine saga dramatizes the challenge of gauging, or achieving, E&S success.

Owning a trivial .002% of shares, Engine No. 1 energetically lobbied Exxon's

leading owners, starting with the “Big Three” asset managers. At the May 26 company meeting, Vanguard and State Street supported two Engine candidates, and BlackRock supported three. When the dust settled, Engine No. 1 directors had captured a quarter of the 12-member board. For the first time, it seemed, an ESG activist had persuaded institutional investors to force change at one of the countless firms they significantly control.⁴ [“This is a big deal,” proclaimed the financier-turned-columnist Matt Levine.](#) Nearly all observers expected that Engine No. 1 would aim to transform Exxon’s climate approach. Some of the savviest foresaw a new era of E&S stewardship.⁵

These expectations aged poorly. In the year after Engine No. 1’s win, the price of oil and oil shares spiked. Exxon raised production, and skeptics’ eyebrows rose.⁶ In a head-snapping interview, [Engine No. 1 founder Chris James told the *Financial Times*](#), “I never considered myself an activist investor.”⁷

In fall 2023 Exxon struck a \$60 billion deal to buy Pioneer Natural Resources —doubling down on fossil fuels with the blessing of its three Engine No. 1 directors. “We need oil and gas in the short-term,” explained a spokesman for the not-so-revolutionary hedge fund.⁸ Then Exxon went to the extreme of suing genuine E&S stewards for trying “to stop climate change.”⁹

The new era of stewardship was illusory, for Engine No. 1 was never what it seemed. But regardless of that fund’s motives, a new E&S proxy fight will be tougher to win, because Engine No. 1’s win hinged on support from the Big Three asset managers, and their support was the artifact of a brief historical moment. In the surest sign of cultural turnabout, in 2023 BlackRock named the CEO of Saudi Aramco to its board.¹⁰

The E&S roller coaster

Historical shareholder support for E&S proposals was meager, averaging under 10% during the 1990s and 2000s.¹¹ Support jumped following the Deepwater Horizon spill of 2010. It kept climbing as more investors embraced the ESG framework, and as E&S advocates lowered their sights—increasingly asking for disclosure rather than demanding action.¹² The pandemic years, when the murder of George Floyd heightened racial awareness, gave stewardship another boost. Yet the investor vogue for diversity was fleeting.

E&S advocacy has continued to intensify, with the volume of E&S filings nearly doubling in four years to 368 in 2024.¹³ But actual investor support reached its top in spring 2021, and for obvious reasons. Within weeks of the Engine No. 1 proxy fight, the first anti-ESG laws, restricting investment of red state public pensions with “woke” asset managers, took effect in Texas and Maine.¹⁴ At the end of the next proxy season, red state attorneys general upped the ante, sending BlackRock a threat letter arguing that net-zero pledges by asset managers are unlawful.¹⁵

The pro-ESG movement faltered. From a peak of 34% in 2021, average investor support for all E&S resolutions fell to 20% in 2023.¹⁶ As a result, the passage rate dropped from 21% to 3%.¹⁷ Among contested E&S proposals, the number that passed plunged from 38 to eight.¹⁸ Even then, some firms scoffed and ignored its shareholders’ nonbinding recommendations, like firearm maker Sturm Ruger, whose shareholders asked it to write a gun safety report. According to a survey by PRI, the UN coalition for responsible investment, only about a quarter of firms fully act upon a passed E&S proposal within a year, and another quarter are likely to ignore their shareholders’ will entirely.¹⁹

Aside from losing history’s only E&S proxy fight, Exxon has been near the top of the proxy hit list ever since E shareholder activism began in earnest, following the 1989 Exxon Valdez spill.²⁰ In 2023 alone, it was the target of eight climate resolutions. Yet the NGO Carbon Tracker recently gave Exxon a *below-failing* grade for alignment with the Paris climate goals.²¹ As one astute observer put it, “Engagement as a way of achieving [the climate transition] seems to be like asking a lion very politely if he would consider the advantages of vegetarianism.”²²



Investor support for environmental and social proposals reached its top in spring 2021, and for obvious reasons. Within weeks, the first state anti-ESG laws took effect.



2. How Stewardship Falls Short, and Why it is Worth Reforming

“Shareholders are especially leery of meaningful action on the social front—the S—because it is more risky and costly, and there is less public pressure for them to do so.”

The rate of “success” in E&S stewardship is studied obsessively, with success thinly defined as obtaining some of the advocate’s stated objective. Often what an advocate seeks is a report that’s doomed to gather dust or a procedural “action” that doesn’t reverberate in the real world.

The illusion of E&S “success”

A set of widely cited studies measure the general success rate for E&S stewardship by an asset manager over a multi-year period. According to the [most encouraging findings](#), a European asset manager achieved a desired objective in 53% of E and 61% of S engagements.²³

[Cambridge University’s Ellen Quigley aptly dismisses these studies](#) as meaningless because most of the “successes” merely generated ineffectual reports or protocols, rather than resulting in any operational change.²⁴ A breakdown of the rosier study shows a divide between requests for E *disclosure*, which “succeeded” at an 81% clip, and action-oriented E requests, which “succeeded” in 27-31% of cases.²⁵ Yet even when stewardship spurs an “action”—a category that often encompasses empty pledges and policy tweaks—that action is rarely consequential. For instance, one study scored an energy company’s shift toward natural gas as an E victory.²⁶ Another article valorized Chevron’s 2010 pledge to respect a few non-

binding human rights treaties as an S triumph.²⁷ [A less naïve conclusion](#), by scholars of corporate communications, is that “[t]he changes corporations adopt as a result of engagement have been marginal procedural adjustments, rather than substantive changes.”²⁸

The literature evaluating stewardship simply neglects to assess the real-world outcome of each campaign.²⁹ Yet impact on the environment and society should be the sole criterion of E&S success. Hanging a “Mission Accomplished” banner after meeting an interim tactical goal does not signify that the war has been won.

The limited value of settlement

E&S advocates make the fair point that last year’s 3% passage rate for E&S proposals is misleading. Some companies respond to engagement before an issue matures into a proposal. Others respond to proxy votes that merely draw a decent level of shareholder support, short of passage.³⁰ Many others forge an agreement in exchange for a resolution’s withdrawal from the ballot.³¹

But again, the advocates generally score a settlement granting some of their demands as a “win,” never mind the ultimate outcome. The NGO As You Sow boasted that it elicited a response from approximately three-quarters of the firms it engaged in 2022.³² The nonprofit Ceres hailed it as “the quiet victory” of 2023 when nearly a third of its tracked E proposals led to settlement.³³ Putting aside outcomes, there is reason to doubt this trend will persist. After all, one year’s settlements rely on the scare value of the prior year’s votes.³⁴ Withdrawals are already dropping.³⁵ The fall of E&S support may portend a reluctance to compromise.

By far the more fundamental question is whether what the activists want is enough. A 2015 Ceres study found that 86% of the climate commitments it tracked in 2014 and 2015 had been fully or mostly implemented.³⁶ But this only assesses, for instance, whether a firm has set a target—not whether it has *met* a target. Cambridge’s Quigley objects that most withdrawals elicit mere *commitments*—and most commitments likely go unfulfilled in the larger sense.³⁷ [Another skeptical study finds](#) that E&S conduct only worsens after a withdrawal agreement. “[M]anagers’ responses,” it concludes, “are symbolic rather than substantive”.³⁸

The special challenges of S engagement

If real-world change is the only proper measure of success, then human and labor rights stewardship usually fails. The hard truth is that meaningful improvements in human and labor rights—like raising wages or improving workplace health and safety globally—are likely to add costs and reduce profits, at least in the near term. And historically, both firms and shareholders have been unwilling to absorb these added costs. In the realm of the S, every proposal that passed in 2022 and 2023 was disclosure-based.³⁹ Proposals on human rights (which proxy watchers conventionally analyze

separately from labor rights) are among the least likely to either pass or end with a corporate agreement.

Since 2021, the number of resolutions filed on human rights risks have hovered around 20 per season.⁴⁰ Last year, a dozen proposals on Chinese human rights issues averaged an anemic support rate of 4%. The SEC blocked the one vote set on Burmese human rights issues.⁴¹ Only three contested resolutions on supply chain human rights reached a vote. Longstanding campaigns against child labor among cocoa growers yielded a piddling 4% “yes” vote at Hershey, and a middling 20% at Mondelez. In the most successful supply chain vote, at TJ Maxx, support reached 26%.⁴² The one proposal for a human rights report that passed the prior year, at Sturm Ruger, was ignored.⁴³

Recognizing that social issues beyond diversity are under-engaged, several groups have mounted worthy initiatives.⁴⁴ Regrettably, early progress has been halting. The UN Global Compact launched the Forward Faster Initiative on Achieving a Living Wage last year, yet the Platform for Living Wage Financials has pressed investees on supply chain wages since 2018. “[W]e are left with a bit of an unsatisfactory feeling,” confesses PLWF engagement manager Marie Payne, “as we have yet to see widespread evidence of brands moving from data-collection to action.”⁴⁵

The most notable new S group is Advance, a \$30 trillion PRI coalition that launched in 2022 with the aim of balancing PRI’s historical tilt toward E stewardship. But Advance itself is advancing slowly. One participant grumbled to *Responsible Investor* magazine: “It’s not working. It’s just slow, and I’m not really satisfied with the progress.” A second saw “very little happening.”⁴⁶

Social stewardship appeals less to both investors and companies, because E progress can be measured more precisely (after years of hard work by groups like CDP and TCFD); and



Curiously, the Biden SEC has barred 2024 shareholder resolutions at the same rate as the Trump-era SEC.

because climate change makes the business case for improving E performance more obvious, certainly in the long run. None of that removes the moral imperative of using stewardship to improve corporate S performance as well. Advocates’ continuing challenge is to refine outcome-based S metrics for each sector; and to maintain the pressure on firms to improve their S conduct, to avoid reputational risk and because it’s the right thing to do.

A surprising obstacle to E&S stewardship

Sometimes a company seeks assurance from US regulators that it may bar a shareholder proposal from its proxy ballot without being disciplined.⁴⁷ The Trump administration gladly used this power to help strangle many E&S proposals in the cradle. In 2021, the Securities and Exchange Commission predictably signaled a change in direction. Democratic regulators issued a more shareholder-friendly reading of “SEC Rule 14a-8,” which lays out the acceptable grounds for a company to block a proposal.⁴⁸ On paper, that should have made it harder for a firm to obstruct investor activism. But surprisingly, [the Biden SEC has effectively barred 2024 resolutions from the proxy ballot at the same rate as the Trump SEC](#).⁴⁹

Recent SEC rulings have been astonishingly restrictive—especially in the S domain—and deferring excessively to company assertions that disputed resolutions intrude on “ordinary business,” or constitute “micromanagement.” In 2024, the SEC cited micromanagement in blocking resolutions seeking to force

Delta to disclose its spending on union suppression and to oblige Amazon to disclose the payment of sub-living wages to workers. Using the same rationale, the SEC blocked a 2023 proposal for Kroger to join the Fair Food Program, which aims to end forced labor and worker abuses among suppliers.⁵⁰

This year's surge in anti-ESG Rule 14a-8 letters by the SEC may reflect a shift in corporate mores. Firms have been historically aggressive, making 259 requests to exclude proxy proposals in 2024 through May, compared with 167 such requests in all 2023.⁵¹ This is a disturbing trend, of a piece with Exxon's astounding choice to sue the stewards who dare to query their co-owners on the wisdom of Exxon going all-in on fossil fuels. Nonetheless, it does not explain why the *proportion* of requests granted by the SEC has held steady despite the SEC's change in policy.

What might account for the jarring discrepancy between the Biden administration's avowed loosening of its Rule 14a-8 guidance and the continuity of results? One possibility is that the career staffers writing the advisory letters have not properly absorbed the new guidance, or are reverting to their personal biases as they are swamped by requests for Rule 14a-8 letters. [A Journal of Accounting and Public Policy article](#), studying Rule 14a-8 advisory letters during the Obama and Trump administrations, found that the identity of the SEC staff member writing the letter was a statistically significant determinant of outcome—and that staffers who were inclined to bar a resolution outnumbered the staffers who were disinclined by 73 to 12.⁵² This would suggest a need for closer oversight by supervisors in the Corporate Finance division.

The SEC must appreciate that the “no-action letters” issued by its Rule

What E&S Stewards Say In Their Own Defense

Prior to final publication of this report, we shared a draft with several long-time shareholder advocates who generously offered feedback. Their common perspective is that the report does not adequately describe the many tangible benefits of stewardship. One of the highly respected leaders who responded was Tim Smith, who has been actively involved in a wide range of stewardship efforts since co-founding the Interfaith Center for Corporate Responsibility in 1971. Even though he and his colleagues are sometimes frustrated in their short-term efforts, he forcefully argued that investor advocates excel at “drawing attention to shocking and substandard corporate conduct in a very visible way.” In sum, Smith observed, “We often get the debate started.”

Jonas Kron, chief advocacy officer of Trillium Asset Management, told us that it's unrealistic to expect investors to singlehandedly transform businesses overnight. He embraces [what the Journal of Management Studies calls a “field building” approach](#).¹ The idea is that stewards shape assumptions, norms, and rules in the larger corporate setting by stigmatizing certain behavior, promoting voluntary standards, and pushing regulatory change. “Engagement should not be viewed in isolation,” but as one point of pressure among many, he said. “We’re asking new questions, influencing investors to think differently, contributing to a larger body of work by stakeholders of all kinds.”

One of Smith's colleagues, Rebecca De Winter-Schmitt, is the associate director of the Investor Alliance for Human Rights, an ambitious platform for collective action that shares many of our Center's priorities. She argued that our report is too absolute in dismissing the value of certain modes of stewardship—and too quick to find failure—even as our report “captures the complex interplay of factors that can move corporations towards more responsible conduct.” Indeed, our two groups broadly agree that disclosure is generally a needed precursor to action, that stewardship “is only one tool to be used in conjunction with others,” and that the recent blossoming of sustainable regulation provides an opportunity for investors to play a crucial supporting role, because hard law is incomparably most effective in spurring a company to act.

Rob Berridge, who directs engagement at the non-profit Ceres, is among many advocates who stress the constraints placed on investors by the SEC. Climate pledges, while imperfect, are often the best practicable outcome in his view. As an example, he points to a 2021 settlement with the steelmaker Cleveland-Cliffs. “Investors basically got the US rolled steel leader to commit to decarbonize on a science-based timeline. That’s a win. Yes, some companies might fall short of meeting their commitments—but that’s why investors also increasingly ask for annual transition plans. What more can investors do? They are not regulators. The way the SEC interprets its rules, investors can’t just ask steel makers to do something really specific like use more green hydrogen.”

Andrew Behar has served since 2010 as chief executive of As You Sow, which bills itself as the nation’s non-profit leader in shareholder advocacy. He agreed that E&S stewards are shackled by regulatory constraints—and highlighted the added challenges posed by the conservative anti-ESG movement. If the Republican-controlled House Committee on Financial Services ever has its way, Congress might pass a bill that gives companies near-total control over what investor proposals they are willing to entertain.² “You have to understand that our hands and feet are tied behind our backs,” Behar said.

¹ Emilio Marti, et al., “The Impact of Sustainable Investing: A Multidisciplinary Review,” *Journal of Management Studies* (June 2, 2023).

² Sanford Lewis, “Shareholder Rights: Assessing the Threat Environment,” *Harv. L. Sch. Forum on Corp. Governance* (Aug. 21, 2023). A pending lawsuit in the Fifth Circuit, filed by the National Association of Manufacturers against the SEC, seeks a similar outcome. *Id.*

14a-8 team have the force of legal rulings; yet they routinely assert that the line has been crossed into micro-management, with no elaboration. A modicum of shareholder democracy requires that an E&S question be put to the full investor base (and if it passes, to management), subject to reasonable limits. The SEC should stop construing its rules so narrowly as to deprive investors of their right to urge corporate protection of the environment and society or the minimization of material E&S risk.

Why E&S stewardship is still worth reforming

There are two primary ways for socially conscious investors to influence large public companies to protect the environment and society: through engagement or through ESG fund construction.⁵³ Most scholars believe that, at present, engagement is more likely to have an effect.

“[E]ngagement emerges as the most reliable mechanism for investors seeking impact,” [concludes a team led by MIT’s Julian Kölbel](#).⁵⁴ On the same basis, [Stanford’s Jonathan Berk and Wharton’s Jules van Binsbergen](#) urge ethical investors not to divest, but rather “to invest and exercise their rights of control.”⁵⁵ In more elegant terms, the economists [Eleonora Broccardo, Oliver Hart, and Luigi Zingales](#) advise using “Voice” over “Exit” as a way to boost social responsibility.⁵⁶ Elsewhere, [Hart and Zingales](#) go further, and argue for designing ESG funds around a specific stewardship strategy.⁵⁷ When [Alex Edmans of the London School of Economics](#) told the *Wall Street Journal* that “engagement is the key mechanism through which sustainable investing has impact,”⁵⁸ he spoke for a daunting group of heavyweight scholars. We take a more nuanced view of both premises, and draw a more nuanced conclusion.

We agree that *existing* ESG funds generally fail to influence companies through portfolio construction, [as we elaborated in the Center's 2023 report](#) on investment.⁵⁹ Perversely, most ESG ratings only assess ESG factors when the legal or reputational risks to the firm are significant. Yet ESG investors must hold a firm accountable precisely when those mechanisms fail, and when harming the world may be profitable or go unnoticed. Most current ESG funds barely differ from their non-ESG benchmarks.⁶⁰ And most ESG funds pick their holdings based on an aggregate score for each company that combines countless subfactors, making it hard for the company to know what conduct is being encouraged or discouraged. ESG fund construction will not sway the C-suite until ESG funds are reformed.⁶¹ However, our last report charts a path to creating funds that prioritize clear and well-measured ethical objectives. And that path is worth pursuing.

As ESG funds are reimagined and strengthened, engagement is for now investors' main *potential* lever of power over corporate conduct, with emphasis on the word "potential." The stronger and more common claim—that stewardship is the key mechanism for actual impact—goes too far. A company tossing a bone to activists should not be confused with one agreeing to real-world change.

Toward a pragmatic definition of E&S success

"Evidence of positive results are lacking," [Cambridge University's Quigley wisely concludes](#) after reviewing the stewardship literature. "[T]hese results are incremental at best – if there is any real-world outcome at all." Overall, E&S engagement "has not yet proven itself an effective" strategy in her view. The under-used exception is the tactic of withholding support for company

directors, which has yielded robust real-world results in lowering CEO pay, enforcing climate disclosure, and promoting women or minorities on boards, as discussed below.⁶² Quigley holds out hope that the general strategy of E&S stewardship "could become more effective," with greater use of the tactic that is proven (director voting)—and a greater focus on outcomes.⁶³

We concur with Quigley's generalizations that E&S stewardship usually yields empty symbolism and that the existing scholarship has defined "success" naively. We also support her recommendations that stewards withhold their support for management directors more often and prioritize real-world change above all other goals.

However, Quigley may overstate the historical failures of stewardship because she is primarily focused on stewards' inability to alter the business models that stoke climate change. In addition, her analysis is weakened by her reliance on the standard taxonomy, which simplistically divides all stewardship into the two goals of "disclosure" and "action."

Just as ESG funds need to be reformulated, so too must efforts to engage with companies be fundamentally strengthened if they are to realize their *potential* to shape business impacts on society. That potential makes it imperative to assess stewardship's record, with an emphasis on the S. To do so properly requires a more precise and ambitious analytical framework.

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Until 'ESG' investment funds are fixed, engagement is for now investors' main *potential* lever of power over corporate conduct, with emphasis on the word 'potential.'

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3. A New Analytical Framework for Stewardship

“Sophisticated activists have no illusion that stewardship is a cure-all. They know that their role is supplementary, to fill the void where government is paralyzed.”

Stewardship proposals are conventionally divided into two unitary categories: corporate “disclosure” and corporate “action.” But these broad categories conceal more than they reveal. The only criterion that should matter is real-world change.

The Varieties of E&S Disclosure

However much they might prefer action, stewards are acutely aware that disclosure-based stewardship is likelier to find a receptive audience. Last year shareholders failed to pass a single action-directed E&S proposal. More precisely, every proposal that passed took the form of a *report*.⁶⁴ [A long-term study by the proxy adviser ISS](#) shows that the proportion of proposals calling for E&S disclosure rose sharply after 2010. ISS partly credits this conciliatory approach with the long rise in shareholder support after 2010.⁶⁵ But not all disclosures are created equal.

A tale of two reports

Whatever issue they addressed, most 2023 E&S proposals took a single form, and in most cases, a singularly ineffective one. Investors’ go-to move is asking the board to commission a one-off report assessing a certain problem. If company assent is the marker of success, then asking for a harmless report is a masterstroke. If social impact is the goal, then it’s usually pointless—but not always. Last year’s reports on union suppression at

Apple and Starbucks present a fascinating case study, with Apple representing business as usual and Starbucks showing a new path forward.

One of the most feted “successes” of 2023 focused on freedom of association at Apple. Investors asked the firm to report on the tension between its alleged efforts to defeat union organizing and its nominal respect for the International Labor Organization’s Core Labor Standards. The resolution settled with fanfare—and a non-revelatory report issued quietly at year’s end. The proponents followed up with a sharp critique. The legal team that conducted the study had relied primarily on a “desktop review” of Apple’s written policies—without speaking to workers and without specifically addressing the federal unfair labor charges. The law firm report concluded that Apple was making reasonable efforts to comply.⁶⁶

At Starbucks, investors obtained a similar report by winning a shareholder vote, and the report suffered from similar flaws.⁶⁷ But there the story takes a dramatic twist. A union coalition called the Strategic Organizing Center (SOC) began to mount the world’s second

ESG proxy fight—nominating three union-friendly directors for the Starbucks board. About two weeks before Starbucks' 2024 general meeting, Starbucks agreed to begin the process of national collective bargaining, and SOC dropped its proxy fight. An expert on unionization said that it was a "huge step forward" if genuine, and by June, Starbucks had reached several key early agreements with union organizers.⁶⁸

What made the difference at Starbucks? Union organizing was clearly essential, but that was not sufficient at Apple. "I don't believe Starbucks would have settled but for the proxy fight," opines Chief ESG Officer John Adler of the NYC Comptroller's Office, who helped lead both investor campaigns.⁶⁹ What suddenly made an ESG proxy fight feasible after the Exxon debacle? The answer is "universal proxy cards."⁷⁰ A technical change in the physical logistics of voting, adopted by the SEC in 2022, reduced the cost of proxy fighting by an order of magnitude, from \$35 million for Engine No. 1 to \$3 million for SOC. And while the retreat of big US asset managers has made it hard to build support, SOC compensated by recruiting the top proxy advisers. With creative allies, genuine investor success is possible.

[The value of ongoing reporting](#)

Ongoing reporting of E or S data should not be lumped in with a one-shot, single-issue report by a professional beholden to the board. The value of such ongoing disclosure may be limited and contingent, but it can be real. That which is measured publicly may not improve immediately, but at least it stands a chance of improving, as better metrics and mechanisms of enforcement are developed, and as public opinion gathers force.

Our position is that stewards should make demands for ongoing reporting *alongside* their demands for sweeping action. Uniform reporting under the best metrics can have value so long as it is properly understood as the pre-

cursor to action, rather than as an end in itself—or even worse, as a substitute for action. Sophisticated activists have no illusion that stewardship is a cure-all. They know that their role is supplementary, to fill the void where government is paralyzed (as is routine these days in Washington, DC). While some cynical executives may see voluntary disclosure as a way to avoid mandatory disclosure, and disclosure as a way to stave off action, the shrewdest stewards push for all of the above. US sustainability advocates have recently poured their energies into SEC disclosure rules. They know that mandatory uniform reporting under clear metrics—on human capital as on climate—would empower constituencies inside and outside the corporations to push for follow-up reform and for further regulatory steps.

The value of any reporting system depends initially on the strength of its metrics and indicators, and many early reporting frameworks (like the UK Modern Slavery Act) have not been constructive.⁷¹ But if more ambitious frameworks evolve, especially within the S, this may be an area where future stewards can play a constructive role. Stewards have historically been effective in helping to enforce compliance with reporting frameworks, though many of the current reporting frameworks are weak.⁷²

Since 2020, BlackRock has pushed the worst publicly-traded carbon polluters to report in line with voluntary global standards, warning that it would discipline laggards by opposing their directors.⁷³ Here BlackRock has followed through in useful ways. On climate grounds, it withheld support for 270 management proposals related to directors in 2022, and 213 in 2023. The share of the world's 1,000 most-carbon-intensive firms that fully disclose under the Task Force on Climate-Related Financial Reporting rose from 57% to over 70% in just two years.⁷⁴ Vanguard and State Street, on a smaller scale, have also focused on engaging with carbon polluters.

One study has accordingly found a correlation between Big Three engagement and reduced emissions.⁷⁵ Of course, a proven method in the E arena may also be applied in the S. The same discipline should be used to enforce reporting on S factors, like human capital management. And human capital data should encompass indirect workers in the supply chain.

An important caveat is that big asset managers outside Europe rarely discipline companies that lag in climate *action* (versus disclosure). The NGO [Majority Action](#) studied the director votes of 16 global asset giants at the 16 companies that it deems most out of sync with the Paris Climate Accord.⁷⁶ Vanguard and Fidelity rubber-stamped every director named by the Paris scofflaws, and BlackRock was not much better.⁷⁷

[The Varieties of E&S Action](#)

The key to understanding E&S proxy politics is to realize that the resolutions lauded by E&S advocates as "action-oriented" are exactly the ones deplored by big US asset managers as "prescriptive." The irony is that disclosure is designed to lead to action. The whole point of firms disclosing their carbon footprint, or supply chain wages, is to enable other actors (like investors and regulators) to operationalize the shared data to protect people and the planet. A proposal requesting follow-up action is thus the logical sequel to one demanding disclosure. Such a strategy would seem unobjectionable when it seeks action aligned with globally accepted norms.

Managers driven by short-termism do object, because meaningful change will add costs. But not all "active" proposals are meaningful. Different types of action may be arrayed along a spectrum according to their likelihood to effect real change (and elicit resistance).

[Pledges and commitments](#)

Pledges are the easiest "action" for a company to concede, because they are costless, symbolic, and revocable.

Chevron's 2010 commitment to the highest UN and ILO standards on human and labor rights didn't halt its collaboration with Myanmar's abusive military junta. Similar policies at Apple haven't softened that firm's hostility to unionization. BP and Shell scaled back their pledges to reduce oil and gas production this decade as soon as it suited management's fancy.⁷⁸ Even if a current CEO makes a pledge in good faith, he won't be around forever. He might even be ousted *because* of his E&S commitment, as arguably contributed to leadership changes at Danone and Unilever. The median CEO tenure in the S&P 500 is under five years.⁷⁹

On the 2023 ballot, ShareAction classified over a quarter of the E&S questions it tracked as action-oriented (69 of 257).⁸⁰ Most of the "actions" demanded were climate commitments—for instance, to set Paris-aligned emissions targets or a timeline for phasing out fossil fuel financing. The rare S example was a request that Rivian, the electric carmaker, adopt a human rights policy throughout its supply chain consistent with UN and ILO standards.

The best that can be said of pledges is that they provide a foothold within the company for constituencies to advocate for change. "Symbols can offer an important starting point," argues the law professor Kishanthi Parella.⁸¹ Unfortunately, as the Apple example shows, follow-on reports that are designed to document the divergence between a firm's pledges and practices can be futile in their own right. Perhaps a new wave of proposals that spotlight the mismatch between a firm's policies and political activity will fare better.

[Due diligence: adopting a policy that might lead to real-world change](#)

The second-easiest way for a cynical company to coopt its critics is to agree to an empty, low-cost policy tweak. At the same time, protocols are the standard tools for an enterprise to operationalize change through human rights

due diligence. As with ESG pledges or ESG reporting, human rights due diligence policies can be important, but are insufficient on their own. Firms must avoid the pitfall that procedural change will *take the place* of substantive change—especially in the realm of human rights. As ever, the sole criterion of success should be outcomes: more livable wages, fewer accidents, less child labor, less forced labor, and so forth.

A dozen 2023 resolutions classified by ShareAction as "action-oriented" asked for due diligence, and many garnered substantial support.⁸² At least four asked firms to ban union-busting, with processes installed to identify and prevent or remediate any violations. Another half-dozen asked drug makers to adopt a process considering equitable access to drugs before extending their patents.

Due diligence merits close attention because advocates cite it as a historically successful strategy for engagement on *human rights*, and its centrality will only grow as EU supply chain laws are phased in. But it can only be judged retrospectively, and current evaluations rarely focus on outcomes. The most we can do is to review the policies adopted in the nominal success stories and look for hints in existing flawed sources as to whether change has taken hold and persisted.

A 2014 investigation by *The Guardian* exposed Thailand's CP Foods for relying on forced labor to supply its fishmeal. Within weeks, the Dutch asset manager [Robeco organized a PRI coalition](#). The investors pushed the world's leading prawn producer to map its supply chain, limit its purchases to certified processing plants, audit its labor standards, and develop sustainable sourcing protocols.⁸³ CP Foods still scores relatively respectably in the World Benchmarking Alliance's Seafood Stewardship Index. But in a common pattern, it has recently slipped from 3rd to 8th among the 30 companies ranked in its sector.⁸⁴

Following a 2020 sweatshop scandal at the UK fast-fashion brand BooHoo, US asset giants spurred the firm to publish its supplier list; cut nearly 400 suppliers from its roster; build a manufacturing center to model best practices; and—not least—appoint a director with ESG expertise.⁸⁵ BooHoo debuted on the "Know the Chain" human rights scorecard in 2023, with an above-average rating of 28th among 65 apparel makers.⁸⁶ While such tools are perhaps most reliable in comparing a single firm over time, here we lack the advantage of a prior score history.

As You Sow began engaging with Monster Beverage because the company placed dead last in Know the Chain's 2016 food and beverage scorecard. As a consumer youth brand facing negative publicity on child labor among Indian sugar suppliers, Monster was receptive. [As You Sow proclaimed Monster a stewardship poster child](#) when its score soared to the 53rd percentile in 2020-21.⁸⁷ Regrettably, its score then slid to the 38th percentile in 2022-23.⁸⁸ For Monster's slide, As You Sow CEO Andrew Behar blames fickle human rights funding, which halted his group's annual follow-ups after five years. While media coverage and nonprofit funding may ebb and flow, the countervailing pressure to beat quarterly earnings calls never lets up.

Patricia Jurewicz, the founder and longtime CEO of the Responsible Sourcing Network, points to Uzbek cotton as a regional sector where a long stewardship campaign, starting in 2007, lastingly slashed the incidence of child labor. At the end of the campaign's first decade, [Jurewicz gave credit for the decline in child labor](#) to multiple actors using multiple strategies. Reliably-funded nonprofits issued biting reports, seeded local or global media coverage, and threatened a consumer boycott. Investors prodded Western firms and governments to lobby Uzbekistan, and the ILO deployed experts to design an enduring solution.⁸⁹ The 2016 death of the post-Soviet dictator Islam Karimov, and the coming

into power of a more reform-oriented government, has also aided efforts to address Uzbek forced labor. The US Labor Department confirms in its 2022 International Child Labor & Forced Labor Reports that Uzbekistan “has made strong progress in addressing labor issues in the cotton harvest.”⁹⁰

Finally, the Brumadinho dam disaster set in motion due diligence at a sectoral level *worldwide*. The 2019 collapse of a mine tailings dam in Brazil, killing 250 Vale workers and contractors, was both an E and an S tragedy. Within days, [the pension funds of Sweden and the Church of England rounded up 114 PRI members](#) managing \$14 trillion. The investor coalition rapidly got 45 of the top 50 mining firms by revenue to publicly catalog nearly 2,000 tailings dams—which had previously been secret ticking time bombs—and to institute a 24/7 alert system. Next, the investors developed a global standard on mine waste management and persuaded over half of the sector to adopt it. To discipline firms that won’t consider the new standard, some investors are refusing to approve their board chairs.⁹¹ Though in some respects it seems a model for sectoral due diligence, this campaign is too fresh to assess. As for the vital task of providing a remedy to the victims’ families, Vale continues to come under harsh criticism.⁹² To be a model in all respects, the Brumadinho engagement would encompass a proper remedy for the victims.

[Taking action: adopting a policy that directly yields real-world change](#)

Sometimes stewards advocate a policy that would have an instant impact—like paid sick leave. In a clear victory, Norfolk Southern last year granted all its union workers the right to sick leave before such a proposal went to a vote. Norfolk Southern shows that a transformative resolution is still feasible, despite narrow SEC rulings. Improving workers lives is what it’s all about. However, the breakthrough came in the unique context of unions threaten-

ing a national rail strike over sick leave, and the US President backing them up—all while Norfolk Southern was under scrutiny from the February 2023 derailment of its train carrying toxic waste in East Palestine, Ohio.⁹³

For an older impactful precedent, consider corporate America’s LGBTQ policies. As part of a much wider movement, activists filed 237 S proposals against discrimination based on sexual orientation or gender identity between 2005 and 2012. About 60% led to reform, with untold knock-on effects.⁹⁴ Granting marriage or retirement benefits to same-sex partners goes beyond words and affects people’s lives in a lasting way.

At the bold end of the spectrum, some corporate steps take effect so directly that they may simply be labeled “taking action”: Raise wages, stop oil drilling, fire your CEO.

Perhaps the closest 2023 example was a demand that Japan’s Kansai Electric ban new coal-fired power plants. This idea didn’t get far, which is why pure action presents a dilemma for advocates. But in rare instances, demands for direct action have gained surprising traction. Most notable has been the appointment of more women to corporate boards. Modest progress has also been made in appointing minority group members, and reducing extravagant CEO compensation.

Shareholder advocates have made an important contribution to the rising number of women in the boardroom. Years of old-style engagement had run into a brick wall. Then, starting with State Street’s “Fearless Girl” campaign of 2017, the Big Three began disapproving directors at companies with male-dominated boardrooms. Within three years, [a Journal of Financial Economics study credits](#) the Big Three with raising the net rate of women joining boards by at least 2.5 times.⁹⁵ Of course, it should be noted that the Fearless Girl campaign kicked off at a pivotal moment for feminism,

in the months between the “Women’s March,” and the inauguration of the “Me Too” movement.

Since then, BlackRock has aimed to diversify the boardroom more broadly. Citing a lack of diversity, the asset leader opposed management on 1,500 director votes in 2020 and has kept that pace through 2023.⁹⁶ This program overlapped with some progress in minority board representation. Upward of 800 Russell 3000 companies selected their first minority director between 2020 and 2022.⁹⁷ To be sure, this spurt of progress is belated and all too limited.

Stewards who would slash CEO pay may also claim some limited impact. Despite the problem’s obvious persistence, a 2011 *Review of Financial Studies* study awarded a gold star to 134 campaigns opposing director reelection at firms that overpay their chieftains. [Scholars give the activists credit](#) for driving down CEO pay at targeted firms by a sturdy 38%.⁹⁸

[A stark choice](#)

A choice between the tamest sort of disclosure and a bold form of action was presented by two competing 2022 resolutions to improve Amazon warehouse working conditions. Professional stewards presented a state-of-the-art proposal that asked for a report. At the general meeting, warehouse worker Daniel Olayiwola offered a floor resolution. He demanded an end to the productivity quotas and surveillance that he blamed for the epidemic of warehouse injuries. The proxy proposal won 40% support. Olayiwola’s idea garnered all of 0.2%.⁹⁹ But is the goal to study the problem or to solve the problem? Olayiwola offered a real solution, which has since been taken up by federal and state legislators.¹⁰⁰ The bolder strategy better served the workers’ cause.

4. How Large US Asset Managers Have Abandoned E&S Stewardship

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The conclusion is inescapable that big US asset managers have retreated from shareholder advocacy in response to partisan anti-ESG pressure.
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Having established that engagement, for all its shortcomings, holds promise, we return to the present era of backsliding. The dominant US money managers insist that they've remained consistent. But the facts show clearly that they have retreated in the face of the anti-ESG movement.

The US Industry's Responses to the Anti-ESG Backlash

The recent plunge in support for E&S proposals is driven by the choices of a few trillion-dollar US asset managers, starting with the two runaway market leaders.¹⁰¹ From 2021 to 2023, BlackRock went from embracing over 40% of the E&S proposals on its proxy ballots to under 10%. Vanguard slashed its rate of E&S support by a factor of 10, from 30% to 3%.¹⁰² Support from the “Big Four,” as those two plus State Street and Fidelity are known, is crucial to passage.¹⁰³ A “yes” from each would have passed at least 69 extra E&S proposals last year.¹⁰⁴

Big US asset managers retreated regardless of any pledges or guidelines they've embraced. T. Rowe Price favored only 7% of the 2023 climate proposals tracked by ShareAction, despite its status as a supposed “Net Zero Asset Manager.”¹⁰⁵ Goldman Sachs has impeccable E&S voting guidelines, yet embraced only 5% of the E&S resolutions tracked last year by ShareAction.¹⁰⁶ Investors who

wish to support ethical proposals should be leery of ESG rankings that focus on an institution's pledges or policies.¹⁰⁷ With some exceptions,¹⁰⁸ they should simply be skeptical of huge US asset managers.

The ghost of proxy future

In January 2022, BlackRock introduced “Voting Choice,” also known as pass-through voting. The program gives clients the options of making their own decision on proxy votes, adopting BlackRock's recommendations, adopting the recommendations of the top proxy advisers, or taking a hybrid approach. Over the past two-and-a-half years, the program has been steadily expanded by BlackRock, copied by its US peers, and taken up by some of its customers.¹⁰⁹

It's hard to object to the principle of empowering the ultimate investors. But the practical fallout will be to diffuse the voting power of the Big Four—and make the passage of investor resolutions even less likely. “The result of this is likely to be *less shareholder power*,” observes Bloomberg's Matt Levine.¹¹⁰ Pass-through voting lets money managers lower their sights,

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Vanguard slashed its rate of support for environmental and social investor resolutions by a factor of 10, from 30% to 3%.
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warns ShareAction.¹¹¹ Put another way, advocates fear that big US money managers are abdicating their role to safeguard the systemic interests of their universal investor clients. Returning power to individuals re-introduces the problem that individuals won't act in their own collective interest.¹¹²

Is a retreat in the offing on engagement beyond the proxy ballot?

Historically, the Big Four are relatively weak E&S stewards.¹¹³ And they avoid collaborative engagement for fear of being labeled a cartel.¹¹⁴ [In an extensive study of PRI campaigns](#) launched between 2007 and 2015, none of the ten largest US asset managers joined a single stewardship campaign. Only two small US asset managers appeared on the honor rolls, which spotlighted the ten PRI members joining the most engagements, and the ten PRI members leading the most engagements.¹¹⁵

But when the Big Four do engage, they tend to engage systemically, and they make a difference.¹¹⁶ Tackling systemic issues makes sense for players with a deep knowledge of the economy, who can spread costs widely, and whose clients stand to benefit from the broad gains that may follow. Most importantly, evidence shows business is likelier to heed investors holding a larger stake.¹¹⁷

For now, BlackRock remains committed to E&S engagement (as opposed to proxy voting), with over 3,000 E&S

engagements recorded in 2023.¹¹⁸ Similarly, 2023 saw BlackRock defy management on director-related votes over 1,500 times to chasten a firm for its lack of board diversity and over 200 times for poor climate reporting.¹¹⁹

At the same time, BlackRock's tone has shifted, and there are alarming hints of a policy shift on director voting. [BlackRock's 2024 climate policy](#)—issued shortly after [Tennessee filed a suit](#) challenging the lawfulness of BlackRock's climate policies—features two boldface paragraphs on fiduciary duty.¹²⁰ If polluters lag on reporting, the new policy doesn't threaten to oust their directors; it merely “look[s] for a fulsome explanation.”¹²¹

The language of BlackRock's policy on human capital has also grown more timid. Where it used to state in its own voice, “We view a company's approach to human capital management as a potential competitive advantage,” BlackRock now hides behind the opinions of others: “[M]any companies and investors consider robust HCM to be ... a competitive advantage.”¹²² These tonal shifts should put BlackRock watchers on high alert for a change in its behavior, especially on director voting.

The US Industry's Excuses and Why They Ring Hollow

Conventional wisdom at first attributed the E&S retreat to anti-ESG pressure.¹²³ Big US asset managers and their allies have since muddied the waters by spreading a different narrative.¹²⁴ But the backlash theory is clearly correct, tightly fitting the nature and timing of the retreat.

A false epidemic of bold proposals

Asset managers insist they've stayed consistent in the face of anti-ESG pressure.¹²⁵ Vanguard claims that recent resolutions go beyond disclosure to seek “specific actions.”¹²⁶ Condemning efforts to “direct” a firm's practices,

BlackRock opposes E&S demands that are too “prescriptive” or “constraining,” or that seek “to engineer a specific decarbonization outcome.”¹²⁷ Among the proposals it opposed last year as too “prescriptive” were 21 that asked firms to phase out fossil fuel financing, set targets, or plan other steps in line with the Paris Agreement.¹²⁸ “Prescriptive” is, of course, code for action-oriented.

In reality, requests for disclosure still predominate. ShareAction calculates that calls for action only ticked up from 22% to 27% of all E&S resolutions last year. The deeper plunge in E&S support by US asset managers can only be explained by the fact that US asset managers are retreating on disclosure too. By way of illustration, BlackRock opposed 13 of 15 climate proposals classified by ShareAction as disclosure-based. Goldman Sachs rejected 12 of the 15.¹²⁹

The trend toward demanding action, such as it is, explains still less in the realm of the S. In justifying its “no” votes on S proposals, [BlackRock says it defers to managers on issues like employee pay or workplace risks](#).¹³⁰ [Vanguard says it views “with some concern” any call for a third-party report](#), absent evidence that the board lacks independence.¹³¹

The retreat closely tracks the anti-ESG agenda

The anti-ESG world's twin obsessions are, in the *Wall Street Journal's* words, “woke shareholder proposals to do racial audits or strangle fossil fuels.”¹³² Not coincidentally, proxy voting on those two issues has collapsed. Shareholder support of civil rights audits fell from about a third the prior two years to 14% in 2023—and none passed.¹³³ On climate questions, support also fell from a peak of 50% in 2021 to about 20% in 2023.¹³⁴ In the warmest year in recorded history, not a single vote on greenhouse gas emissions reached a majority.¹³⁵

Vanguard, along with Fidelity, voted “no” on nearly all of the 50 “wokest” 2022 proposals [identified by the anti-ESG Committee to Unleash Prosperity](#), earning an “A” grade for anti-wokeness.¹³⁶ Vanguard placed an exclamation point on its 2022 record by rescinding its Net Zero Asset Managers pledge.¹³⁷ This flip-flop came barely a week after red state AGs opposed a regulatory petition by Vanguard to raise its national utility holdings, expressly citing Vanguard’s net-zero policy.¹³⁸ The next season, Vanguard found fault with 470 of 480 E&S proposals.

The other half of the Big Four has a more mixed voting record.¹³⁹ Yet BlackRock downgraded its membership in the Climate Action 100+ coalition, and State Street left the group altogether.¹⁴⁰ Meanwhile, [State Street’s acknowledgment that “climate change pose\[s\] a systemic risk” vanished from its annual climate report](#).¹⁴¹

Big US asset managers vote “no” while others vote “yes”

In contending that E&S activists have grown bolder, the US industry likes to say that the “quality” of their proposals has fallen.¹⁴² Morningstar has a method of holding resolution “quality” steady in cross-year comparisons, which allows this contention to be tested.¹⁴³ Morningstar tracks resolutions favored by at least 40% of independent investors, which it calls “key,” or “high quality.” A better term would be “widely accepted.”

If the rise of “low-quality” resolutions explained their shift in voting patterns, then one might expect US asset giants’ support of widely accepted E&S measures to hold steady. In fact, the roller coaster ride has been steeper for such proposals.¹⁴⁴ Though a few of their peers have bucked the trend,¹⁴⁵ [there has been a sharp pull-back in support for widely accepted measures](#) by five of the global top six—Vanguard,

BlackRock, Fidelity, Goldman Sachs, and JPMorgan—as well as by American Century, Capital Group, T. Rowe Price, and TIAA/Nuveen.¹⁴⁶

Big US asset managers are dramatically out of step with their European peers

There has long been an E&S voting gap between US and continental European money managers. But from 2022 to 2023, the transatlantic gap widened into a chasm.¹⁴⁷ This pattern buttresses the theory that US institutions are responding to the anti-ESG backlash, which thus far is almost exclusively a US phenomenon.

European money managers supported E&S resolutions last year at over triple the rate of their counterparts in the US. On [the latest voting scorecard kept by the NGO ShareAction](#), American money managers comprise 15 of the bottom 20 E&S performers, while the top 25 are all based in Europe or the UK.¹⁴⁸ Unfortunately for E&S advocates, American firms still dominate the field.¹⁴⁹

The transatlantic divide is at its widest in close E&S votes. Fifteen of the largest European money managers favored 98% of widely-accepted proposals last year, while Vanguard approved 9%.¹⁵⁰

Concluding thoughts on big US asset managers

As a simple matter of timing, the E&S retreat of 2022 and 2023 coincided with an unprecedented wave of state-level anti-ESG laws and legal threats.¹⁵¹ Florida Governor Ron DeSantis used the issue to enhance his national profile, prompting attacks on ESG by all eight of the other GOP candidates that qualified for any 2024 presidential debate.¹⁵² Vanguard jumped when red state AGs assailed its net-zero pledge, and withdrew it a week later. The month after Tennessee filed suit, BlackRock pared back its climate engagement policy.

The conclusion is inescapable that big US asset managers retreated in response to anti-ESG pressure. Unfortunately, action-oriented stewardship has become anathema to large US asset managers. Those players are rolling back their support even for disclosure-based resolutions, while their expansion of pass-through voting dilutes their power and makes the passage of any proposal a long shot. The Big Four have never joined PRI’s collective actions, even though sectoral engagement is their forte. BlackRock has so far continued to engage on diversity and climate. And those campaigns are exceptionally productive because they are backed by the discipline of voting down company directors. But BlackRock’s shift in rhetoric, and its pattern of placating the anti-ESG movement, makes it essential for civil society to closely monitor its actions, along with those of its peers.

The big US asset managers are too important to give up on. But it isn’t clear, in light of the current political climate, what might cause them to reverse course. Meanwhile, an alliance of European asset managers, global asset owners, and socially responsible investors can continue to send business a pro-ESG message through stewardship in all its forms.

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There’s been a sharp pull-back in support for ‘widely accepted’ environmental and social proposals by five of the six top global asset managers: BlackRock, Vanguard, Fidelity, Goldman Sachs, and JPMorgan.

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5. Conclusion

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Stewardship has been much less effective in improving company performance on social issues, as compared with promoting climate reporting or climate commitments.
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Shareholder activism on environmental and social issues can potentially help press companies to improve environmental and social performance. This style of investor activism has been used most effectively to advance climate disclosure and the setting of climate targets. Stewardship has been much less effective in improving company performance on social issues, like the well-being of workers in global supply chains. In this area, the potential of shareholder activism is not being realized.

E&S stewardship takes three broad forms: (1) proxy resolutions asking for more disclosure or action; (2) informal efforts to engage directly with companies and persuade them to change course; or (3) various strategies relating to the board of directors. We address each in turn.

Shareholder resolutions

The first tool available to activists is to file shareholder resolutions calling for changes in corporate policies or practices. Such resolutions have been more effective in drawing support for environmental than for social issues, with the partial exception of diversity, which enjoyed a burst of passed proposals and commitments in 2020-2021. Other human rights issues have historically drawn lower levels of investor support. In the US, the ultimate limit on the effectiveness of shareholder proposals is the fact that they are non-binding. All too often these resolutions—or the agreements that are struck before the resolutions can be voted on—are too modest in their objectives. The most typical end result is for companies to prepare self-assessments that rarely yield new data or trigger remedial action.

Direct engagement

The second broad strategy available to shareholder activists is direct informal engagement with companies. In principle, all environmental and social engagement occurs in the shadow of shareholder voting power. Influential financial institutions—often acting in powerful coalitions—prefer to engage discreetly, without filing a contentious public proxy resolution. Some scholars find that this strategy is more likely to accomplish its objective. “[S]uccessful engagements are predominantly private,” [concludes one study](#), with proxy votes “used only occasionally to increase leverage.”¹⁵³ Discreet engagement is becoming more important, because the largest US investment managers have slashed their support for E&S proxy proposals—making it harder to reach the 50% threshold of investor support needed for their passage.

Ongoing attacks by conservative US politicians on ESG frameworks pose increased challenges to activist shareholders. These attacks underscore the imperative that governments introduce and apply binding human rights laws. The most notable new hard law in this area is the EU Corporate Sustainability Due Diligence Directive, which was adopted in April 2024, and needs to be implemented by new or amended supply chain laws in all 27 EU member states. Over time, these and other government regulations will obligate firms to take environmental and social remedial actions based on reported data. These ambitious and evolving statutes will not displace shareholder activism. Rather, they will play to the strength of these activists, who excel at helping to enforce compliance. Shareholder advocates already have a record of pushing for company adherence to a range of much weaker reporting frameworks, from the UK Modern Slavery Act to the UN Global Compact.

Strategies relating to boards of directors

Investors may send firms a strong message of disapproval by voting “no” on management proposals to reappoint their preferred board members. At most publicly listed corporations, a board nominee repudiated by a majority of investors must resign provisionally.¹⁵⁴ And at most such firms there is a relatively strong norm to respect the will of the shareholders.¹⁵⁵ Votes to reject directors, especially over climate issues, have been gaining prominence as an engagement strategy, if slowly.¹⁵⁶ Over six years, the number of defeated directors has more than doubled, from 26 in 2018 to 65 in 2023.¹⁵⁷ Ellen Quigley of Cambridge concludes that “voting against board members, a relatively rare tactic, may be significantly more effective than the much more common tactic of filing advisory shareholder resolutions.”¹⁵⁸

The ultimate way to confront a company over its board is for investors to mount an E&S proxy fight in a *contested* election, and to campaign on behalf of their own rival slate of directors. The most heralded example, the 2021 confrontation between Engine No. 1 and Exxon, failed to shift Exxon away from fossil fuels. A less heralded but far more promising model for E&S proxy fights was established last year by the union coalition SOC in the case of Starbucks. SOC persuaded the leading proxy advisers that the apparent suppression of union organizing at 300 cafes posed a material risk to a consumer brand catering to young professionals. Despite the retreat of big US asset managers from their support for E&S proposals, SOC’s proxy threat was credible enough for Starbucks to agree before the proxy vote to start collective bargaining. The Starbucks episode shows that the 2022 introduction of universal proxy cards has vastly lowered the cost of E&S proxy fights, and unexpectedly opened a new path forward.

The sensitivity of companies to director-based strategies points the way to another under-used tactic: demanding deeper expertise. [A new report by the NYU Stern Center for Sustainable Business](#) finds that the number of Fortune 100 directors with expertise on diversity or the environment grew respectably from 2018 to 2023—while director expertise on human rights, labor relations and workplace safety shrank by more than half, from 31 to 14.¹⁵⁹ As in the BooHoo engagement, stewards can and should demand more supply chain experts on boards. There are few better or simpler ways to promote ongoing real-world change.

The key to stewardship “success”

One common thread that runs through every example of social impact in this report is that the resolutions or engagements were timely¹⁶⁰ and coincided with intense pressure campaigns by other actors. Corporate America’s broader acceptance of LGBTQ rights and women on boards were part of broad social trends. The more constructive engagements tend to follow media firestorms—whether at firms like BooHoo and CP Foods, or at consumer brands reliant on Uzbek cotton or Indian sugar, or in the global mining sector after the Brumadinho dam tragedy. The recent investor breakthroughs at Norfolk Southern and Starbucks relied crucially on union organizing.

Each of these campaigns coincided with a wider wave of pressure, whether at the level of the company, the sector, or society as a whole. It’s hard to know how much credit for a given breakthrough should go to investors, as opposed to consumers, employees, organizers, litigators, or journalists. E&S stewards played a valuable role in translating social sentiment into corporate action. Of all the players in this complex drama, investors enjoy unique access to the boardroom and a unique understanding of boardroom culture. Stewardship can succeed when investors work in tandem with other constituencies to shift social mores over time.

Endnotes

- 1 See, e.g., Elroy Dimson, et al., “Active Ownership,” 28 *Review of Financial Studies* 3225 (2015) (“Traditional shareholder activism and hedge fund activism typically focus on issues related to the interests of shareholders only, whereas ESG activism focuses on issues related to the interests of a broader range of stakeholders, including employees, customers, and creditors.”).
- 2 A more recent E&S proxy fight at Starbucks, discussed below in Section III(A), did not proceed to a vote—but offers a far more intriguing model for the future.
- 3 See, e.g., Jessica Camille Aguirre, “The Little Hedge Fund Taking Down Big Oil,” *New York Times* (June 23, 2021). Vivienne Walt, “Time 100 Most Influential Companies of 2022: The Climate Capitalists: Can Capitalism Save the Planet? Engine No. 1’s Jennifer Grancio Thinks So,” *Time* (Mar. 30, 2022); Martin Whittaker & Richard Feloni, “‘We Always Believed We Had a Compelling Case for Change’—JUST Interviews Activist Investor Engine No. 1 After Exxon Victory,” *JUST Capital* (June 2, 2021).
- 4 See Conor Sen, [Twitter post](#) (May 26, 2021). See also Jan Fichtner et al., “The New Permanent Universal Owners: Index funds, patient capital, and the distinction between feeble and forceful stewardship,” 49 *Economy & Society* 493-515 (Nov. 2020) (showing that the Big 3 “are the largest owner in almost 90 percent of the S&P 500 firms, holding on average 21 per cent of the ownership,” with an even higher percentage of voting shares).
- 5 Matt Levine, “Exxon Lost a Climate Proxy Fight,” *Bloomberg Opinion* (May 27, 2021); Kevin Crowley & Scott Deveau, “Exxon CEO Is Dealt Stinging Setback at Hands of New Activist,” *Bloomberg* (May 26, 2021); Adele Peters, “World Changing Ideas: The inside story of how tiny hedge fund Engine No. 1 reshaped Exxon’s board,” *Fast Company* (June 10, 2021).
- 6 After one year, Engine has made no “discernible difference in the way Exxon is addressing climate change,” the president of As You Sow told *Dealbook*. Andrew Ross Sorkin, et al., “Reassessing the Board Fight That Was Meant to Transform Exxon,” *New York Times* (May 31, 2023).
- 7 Ortenca Aliaj & Derek Brower, “Exxon nemesis Engine No. 1 drops activism in hunt for new identity,” *Financial Times* (Aug. 9, 2023).
- 8 For its part, Exxon argues that the deal will accelerate Pioneer’s net zero timeline. Kevin Crowley & Saijel Kishan, “Why One-Time Exxon Adversary’s Board Picks Backed Mega Deal,” *Bloomberg Green* (Oct. 12, 2023).
- 9 Exxon Mobil, “Shareholder Proposal Lawsuit – Our responsibility to fight back” (Feb. 26, 2024); [Complaint, Exxon Mobil v. Arjuna Capital and Follow This](#), CV-00069-O (N.D. Tex., Jan. 21, 2024), at paras. 1, 3, 48; Sydney Ember, “Exxon Suit Over Activist Investor’s Climate Proposal Is Dismissed,” *New York Times* (June 17, 2024).
- 10 Natalie Grover, “BlackRock names Aramco boss to board,” *Reuters* (July 17, 2023).
- 11 See Paula Tkac, “One Proxy at a Time: Pursuing Social Change through Shareholder Proposals,” *Economic Review*, Vol. 91, No. 3 (2006) (finding 8.2% average support for 2,829 E&S proposals from 1992 to 2002); and Fassil Michael, “Responsible Investment: Proxy Voting,” ISS Governance Research & Voting (2021), at 14 (charting average annual support for E&S Proposals from 2000 to 2021).
- 12 Kosmas Papadopoulos, “The Long View: US Proxy Voting Trends on E&S Issues from 2000 to 2018,” *Harv. L. Sch. Forum on Corp. Governance* (Jan. 31, 2019).
- 13 As You Sow, “[Webinar – 2024 Proxy Preview](#)” (Mar. 14, 2024).
- 14 See Ropes & Gray, “[State Regulation of ESG Investment Decision-Making by Public Retirement Plans: An Updated Survey](#)” (continually updated).
- 15 [Letter from 19 Republican Attorneys General to BlackRock](#) (Aug. 4, 2022).
- 16 In a given year, about 90% of annual company meetings occur from March through June. Most data analysts define the 2023 proxy season to include resolutions from the second half of 2022 through the first half of 2023; we generally follow that convention. Lindsey Stewart, “Proxy Voting Insights,” *Harv. L. Sch. Forum on Corp. Governance* (Oct. 4, 2023) (citing Morningstar figures).
- 17 ShareAction, *Voting Matters 2023: Are asset managers using their proxy votes for action on environmental and social issues?* (Jan. 2024). By other calculations, the passage rate in 2023 was only 2%.
- 18 See Lara Anyani & William Kim, “A Review of the 2023 Proxy Season: An ESG Backlash?” *Harv. L. Sch. Forum on Corp. Governance* (Dec. 21, 2023) (charting a decline in passed E&S proposals from 38 to 32 to 7). Our more comprehensive count of eight companies where shareholders passed a contested E&S proposal during the 2023 season includes: Coterra Energy (74% for methane emission disclosures); Dollar General (68% for a worker safety audit); Expeditors International (57% for a DEI report); General Mills (56% for a plastic packaging report); Wells Fargo (55% for a harassment and discrimination report); Starbucks (52% for a labor relations report); and Kroger (51% for a pay gap report). We are excluding a lobbying report at McDonald’s that was approved by 50.3% of votes cast, but only 49.75% counting abstentions. See Ben Maiden, “Lobbying proposal attracts strong support at McDonald’s AGM,” *Governance Intelligence* (June 7, 2023). We are also excluding three companies where 2023 E&S proposals passed with management assent: FLSmidth & Co. (100% support for a management-approved human rights report); Cenovus Energy (99.5% for a management-approved climate lobbying report); NY Community Bancorp (95% for a management-approved climate lobbying report).
- 19 PRI, “[Are corporate boards responding to successful shareholder ESG proposals?](#)” (Mar. 1, 2023).
- 20 In 1990 the number of E proxy filings jumped ten-fold, to 42, on the back of the Exxon Valdez oil spill. Andrew J. Hoffman, “A Strategic Response to Investor Activism,” 37 *Sloan Management Review* 51, 61-62 (1996). For an article noting how Exxon was targeted for the next 13 years, see Robert Monks, et al., “Shareholder activism on environmental issues: A study of proposals at large US corporations (2000–2003)” (Dec. 2004).
- 21 Carbon Tracker, “Oil and gas companies are way off-track from Paris Agreement goals, finds new combined alignment scorecard” (Mar. 20, 2024).
- 22 Ellen Quigley, et al., “Divestment: Advantages and Disadvantages for the University of Cambridge,” Appendix V: “Impact of Engagement on Companies’ Environmental and Social Performance,” at page 123, available at SSRN (posted May 24, 2021).
- 23 Tamas Barko, et al., “Shareholder Engagement on Environmental, Social, and Governance Performance,” *Journal of Business Ethics* 180, pp. 777–812, at Table 1 (2022). A similar UK study found that only 22% of E engagements, and 30% of S engagements, succeeded to the point of influencing a company to respond. Andreas G. F. Hoepfner, et al., “ESG Shareholder Engagement and Downside Risk,” *Review of Finance* (forthcoming), at Table II (Sept. 2023). A smaller Canadian study found a “success” rate of 45% for E resolutions and 21% for S resolutions. I.J. Alexander Dyck, et al., “Do institutional investors drive corporate social responsibility? International evidence,” *Journal of Financial Economics*, 131(3), 693-714, at 19 (2019).
- 24 Quigley et al., “Divestment: Advantages and Disadvantages for the University of Cambridge” Appendix V: “Impact of Engagement on Companies’ Environmental and Social Performance,” at 105-106.
- 25 Barko, et al., “Shareholder Engagement on Environmental, Social, and Governance Performance,” *Journal of Business Ethics*, at 3, 41 (2022).
- 26 Dyck, et al., “Do institutional investors drive corporate social responsibility? International evidence,” *Journal of Financial Economics*, at 6 (2019).
- 27 Nicholas J. C. Santos, et al., “Shareholder Engagement and Chevron’s Policy 520 on Human Rights: The Role Played by the United States Jesuit Conference’s ‘National Jesuit Committee on Investment Responsibility,’” in Celine Louche et al., eds., *Socially Responsible Investment in the 21st Century: Does It Make a Difference for Society?* at 43-63 (2014).
- 28 Nur Uysal, et al., “Shareholder Communication and Issue Salience: Corporate Responses to ‘Social’ Shareholder Activism,” *Journal of Applied Communication Research* 46 (2): 179-201 (2018) (studying over 700 E proposals filed from 2006 to 2014).
- 29 Emma Sjöström, “Active ownership on environmental and social issues: What works? A summary of the recent academic literature” (Stockholm School of Economics, 2020), at 22.
- 30 See, e.g., Lindsey Stewart, “Starbucks Investors Aren’t Unified on Unionization” (Apr. 6, 2023) (“Usually, 30% support for a shareholder resolution is seen as a strong prompt for management action”). See also [The Conference Board Heat Map, 2023 Proxy Season](#) (treating 30% support as the threshold for a proposal that firms take seriously). For a slightly different rule of thumb, see Jennifer Williams-Alvarez, “Investors Put Forward More Proposals, Dialing Up Pressure on Companies,” *Wall Street Journal* (Aug. 2, 2022) (suggesting a corporate response is expected when the proxy vote reaches 25 to 30%).
- 31 How often does withdrawal signify that advocates got what they wanted? Studies are split. One finds that nearly 80% of withdrawals lead to corporate commitments. Another finds “success” in only a third of withdrawals, which may be spurred by either side’s fear of losing the vote. Compare Paula Tkac, “One Proxy at a Time: Pursuing Social Change through Shareholder Proposals,” *Economic Review*, Vol. 91, No. 3 (2006) with Miguel Rojas, et al., “Bringing About Changes to Corporate Social Policy through Shareholder Activism: Filers, Issues, Targets, and Success,” *Business and Society Review* 114 (2): 217–52 (2009).

- 32 As You Sow, "[Webinar: Proxy Preview 2023](#)" (Mar. 22, 2023).
- 33 Rob Berridge, Why climate agreements are the untold story of the 2023 proxy season, *Reuters* (June 28, 2023).
- 34 Paul Verney & Gina Gambetta, "[Recap of the 2023 Proxy Season and a Look Ahead to 2024](#)," *Responsible Investor* (Dec. 20, 2023).
- 35 See As You Sow, "[Webinar – 2024 Proxy Preview](#)" (Mar. 14, 2024) (noting a nearly-25% decline to 209 E&S settlements in 2023); Interview by the author with Rob Berridge of Ceres (June 3, 2024), noting a decline in E withdrawals for commitment from 33% in 2023 (85 of 259 climate proposals withdrawn) to 25% in 2024 to date (69 of 277 climate withdrawals withdrawn through June 3).
- 36 Ceres, "[Shareholders Spur Action On Climate Change: Company Commitments From the 2014 & 2015 Proxy Seasons](#)," at 4 (Oct. 2015).
- 37 Quigley et al., "Divestment: Advantages and Disadvantages for the University of Cambridge" Appendix V: "[Impact of Engagement on Companies' Environmental and Social Performance](#)," at 102.
- 38 Parthiban David, et al., "Investor Activism, Managerial Responsiveness, and Corporate Social Performance," *Strategic Management Journal* 28 (1): 91-100 (2007) (studying 1,906 proposals from 1992 to 1998).
- 39 ShareAction, *Voting Matters 2023: Are asset managers using their proxy votes for action on environmental and social issues?* (Jan. 2024).
- 40 As You Sow, "[Webinar – 2024 Proxy Preview](#)" (Mar. 14, 2024).
- 41 Freshfields Bruckhaus Deringer, "[Trends & Updates from the 2023 Proxy Season](#)" (July 2023). The SEC deemed the proposal on Chevron's implication in human rights abuse in Myanmar to be substantially the same as two that earlier fell short of the 15% resubmission threshold.
- 42 For this purpose, we are not considering the Danish tech firm FLSmidth, where the management encouraged shareholders to approve a report on human and labor rights risks in the supply chain, and it passed by acclamation.
- 43 PRI, "[Are corporate boards responding to successful shareholder ESG proposals?](#)" (Mar. 1, 2023).
- 44 Another recent S engagement initiative is the Corporate Lobbying Alignment Project, which began with the insight that E&S stewardship has neglected the issue of ethical lobbying. Since then, a wave of "political congruence" proposals has highlighted the tension between companies' E&S policies and their funding of climate deniers or election deniers. A similar campaign might fruitfully focus on hypocrisy in corporate advocacy of tax-cutting, which promotes inequality and undermines basic social support. See Preventable Surprises, "Top 50 asset managers have yet to match rhetoric with action to address negative lobbying & corporate policy capture" (May 2021); "How Can Investors Help Prevent Corporate Policy Capture" (May 2021); "Global asset managers have some catching up to do on corporate lobbying & policy capture" (Feb. 2021).
- 45 Webinar, "[From policy to action: Addressing the effectiveness of living wage programs](#)" (Feb. 15, 2023).
- 46 Gina Gambetta, "PRI targets 2025 for Advance report as investors flag slow progress," *Responsible Investor* (Nov. 22, 2023).
- 47 Historically, the first legal test for E&S resolutions arose out of a proposal to ban the sale of napalm by Dow Chemical. A federal appeals court proclaimed that firms may not "place obstacles in the path of shareholders who wish to" propose to their co-owners that their assets be used in a manner "they believe to be more socially responsible." *Medical Committee for Human Rights v. SEC*, 432 F.2d 659 (D.C. Cir. 1970), vacated as moot 404 U.S. 403 (1972). However, all shareholder proposals are subject to SEC Rule 14a-8 – which dates to 1942 – detailing 13 substantive grounds on which a firm may bar a resolution from the proxy ballot. Among the most commonly asserted is that it "deals with a matter relating to the company's ordinary business operations." As a corollary, a firm may bar a resolution seeking to "'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." SEC Rule 14a-8(i)(7); SEC, "Amendments to Rules on Shareholder Proposals," 63 Fed. Reg. 29,106, 29,108 (May 28, 1998) (all emphasis added). In *Staff Legal Bulletin No. 14L* (Nov. 3, 2021), the Biden-era SEC returned to the position that "proposals that seek detail or seek to promote timeframes or methods do not per se constitute micromanagement." Rather, the SEC clarified, "we expect the level of detail included in a proposal to accord with what investors need to assess an issuer's impacts, progress towards goals, risks or other strategic matters that are appropriate for shareholder input." SEC, "[The Shareholder Proposal Rule: A Cornerstone of Corporate Democracy](#)," Speech by Renee Jones (SEC Corporate Finance Division director from 6/21 to 1/23) to Council of Institutional Investors Spring 2022 Conference (Mar. 8, 2022). Biden's Bulletin 14L especially criticized the Trump SEC for excluding "targets to address climate change" on micromanagement grounds (for instance at Conoco). One can therefore imagine harried SEC staffers reading their new guidance as mainly applying to E proposals. But in fact, the Bulletin is clear that while it was reacting to the Trump SEC's narrow rulings on climate policy, "the analysis in this bulletin may apply to any subject matter." Accordingly, SEC staffers need to properly apply their governing guidance on the S, and their supervisors need to ensure that they do so.
- 48 See, e.g., Era Anagnosti, et al., "SEC's New Approach to No-Action Requests for Shareholder ESG Proposals," *Harv. L. Sch. Forum on Corp. Governance* (Dec. 4, 2021).
- 49 Sanford Lewis, "SEC No Action Statistics to May 1, 2024," *Harv. L. Sch. Forum on Corp. Gov.* (May 20, 2024) (finding a 68.4% exclusion rate in the 2024 season to date, compared with an average rate of 69% from 2017-20).
- 50 See SEC Rule 14a-8 Review Team, No Action Letter to Kroger (Apr. 25, 2023); Lewis, "No Action Statistics to May 1, 2024," *Harv. L. Sch. Forum on Corp. Gov.* (May 20, 2024). It should be noted, however, that the SEC rejected two attempts to bar a living wage proposal on the rationale that it intruded upon "ordinary business." *Id.*
- 51 Sanford Lewis, "SEC No Action Statistics to May 1, 2024," *Harv. L. Sch. Forum on Corp. Governance* (May 20, 2024).
- 52 Gregory Burke, "SEC Rule 14a-8 shareholder proposals: No-action requests, determinants, and the role of SEC staff," available at SSRN, at page 30, published in *Journal of Accounting and Public Policy*, Vol. 42, No. 1 (Jan.-Feb. 2023).
- 53 This report does not address the important but distinct strategy of "impact investing." Impact funds invest in firms whose business model is to directly pursue E&S goals. The targeted firms tend to be private and small.
- 54 Julian F. Kölbel, Florian Heeb, Falko Paetzold & Timo Busch, "[Can Sustainable Investing Save the World? Reviewing the Mechanisms of Investor Impact](#)," *Organization & Environment* (June 2020).
- 55 Jonathan B. Berk & Jules H. van Binsbergen, "[The Impact of Impact Investing](#)," Stanford University Graduate School of Business Research Paper (Aug. 21, 2021).
- 56 Eleonora Broccardo, Oliver Hart & Luigi Zingales, "[Exit versus Voice](#)," 130 *Journal of Political Economy* 3101 (Dec. 2022).
- 57 Oliver D. Hart & Luigi Zingales, "Companies Should Maximize Shareholder Welfare Not Market Value," *Harv. L. Sch. Forum on Corporate Governance* (Sept. 5, 2017).
- 58 William Power, "Does Sustainable Investing Really Help the Environment," *Wall Street Journal* (Nov. 7, 2021).
- 59 Michael D. Goldhaber, *Making ESG Real: A Return to Values-Driven Investing* (NYU Stern Center for Business and Human Rights, 2023).
- 60 See, e.g., Jan Fichtner, et al., "[Mind the ESG capital allocation gap](#): The role of index providers, standard-setting, and 'green' indices for the creation of sustainability impact," *Regulation & Governance* (June 4, 2023); Jan Fichtner, et al., "[ESG Funds and the Question of Sustainability Impact](#)," *Oxford Business Law Blog* (July 4, 2023) (finding that ESG integration funds constitute 88% of ESG funds, versus 12% for light green or dark green funds).
- 61 We remain optimistic that a reinvented ESG fund *could* affect boardroom decisions. Skeptics object that ESG funds can't affect the price of capital because they don't trade in the primary capital markets (where an issuer directly sells securities to investors), but rather in the aftermarket (where securities trade among investors). We find this objection unpersuasive, because the aftermarket helps set the price in the primary markets. As for the effectiveness of divestment, skeptics cite empirical research that is old, sparse, and divided. Recent research shows that BlackRock's announcement that it was divesting from thermal coal did drive down the share prices of large US thermal coal firms. That would explain why fossil fuel firms appear terrified of ESG. For reviews of the skeptical scholarship, see Kölbel, et al., "[Can Sustainable Investing Save the World? Reviewing the Mechanisms of Investor Impact](#)," *Organization & Environment* (June 2020); Ellen Quigley, "[Universal Ownership in Practice: A Practical Investment Framework for Asset Owners](#)," at 7-8 (May 28, 2020). For the recent scholarship on BlackRock's divestment from coal, see Daniel Buchholz, *Sustainability in Finance — Real Effects and Capital Market Consequences*, at 60 (University of Hamburg Doctoral Thesis, Mar. 7, 2023); Alexander Bassen, Thomas Kaspereit & Daniel Buchholz, "[The Capital Market Impact of Blackrock's Thermal Coal Divestment Announcement](#)," 41 *Finance Research Letters* (July 2021).
- 62 Quigley, "[Universal Ownership in Practice: A Practical Investment Framework for Asset Owners](#)," at 7-8, 13 (May 28, 2020).

- 63 Quigley, "Divestment: Advantages and Disadvantages for the University of Cambridge" Appendix V: "Impact of Engagement on Companies' Environmental and Social Performance," at 110-111.
- 64 See *supra*, at footnote 18. Along similar lines, 27 of the 31 most popular E&S resolutions in 2018 sought disclosure. Emma Sjöström, "Active ownership on environmental and social issues: What works? A summary of the recent academic literature" (Stockholm School of Economics, 2020).
- 65 Kosmas Papadopoulos, "The Long View: US Proxy Voting Trends on E&S Issues from 2000 to 2018," *Harv. L. Sch. Forum on Corp. Governance* (Jan. 31, 2019) (charting the relative number of such proposals from 2000-2018).
- 66 "Investor Review of Jenner & Block's Workers' Rights Assessment Report (Prepared for Apple, Inc.," (Feb. 2024).
- 67 "Proponents' Review of Starbucks Labor Assessment" (Jan. 25, 2024).
- 68 Parker Purifoy, "Starbucks, Union Reach Tentative Agreements for Job Protections," *Daily Labor Report* (May 31, 2024); Noam Scheiber, "Starbucks and Union Agree to Work Out Framework for Contract Talks," *New York Times* (Feb. 27, 2024).
- 69 Email from John Adler to the author (June 2, 2024).
- 70 Michael R. Levin, "The First ESG Proxy Contest Under UPC," *Harv. L. Sch. Forum on Corp. Governance* (Feb. 12, 2024); Debevoise & Plimpton, "Frequently Asked Questions: Universal Proxy and Contested Director Elections" (Dec. 14, 2022).
- 71 See, e.g., Herbert Smith Freehills, "UK House of Lords Select Committee launches call for evidence on Modern Slavery Act 2015" (Mar. 14, 2024).
- 72 One investor coalition rapidly pushed 80 of 83 holdouts into compliance with the mandatory UK Modern Slavery Act. Other coalitions have had been effective in enforcing *voluntary* reporting, for instance under the UN Global Compact, or the Carbon Disclosure Project. See Rathbones Group, *Votes Against Slavery: Investor action on supply chain transparency* (Mar. 2022); PRI, "Case Study: Carbon Disclosure Project (Sept. 1, 2013); PRI, "Case Study: Communication on progress (COP)" (Sept. 1, 2013).
- 73 BlackRock, "Larry Fink's 2020 Letter to CEOs: A Fundamental Reshaping of Finance" (Jan. 2020); BlackRock, "Executive summary: Our approach to sustainability," at 4 (2021).
- 74 BlackRock, *Advancing our clients' financial interests: Overview of the 2022-23 proxy voting year* (July 2023).
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- 76 Majority Action, *Climate in the Boardroom: How Asset Manager Voting Shaped Corporate Climate Action in 2023* (Nov. 7, 2023).
- 77 *Id.* Of the 16 asset giants studied, the only 3 that sometimes rejected directors at most of the Paris scofflaws were the 2 Europeans in the study—France's Amundi and Britain's LGIM—and the US outlier, Franklin Templeton.
- 78 See Jason Bordoff, "Behind All the Talk, This Is What Big Oil Is Actually Doing," *New York Times* (Aug. 7, 2023); Kate Aronoff, "Oil Companies Are Finally Being Honest About Their Feelings on Renewable Energy," *The New Republic* (Feb. 8, 2023).
- 79 Joyce Chen, et al., "CEO Tenure Rates," *Harv. L. Sch. Corp. Governance* (Aug. 4, 2023).
- 80 For ShareAction's list of 257 resolutions, including their classification as disclosure-based or action-oriented, see ShareAction, *Voting Matters 2023*, at 65-93. The sub-classification of these proposals is our own.
- 81 Kishanthi Parella, "Investors as International Law Intermediaries: Using Shareholder Proposals to Enforce Human Rights," 45 *Seattle Univ. L. Rev.* 41, 62-64 (2021).
- 82 The union avoidance proposals drew over 30% support at Activision, Netflix, Wells Fargo, and Delta Airlines. At least 30% of investors favored the patent extension proposals at Pfizer, Merck, and Eli Lilly. A less popular strategy sought to restrict the use of drug-resistant antibiotics in the supply chain at Tyson Foods, Hormel Foods and McDonald's. Tyson Foods was excluded from the ShareAction sample. See appendix to 2023 ShareAction report.
- 83 PRI, "Case Study: CP Foods" (June 9, 2016). The pressure campaign benefited from a US lawsuit targeting Costco and CP Foods, and from a contract cancellation by the French retailer Carrefour. For a recent self-evaluation by the company see CP Foods, "Statement on Slavery and Human Trafficking (2022)," at 29-30 (claiming that none of the worker hotline complaints between 2018 and 2022 concerned forced labor).
- 84 See <https://www.worldbenchmarkingalliance.org/publication/seafood-stewardship-index/2021/companies/charoen-pokphand-group-3/> (allowing for a comparison of CP Foods' 2019 and 2023 rating).
- 85 See BlackRock, *Investment Stewardship Vote Bulletin*: boohoo group Plc; JPMorgan, *Human Capital Management, 2021 Engagement Case Studies*; Vanguard *Investment Stewardship Insights Voting insights: Workers' rights and board accountability* at Boohoo (June 2001).
- 86 See <https://knowthethechain.org/company/boohoo-group-plc/>.
- 87 As You Sow, "Monster Beverage Corporation – A Case Study in Shifting from Laggard to Leader on Slavery in the Supply Chain" (June 4, 2019).
- 88 See <https://knowthethechain.org/company/monster-beverage-corporation-2/> (Monster Score History).
- 89 Patricia Jurewicz, "Reducing Child Labor in Uzbekistan: Lessons Learned and Next Steps," 21 *UC Davis Journal of Int'l Law & Policy* 191, 202-205 (2015).
- 90 See <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/uzbekistan#:~:text=However%2C%20children%20in%20Uzbekistan%20are,in%20agriculture%20and%20public%20works.>
- 91 The Church of England Pensions Board Investments, "The Investor Mining and Tailings Safety Initiative"; PRI, "Case Study: Investor Mining and Tailings Safety Initiative" (Nov. 1, 2020).
- 92 Jan Morrill, et al., "Vale at COP28: Where Is the Accountability?" *Earthworks Blog* (Dec. 11, 2023).
- 93 Josh Funk, "Norfolk Southern is first railroad to give all workers sick day—like most other industries have done for decades," *Forbes* (June 5, 2023); David Shephardson, "Most unionized US rail workers now have new sick leave," *Reuters* (June 5, 2023); IBEW, "We Never Stopped Applying Pressure: Hard-Fought Success on Rail Sick Days" (June 20, 2023); Nandita Bose, "White House renews pressure on railroads over paid sick leave," *Reuters* (Feb. 9, 2023).
- 94 Neel Rane, "Twenty years of shareholder proposals after cracker barrel: An effective tool for implementing LGBT employment protections," 162 *U. Penn. L. Rev.* 929, 950-54 (Mar. 2014).
- 95 Vishal Gupta, et al., "The Big Three and Board Gender Diversity: The Effectiveness of Shareholder Voice," *Journal of Financial Economics*, 149(2), 2023, 323-348 (2021) (resulting in the proportion of women on US boards rising about 50% in three years, from 13% in 2016 to nearly 20% in 2019).
- 96 Compare BlackRock, *Investment Stewardship Annual Report* at 10 (Sept. 2020) with BlackRock, *Advancing our clients' financial interests: Overview of the 2022-23 proxy voting year* at 28 (July 2023).
- 97 Subodh Mishra, "Racial and Ethnic Diversity on U.S. Corporate Boards – Progress Since 2020," *Harv. L. Sch. Forum on Corp. Governance* (July 21 2022). See also Fasil Michael, "Responsible Investment: Proxy Voting," (ISS, 2021), at 13 (charting the gradual trends of 2016-2020 sharply accelerating from 2020 to 2021).
- 98 Yonca Ertimur, et al., "Shareholder activism and CEO pay," 24 *Review of Financial Studies* 535 (2011).
- 99 Interfaith Center on Corporate Responsibility, "Shareholder Proposals Appearing on the 2022 Amazon Proxy Ballot" (Dec. 14, 2021).
- 100 See, e.g., Diego Areas Munhoz, "Amazon Warehouses Targeted in Bipartisan Worker Safety Bill," *Bloomberg Law* (May 2, 2024).
- 101 E&S support by European money managers has *spiked*, as elaborated below. Retail investors pulled back by only two percentage points from 20% support in 2021 to 18% in 2023. It's Chuck Callan & Mike Donowitz, "2023 Proxy Season Review," *Harv. L. Sch. Forum on Corp. Governance* (Oct. 13, 2023).
- 102 BlackRock cut its E&S support rate from 41% in 2021 to 24% in 2022 to 9% in 2023. Vanguard downshifted from 30% in 2021 to 12% in 2022 to 3% in 2023. State Street moved from 44% in 2021 to 29% in 2022 to 21% in 2023. Alan Murray, et al., "BlackRock, Vanguard, and State Street turned against environmental and social proposals this year, a clear sign of backlash," *Fortune CEO Daily* (Oct. 31, 2023) (citing Diligent data). According to ShareAction, Fidelity reduced its support level from 29% in 2021 to 17% in 2022 to 16% in 2023, while the Big Four's collective support rate fell from 32% in 2021 to 20% in 2022 to 12% in 2023. ShareAction, *Voting Matters 2023: Are asset managers using their proxy votes for action on environmental and social issues?* (2024).
- 103 The "Big Three," as BlackRock, Vanguard, and State Street are sometimes called without Fidelity, cast about a quarter of the votes at S&P 500 meetings. Lucian A. Bebchuk and Scott Hirst, "Big Three Power, and Why it Matters," *Harv. L. Sch. Forum on Corp. Governance* (Dec. 13, 2022).
- 104 ShareAction, *Voting Matters 2023*.
- 105 *Id.* at Finding 10. Findings are based on the 257 E&S proposals tracked by ShareAction in 2023, at Finding 3.
- 106 *Id.* at Finding 11.

- 107 Morningstar's ranking of asset managers by their "ESG Commitment Level" drives significant inflows and outflows. But 40% of each institution's score is based on its "Philosophy and Process," including climate pledges. See *The Morningstar ESG Commitment Level: Our assessment of 108 asset managers* (Aug. 30, 2023); Eleonora Broccardo, Oliver Hart & Luigi Zingales, "Exit vs. Voice," *Harv. L. Sch. Forum on Corp. Gov.* (Sept. 4, 2020) (noting \$36 billion in fund flows driven by the first Morningstar ESG Commitment Level rankings).
- 108 In ShareAction's latest comparison of E&S voting records, the relatively best performers among trillion-dollar US asset managers were Northern Trust (supporting 77% of E&S measures), Morgan Stanley (supporting 58%), and Franklin Templeton (supporting 49%), although each modestly lowered their support from the prior year, and none could match their European peers. ShareAction, *Voting Matters 2023: Are asset managers using their proxy votes for action on environmental and social issues?* (2024).
- 109 See "BlackRock Voting Choice" (last checked Feb. 2024); Lindsey Stewart, "New Proxy-Voting Options for IVV and Other Index Funds From BlackRock, State Street, and Vanguard," *Morningstar* (Dec. 13, 2023).
- 110 Matt Levine, "BlackRock Lets Its Clients Vote," *Bloomberg Opinion* (Nov. 3, 2022) (emphasis in original).
- 111 ShareAction, *Voting Matters 2023*, at page 27.
- 112 Cf. John C. Coffee, Jr., "ESG, Common Ownership, and Systemic Risk: How They Intersect," *The CLS Blue Sky Blog* (Sept. 14, 2020) (arguing that common ownership can solve the collective action problem).
- 113 Lucian A. Bebchuk, et al., "Big Three Power, and Why it Matters," 102 *Boston U. Law Rev.* 1547 (2022); Alon Brav et al., "Corporate Governance Implications of the Growth in Indexing" (National Bureau of Economic Research, 2023); Davidson Heath, et al., "Do Index Funds Monitor?" 35 *Review of Financial Studies* 91 (Jan. 2022).
- 114 See, e.g., Morningstar, *The Morningstar ESG Commitment Level: Our assessment of 108 asset managers* at 51-52 (Aug. 30, 2023).
- 115 Dimson, *Active Engagement*, at Table IA.2. Among 121 engaging asset managers in the Dimson sample, only 21 were from the US. The largest US manager that participated was T. Rowe Price (ranked 12th in the US at end 2022), followed by Nuveen, Hermes, and AllianceBernstein within the US top 20. More recently, JP Morgan and Morgan Stanley (ranked 5th and 14th) have joined as lead investors in PRI's "Advance" initiative for social engagement. The only US firms among the 10 most active participants or 10 most active coalition leaders, in Dimson's large sample, were two small socially responsible offices (Boston Common and Boston Trust). The honor rolls also featured two European firms that later became US-owned (Hermes Federated and Candriam). Dimson, *Coordinated Engagements*, at Table I.A.4.
- 116 Jeffrey N. Gordon, "Systematic Stewardship," 47 *J. Corp. L.* 627 (2022); Marcel Kahan et al., "Index Funds and Corporate Governance: Let Shareholders be Shareholders," 100 *Boston Univ. L. Rev.* 1771 (2020).
- 117 See, e.g., Julian F. Köbel, et al., "Can Sustainable Investing Save the World? Reviewing the Mechanisms of Investor Impact," *Organization & Environment* (June 2020).
- 118 Compare BlackRock Investment Stewardship, *Advancing our clients' financial interests: Overview of the 2022-23 proxy voting year* at 15; with BlackRock, *Investment Stewardship Annual Report* at 14 (Sept. 2020). Examined individually, the fastest growing themes were strategy and S issues, which each nearly doubled. If BlackRock raises multiple themes at an engagement, the engagement is counted multiple times for purposes of this tabulation.
- 119 BlackRock, *Advancing our clients' financial interests: Overview of the 2022-23 proxy voting year* at 28 (2023).
- 120 See *Complaint, State of Tennessee, ex rel. Jonathan Skrmetti, Attorney General v. BlackRock, Inc.*, 23CV-618 (Williamson County Circuit Court, 21st Judicial District, Tennessee, Dec. 18, 2023). BlackRock says that it engages on climate "because the way in which companies navigate material climate-related risks and adapt through the low-carbon transition may have a direct financial impact on our clients' investment outcomes and financial well-being," BlackRock, *Climate-related risks and the low-carbon transition* (Jan. 2024) (boldface in original).
- 121 Compare BlackRock, "BlackRock Investment Stewardship: *Climate Focus Universe*," at 2 (2023) with BlackRock Investment Stewardship, *Climate-related risks and the low-carbon transition* (Jan. 2024). In addition, BlackRock now opposes mandatory climate reporting by users or suppliers. In a 2021 policy paper, two BlackRock stewardship directors wrote: "Companies in carbon-intensive industries should also disclose Scope 3 emissions." But in 2022 SEC comments, BlackRock and its peers opposed mandatory Scope 3 reporting. BlackRock's 2024 climate policy reaffirms the latter position. Compare Jessica McDougall & Danielle Sugarman, "Climate Risk and the Transition to a Low-Carbon Economy," *Harv. L. Sch. Forum on Corp. Governance* (Mar. 2, 2021) with BlackRock, *Comment to the SEC on the Proposed Enhancement and Standardization of Climate-Related Disclosures for Investors* (File Number S7-10-22) (June 17, 2022).
- 122 Compare BlackRock, "Our approach to engagement on human capital management" (Jan. 2024) with BlackRock, *Investment Stewardship Annual Report* at 14 (Sept. 2020) (emphasis added). To BlackRock's credit, it continues to own the position that, "in our view, long-term investors can benefit" from due diligence on material human rights risks. BlackRock, "Our approach to engagement on corporate human rights risks" (Jan. 2024).
- 123 See, e.g., Bloomberg, "Support for ESG Shareholder Proposals Plummets Amid GOP Backlash." (June 9, 2023). Even the business-friendly Conference Board think tank acknowledged "ESG Backlash" in the title of its 2023 proxy review. See The Conference Board, *2023 Proxy Season Review: Navigating ESG Backlash and Shareholder Proposal Fatigue* (Oct. 18, 2023).
- 124 See, e.g., Matteo Tonello, "Navigating ESG Fatigue in Shareholder Voting," *Harv. L. Sch. Forum on Corp. Governance* (Jan. 22, 2024); Lara Aryani & William Kim, "A Review of the 2023 Proxy Season: An ESG Backlash?" *Harv. L. Sch. Forum on Corp. Governance* (Dec. 21, 2023).
- 125 See, e.g., Vanguard, "Vanguard Investment Stewardship – U.S. Regional Brief" (Aug. 28, 2023); BlackRock, *Advancing our clients' financial interests*, at 47 (July 2023).
- 126 Vanguard, "Vanguard Investment Stewardship – U.S. Regional Brief" (Aug. 28, 2023). Vanguard also argues that advocates overlook the "complexity" of the issues. See *id.* at 11.
- 127 BlackRock, *Advancing our clients' financial interests: Overview of the 2022-23 proxy voting year*, at 54. In addition, BlackRock opposes proposals that are immaterial or superfluous. See *id.* at 12, 43, 46, 48. See also Vanguard, "Vanguard Investment Stewardship – U.S. Regional Brief" (Aug. 28, 2023). BlackRock, *BlackRock 2030 Net Zero Statement* (web page last checked Feb. 22, 2024); BlackRock, *Response by BlackRock to Letter from 19 Republican State Attorneys Generals* (Sept. 7, 2022); BlackRock, *Climate-related risks and the low-carbon transition* (Jan. 2024).
- 128 Freshfields, "Trends & Updates from the 2023 Proxy Season," at 52, Figure 7 (July 2023); The Conference Board, "2023 Proxy Season Review" (Oct. 19, 2023). It's also true that BlackRock favored a handful of E proposals that seem specific or prescriptive, leading Tennessee to accuse it of "pure activism." Perhaps a fairer generalization is that BlackRock's votes have been consistently inconsistent, while trending pro-climate in 2020 and 2021, and anti-climate in 2022 and 2023. See *Complaint, State of Tennessee, ex rel. Jonathan Skrmetti, Attorney General v. BlackRock, Inc.*, 23CV-618, at paras. 18, 136-139, 145-146 (Williamson County Circuit Court, 21st Judicial District, Tennessee, Dec. 18, 2023).
- 129 ShareAction, *Voting Matters 2023*, at Finding 10 (examining climate actions endorsed by Climate Action).
- 130 BlackRock, *Advancing our clients' financial interests*, at 54.
- 131 Vanguard, "Vanguard's approach to shareholder proposals related to worker health and safety" (Dec. 2023).
- 132 Editorial, "The ESG Proxy Vote Ranking," *Wall Street Journal* (May 15, 2023).
- 133 Miles Rogerson, "Which ESG proposals won the favor of investors?" *Harv. L. Sch. Forum on Corp. Governance* (Nov. 30, 2023); Lindsey Stewart, "Proxy Voting Insights: Key ESG Resolutions," *Harv. L. Sch. Forum on Corp. Governance* (Oct. 4, 2023).
- 134 Miles Rogerson, "Which ESG proposals won the favor of investors?" *Harv. L. Sch. Forum on Corp. Governance* (Nov. 30, 2023).
- 135 Freshfields, "Trends & Updates from the 2023 Proxy Season" (July 2023). Two proposals did pass—with management approval—on climate lobbying reports, at Cenovus Energy at NY Community Bancorp.
- 136 The Committee to Unleash Prosperity, *Politics Over Pensions: The First Annual Report Card on Investment Fund Managers and Proxy Voting Behavior* (May 2023). The other two asset managers receiving an "A" anti-ESG rating were Dimensional Fund Advisors and T. Rowe Price.
- 137 Ross Kerber et al., "Vanguard quits net zero climate effort, citing need for independence," *Reuters* (Dec. 7, 2022). For the text of the Net Zero Asset Managers pledge, see <https://www.netzeroassetmanagers.org/commitment/>.
- 138 Though the connection was largely overlooked in the press, the Kentucky AG declared victory. Kentucky.gov, "Vanguard Withdraws from ESG Initiative Following Attorney General Cameron's Challenge to Federal Energy Regulatory Commission Application" (Dec. 8, 2022).
- 139 Among the E&S proposals considered by State Street, the proportion it supported fell by about half, from 44% in 2021 to 29% in 2022 to 21% in 2023. State Street compares especially well with its closest peers in its support for widely-supported E&S resolutions, approving between about 50% and 70% of such resolutions over the past four proxy seasons. See Alan Murray & Nicholas Gordon, "BlackRock, Vanguard, and State Street turned against environmental and social proposals this year, a clear sign of backlash," *Fortune CEO Daily* (Oct. 31, 2023); Lindsey Stewart, "Proxy Voting Insights," *Harv. L. Sch. Forum on Corp. Governance* (Oct. 4, 2023).

- 140 See David Gelles, "More Wall Street Firms Flip-Flop on Climate Pledges," *New York Times* (Feb. 20, 2024). JP Morgan and Pimco are the largest others to recently leave Climate Action 100+. BlackRock shifted its membership to its small non-US arm. Vanguard and Fidelity did not have to withdraw; they had never joined.
- 141 Saijel Kishan, "ESG Investing Goes Quiet After Blistering Republican Attacks," (May 19, 2023).
- 142 See, e.g., Lara Aryani & William Kim, "A Review of the 2023 Proxy Season: An ESG Backlash?" *Harv. L. Sch. Forum on Corp. Governance* (Dec. 21, 2023).
- 143 See Lindsey Stewart, "What Would Happen to ESG Proposals If Vanguard, BlackRock and State Street Didn't Vote?" (Oct. 11, 2023) ("Key" resolutions provide "a means for ensuring a consistent level of resolution quality from year to year"). Elsewhere in the study, Morningstar finds a decline in the number of proposals supported by 40% of investors *outside the Big Three*.
- 144 BlackRock went from accepting under a quarter of "key" resolutions in 2020, to over 70% in 2021, to 38% in 2023. Vanguard went from accepting under 20% in 2020, to over half in 2021, to 9% in 2023. Lindsey Stewart, "Proxy Voting Insights: Key ESG Resolutions," *Harv. L. Sch. Forum on Corp. Governance* (Oct. 4, 2023); Lindsey Stewart, Voting on ESG: Ever-Widening Differences Voting records for the largest U.S. and European managers reveal greater divergence in 2023," *Morningstar Manager Research* (Jan. 2024).
- 145 Morgan Stanley, Invesco and Franklin Templeton have been quasi-European in their reliability when E&S votes are close. Even State Street has tended to be supportive, increasing its support last year from 59% to 66%. *Id.*
- 146 Between 2021 and 2023 support for key E&S proposals at American Century fell 54 points, to 38%. At Goldman Sachs it fell 47 points to 22%. At Vanguard it fell 41 points to 9%. At Capital it fell 38 points to 30%. At T. Rowe Price it fell 32 points to 14%. At BlackRock it fell 31 points to 37%. At Fidelity it fell 27 points to 24%. At JP Morgan it fell 19 points to 51%. At Nuveen/TIAA it fell 18 points to 67%. By contrast, support for key E&S measures has consistently remained in excess of 80% at Morgan Stanley, Invesco, Franklin Templeton, Charles Schwab, MFS Investment Management, and Columbia Threadneedle. *Id.*
- 147 From 2021 to 2023, the average European asset manager tracked by ShareAction (including those from the UK) went from approving about 69% of E&S ballot questions to 88%, while the typical US manager went from favoring about 40% to 25%. At the same time, the typical UK asset manager steadily embraced about 64% – opening a new gap between asset managers in Britain and the Continent. Values might explain this intra-European divide, but so might the EU's recent directives. What's clear is that America lags far behind all of Europe in both the law and culture of sustainable finance. America's fondness for index funds cannot explain the transatlantic gap, as the UK indexing giant Legal & General supported 92% of E&S measures in ShareAction's 2023 sample, compared with 8% and 3% by BlackRock and Vanguard. ShareAction, *Voting Matters 2023* at Finding 5, Figure 8; *id.* at page 10.
- 148 *Id.* at pages 12-19.
- 149 US money managers account for 12 of the global top 16 by AUM, and manage over double the sum overseen by Europeans (\$67 trillion to \$30 trillion). *The world's largest 500 asset managers: A Thinking Ahead Institute and Pensions & Investments joint study*, at 12 (Oct. 2023).
- 150 Lindsey Stewart, Voting on ESG: Ever-Widening Differences Voting records for the largest U.S. and European managers reveal greater divergence in 2023," *Morningstar Manager Research* (Jan. 2024), at 6-7. The large European asset managers with a perfect record of supporting key E&S proposals last year were Amundi, Aviva, BNP Paribas, Credit Suisse, DWS, HSBC, LGIM, Nordea, Robeco, Swedbank, and UBS.
- 151 For a useful compendium of actions by state and federal officials pressuring ESG asset managers or owners, see Ballotpedia, "Opposition to environmental, social, and corporate governance (ESG) investing."
- 152 Justin Haskins, "New report reveals surprising presidential candidates who will fight ESG, woke companies," *FoxNews.com* (Oct. 19, 2023).
- 153 I. J. Alexander Dyck, et al. "Do institutional investors drive corporate social responsibility? International evidence," *Journal of Financial Economics*, 131(3), 693-714, at 3 (2019). For a helpful review of attributes that improve the probability of a collaborative engagement achieving its objectives, see Elroy Dimson, et al., "Coordinated Engagements," European Corporate Governance Institute, Finance Working Paper No. 721/2021, available at SSRN, especially at pages 2-9 and 38 (last revised May 3, 2023).
- 154 Matteo Tonello, "The Conference Board, and Paul Hodgson, "Corporate Board Practices in the Russell 3000, S&P 500, and S&P Mid-Cap 400," *Harv. L. Sch. Forum on Corp. Gov.* (Nov. 6, 2021). A majority voting system of some kind is in place at over 90% of the S&P 500 and nearly half the Russell 3000. The "majority voting with board-rejectable resignation rule" is in place at nearly 80% of the S&P 500 and nearly 40% of the Russell 3000. However, over 40% of the Russell 3000 still followed a simple plurality rule, which essentially gives shareholders no power over director appointment. *Id.*
- 155 See, e.g., Council of Institutional Investors, "FAQ: Majority Voting for Directors" (2017).
- 156 ShareAction, *Voting Matters 2023: Are asset managers using their proxy votes for action on environmental and social issues?* at Finding 8 (Jan. 2024).
- 157 See Fassil Michael, "Responsible Investment: Proxy Voting," (ISS, 2021), at 12 (charting the trend from 2012-2021); Pickering Energy Partners, "Proxy Voting in 2023: Preparing for a New Wave of ESG Engagement" (Jan. 24, 2023) (citing the figures for 2021-2023).
- 158 Quigley et al., "Divestment: Advantages and Disadvantages for the University of Cambridge" Appendix V: "Impact of Engagement on Companies' Environmental and Social Performance," at 104-105, 110-111.
The "Boardroom Access Project," launched by NYC Pensions Systems in 2014, used the threat or passage of a shareholder proposal to persuade 167 of 181 firms (targeted for E or S reasons) to give large shareholders the power to nominate directors. Following up with 62 firms that had been targeted for climate reasons, a study found that they lowered their greenhouse gas emissions by about 7%, and toxic releases by 13%, based on better operating practices and more spending on abatement. This was an example of G stewardship that aimed to indirectly pursue E and S goals, and purportedly succeeded on climate. S. Lakshmi Naaraayanan, et al., "The real effects of environmental activist investing," European Corporate Governance Institute, Working Paper No. 743/2021 (Mar. 2021).
- 159 Tensie Whelan, "Report: The Percentage of Directors with Environmental or Social Credentials Is Growing" *Directors & Boards* (May 8, 2024).
- 160 See Emma Sjöström, "Active ownership on environmental and social issues: What works? A summary of the recent academic literature" (Stockholm School of Economics, 2020), at 9 (discussing "the time is right" factor).

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