December 2022

# Corporate Governance Outlook 2023

An Equilar Publication

Featuring Commentary From

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# Executive Summary

Going into 2023, companies are preparing for a year that is sure to present new changes to how they approach the corporate governance environment. The long-term economic impacts of the pandemic and other current events—such as the War in Ukraine and a looming recession—continue to leave a mark on Corporate America, forcing companies to face several difficult decisions to keep operations flowing. Despite the challenges faced by companies, investors and other key stakeholders will continue to closely monitor how executives and boards address the most critical governance issues in 2023.

Most notably, the conversation around executive pay and performance alignment is expected to grow louder. On August 25, 2022, the United States Securities and Exchange Commission (SEC) officially adopted Pay Versus Performance rules, following several rounds of comments and proposals. The new rules require public companies to disclose information reflecting the relationship between compensation actually paid to a company's named executive officers (NEOs) and the company's financial performance. As a result, the 2023 proxy season will serve as the inaugural year for these disclosures.

The ongoing discussions around environmental, social and governance (ESG) topics, as well as human capital management (HCM) issues, will further play out over the course of the next year. While topics related to diversity, equity and inclusion (DEI), the return-to-office transition, corporate culture, and employee health and safety will remain top of mind for many companies, much of the focus may shift to climate change in 2023. On March 21, 2022, the SEC proposed new rule changes that would require companies to provide detailed disclosures around climate-related risks that may have a material impact on their business, results of operations or financial condition. As part of the disclosure requirements, companies must identify any board members or board committees responsible for the oversight of climate-related risks.

The aforementioned topics are just a short list of governance issues companies must take into account heading into the new year. Other issues, such as shareholder engagement, CEO succession planning and more, will undoubtedly remain critical areas of focus. With these observations in mind, *Corporate Governance Outlook 2023* analyzes key trends in corporate governance over the last five years. DFIN offers independent commentary on how to effectively address these issues with investors and other stakeholders.

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## Pay Versus Performance Set to Take the Spotlight in 2023

With 2023 serving as the first year for the new Pay Versus Performance requirements, there is a level of uncertainty that looms over companies. This, coupled with the amount of work that will go into the disclosure process, will pose challenges to companies. Nevertheless, the concept of pay for performance has long been advocated by investors, particularly given the influence they have on pay packages. Since the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, companies have regularly disclosed graphs displaying the relationship between executive pay and performance in their proxy statements. However, the prevalence of these disclosures has diminished over the last five years. In 2021, just 9% of Equilar 100 companies disclosed a graph that displayed the relationship between their NEOs' pay and financial performance. While this is up one percentage point from 2020, the figure is down overall by more than 50% since 2017 when 18.2% of companies disclosed a pay for performance graph.

There is no question that the SEC's new Pay Versus Performance disclosure requirement will indeed accelerate the use of these graphs and brighten the spotlight on pay for performance. The question is whether or not the rules will have any impact on Say on Pay results in the coming years. In 2022, just 2.4% of Equilar 500 companies received a failing Say on Pay vote in 2022, down from 3% in the previous year.

While it may be too soon to draw any speculative conclusions, it's in the best interest of companies to begin preparing how to tell their pay story. "Investors who have expressed concerns about executive compensation in prior years or whose policies have a sharper focus on executive compensation are going to take a much greater interest," said Joe Yaffe, Partner and West Coast Chair, Executive Compensation and Benefits at Skadden, during an Equilar webinar. "It's going to vary from company to company. I think a lot of the extent to which companies provide more or less fulsome disclosure is frankly going to depend on the overall story of their executive compensation program relative to their performance."

## A Sustained Focus on DEI in 2023

The global focus around ESG has expanded rapidly over the last several years, with companies seeking to effectively identify the risks and opportunities associated with these topics. Perhaps to no surprise, nearly 97% of Equilar 100 companies discussed their ESG policies to some extent in 2022—up from just 18.9% of companies in 2018. Nevertheless, the last two years, particularly in light of social justice movements stemming from 2020, have shed light on the DEI portion of ESG.
With respect to corporate governance, the conversation specifically starts at the top of an organization in the boardroom.

In 2022, 99% of Equilar 100 companies included a board composition disclosure on gender, the same percentage as companies that did so for ethnicity/race. Similarly, 92.8% of companies included a board or director assessment for gender, with the same percentage including one for ethnicity/race. Furthermore, among the 1,918 new Russell 3000 board members through Q3 2022, 39.7% were women—a figure that has hovered around 40% for the last several quarters.

It has become apparent that leadership teams across Corporate America are making a concerted effort to conduct discourse around board diversity, particularly as pressure mounts from several directions, including new Nasdaq board diversity listing rules that went into effect in 2022. Additionally, beginning in 2023, Glass Lewis will recommend against the chair of the nominating committee of a board that is not at least 30% gender diverse, with the exception of substantial disclosure of a commitment to increase board diversity in the near future. Regardless, DEI issues—board diversity, in particular—will be a key area to monitor in 2023.

# Methodology

*Corporate Governance Outlook 2023*, an Equilar publication, analyzes the proxy statements and shareholder voting results for Equilar 500 companies from 2018 to 2022. The Equilar 500 tracks the 500 largest, by reported revenue, U.S.-headquartered companies trading on one of the major U.S. stock exchanges (Nasdaq, NYSE or NYSE American). The Equilar 100, a subset of the largest revenue reporting companies in the Equilar 500, was manually reviewed for specific examples of disclosure in targeted areas. Year one (2022) was defined as companies with a fiscal year ending from June 1, 2021 to May 31, 2022, and previous years were defined similarly. The narrative portion of this report examines the current governance landscape and trends in executive compensation and corporate governance disclosure practices. DFIN offers independent commentary on strategies to effectively address the most pressing governance issues in 2023.

# Key Findings

**460**

Equilar 500 shareholder proposals in 2022—up 31.8% from the previous year

**94.8%**

Of Equilar 100 companies discussed their shareholder engagement efforts in 2022

**96.9%**

Of Equilar 100 companies discussed their ESG policies in 2022—up from just 18.9% of companies in 2018

**61**

Equilar 500 CEOs departed their positions in 2022

# Beyond the Numbers | DFIN

## A Q&A With Ron Schneider

To provide additional perspective on the trends uncovered in *Corporate Governance Outlook 2023*, Equilar sat down with Ron Schneider, Director of Corporate Governance Services at DFIN, to discuss key governance trends and strategies for companies to stay prepared for 2023. Below is a snapshot of the conversation. A more in-depth discussion can be found at the end of this publication.

**Equilar:** Going into 2023, what governance topics will require the most attention and detail from companies? What are some topics that might go overlooked that should be at the top of the radar?

**Ron Schneider:** Given the intense investor interest in company environmental, social and governance (ESG) data and related risks and opportunities, as well as anticipated new SEC disclosure requirements in this area, companies are rapidly stepping up the pace and depth of their ESG reporting. While this reporting is primarily located at the website in the form of a range of report types, major investors like BlackRock and others are also expecting companies to include highlights or an overview of their program in the proxy.

A related topic that investors want companies to discuss in the proxy and elsewhere is "board oversight" of the ESG program. This may be presented as a component of overall risk oversight, or separately as "ESG oversight." Either way, whether it falls to the full board, a particular committee, or shared across committees, companies need to clearly tell this "ESG oversight" story. When doing so, expect investors to also scrutinize the experience and competencies of directors to provide effective oversight of these emerging issues. For this reason, we suggest our clients review their board bios, and any published skills matrices, to ensure they are in sync with the oversight structure and fully reflect board competencies in this area.

A particular topic of interest to investors is cybersecurity. Recently, I heard an investor state that, regarding vulnerability to cyber-intrusions, "every company is a tech company!"

Some advisors are anticipating that the new universal proxy rules may lessen costs, increase effectiveness and thus the frequency of board election proxy contests. Whether this proves to be true or not, now is a good time for every company to make sure it is telling its best "board story" including diversity, refreshment and each director's skills/qualifications.

**Equilar:** What are some concepts of the new Pay Versus Performance disclosure requirements that companies should keep in mind? What will an effective disclosure look like?

**Schneider:** The new Pay versus Performance (PvP) proxy disclosure rules have three components. They are:

- The required PvP table, including fairly detailed supporting footnotes (the table and footnotes being the first section of proxies requiring IXBRL tagging)
- A graphical and/or narrative explanation of the relationships between the data in the PvP table (the rule details which data points to explain the relationship between)
- Tabular list of three to seven most important company measures used to determine NEO pay

I'll describe what "effective" looks like in year one, versus years two and after. Since the requirements were announced in late August with compliance required this spring for companies with fiscal years ending on or after December 16, 2022 (essentially, all calendar year-end companies), companies have had relatively little time to get up to speed on the requirements and the choices and many calculations required to accomplish this.

Most of our clients are presently indicating their goal is simply to get across the finish line and "comply." Since the rules leave the location in the proxy of this new disclosure to company discretion, most are presently indicating they will place the new PvP table and related disclosures near the back of the proxy, among other tables, near the pay ratio disclosure, and not call a lot of additional attention to it. A much smaller group of companies plan to place the new disclosure in the CD&A, as well as any related PvP graphs derived from the tabular data.

Investors and proxy advisors, as frequently is the case with new disclosures, are not yet changing their pay for performance analysis or Say on Pay voting guidelines to account for the new data. That said, after seeing one year's worth of such disclosures, it's likely they will incorporate this data into their future voting processes.

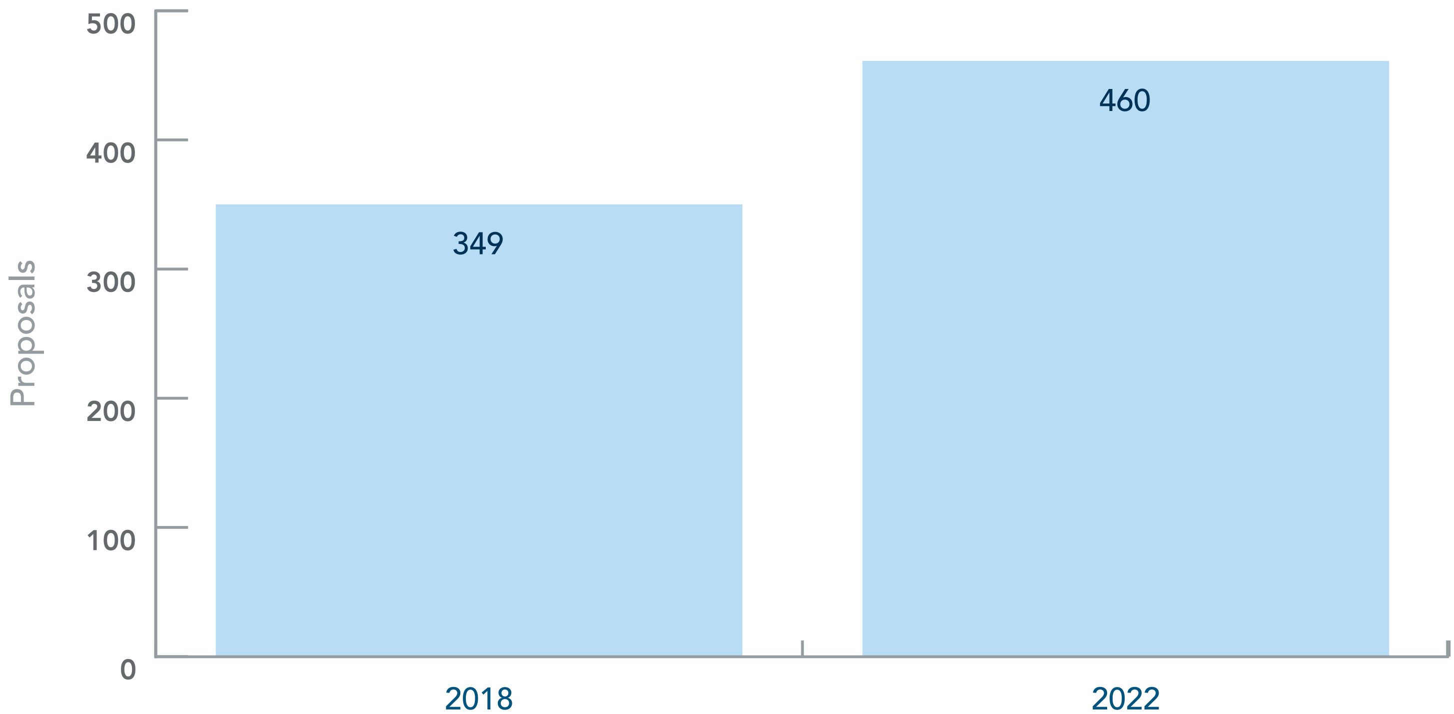
Many companies have been telling their own "pay for performance" (PfP) story for years, usually in the CD&A and often supported by a range of graphs. Now, there will be a new, relatively standardized set of disclosures (i.e. a "spin-free zone"). The data-tagging will make it easy for activists, class-action law firms and others to create lists of positive and negative outliers from the new data, which might be used in targeting companies for activism. If the new disclosures "tell a different story" from that which a company traditionally has been telling, such companies will have to adjust and harmonize these competing stories, or expect scrutiny and questioning from investors and others. Also, if existing pay metrics are not among the three to seven most important company measures used to determine NEO pay, expect questions about that as well. So "success" in year two may require harmonization of pre-existing and new "PfP" story-telling, with perhaps more companies "embracing" the new disclosures and featuring them earlier and more prominently in the proxy. Engagement with investors on this issue this summer is highly advisable.

Read More From DFIN

**Staying Ahead of Governance Trends in 2023**

on page 24 of this report.

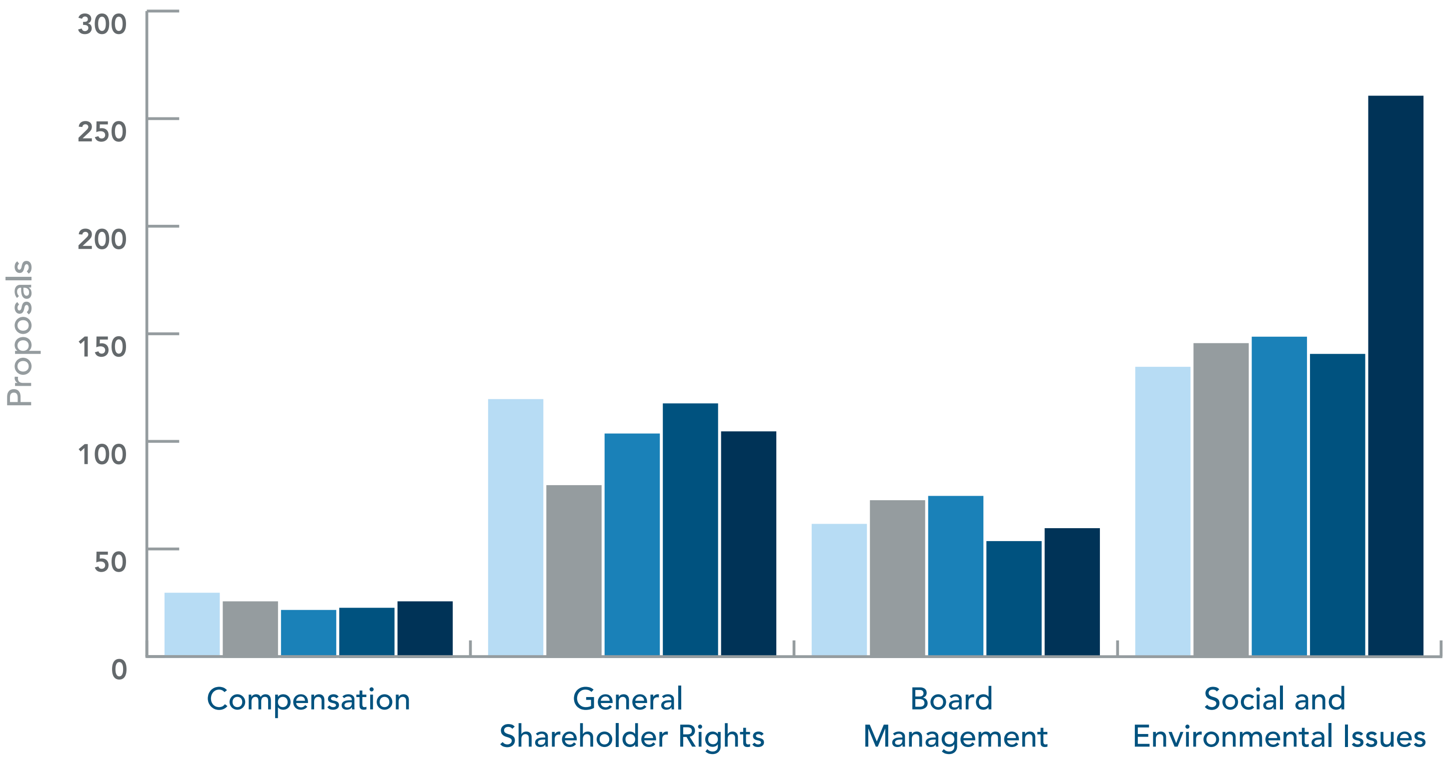
## Figure 01 | Shareholder Proposals (Equilar 500)




### Data Points

1. The prevalence of shareholder proposals surged by 31.8% during the study period, increasing from 349 in 2018 to 460 in 2022. *(Fig. 1)*

## Figure 02 | Shareholder Proposals by Type (Equilar 500)

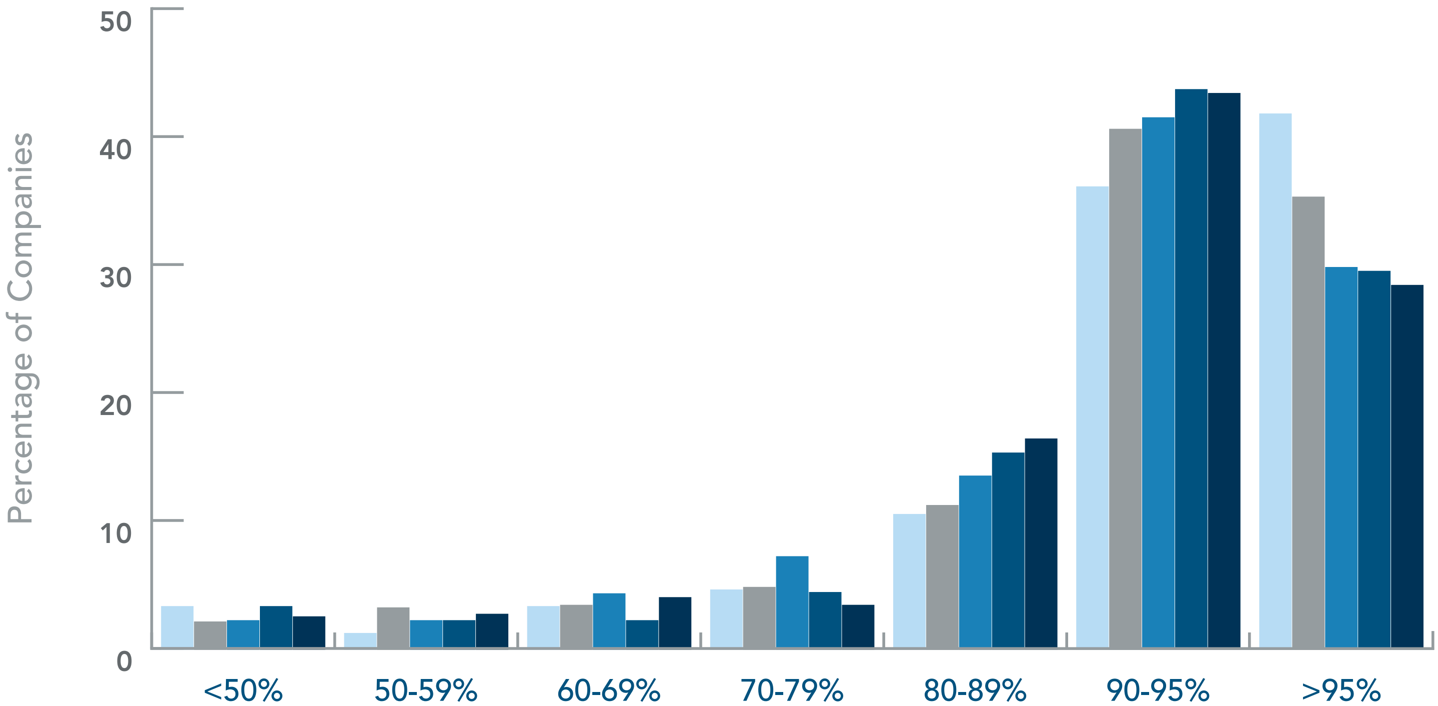



| | Compensation | General Shareholder Rights | Board Management | Social and Environmental Issues |
|---|---|---|---|---|
| 2018 | 29 | 119 | 61 | 134 |
| 2019 | 25 | 79 | 72 | 145 |
| 2020 | 21 | 103 | 74 | 148 |
| 2021 | 22 | 117 | 53 | 140 |
| 2022 | 25 | 104 | 59 | 260 |

### Data Points

1. Social and environmental-related shareholder proposals were by far the most common in 2022—increasing by 94% from 134 to 260 during the study period. *(Fig. 2)*
2. Compensation-related proposals remained the smallest portion of shareholder proposals during each year of the study, while also decreasing in prevalence by 13.8% from 2018 to 2022. *(Fig. 2)*
3. The number of proposals focused on general shareholder rights declined sharply by 33.6% in 2019, and continued to fluctuate during course of the study. *(Fig. 2)*
4. Board management-related proposals were the second least common proposal type in each year of the study and decreased by 3.3% overall from 2018 to 2022. *(Fig. 2)*

## Figure 03 | Say on Pay Voting Trends (Equilar 500)

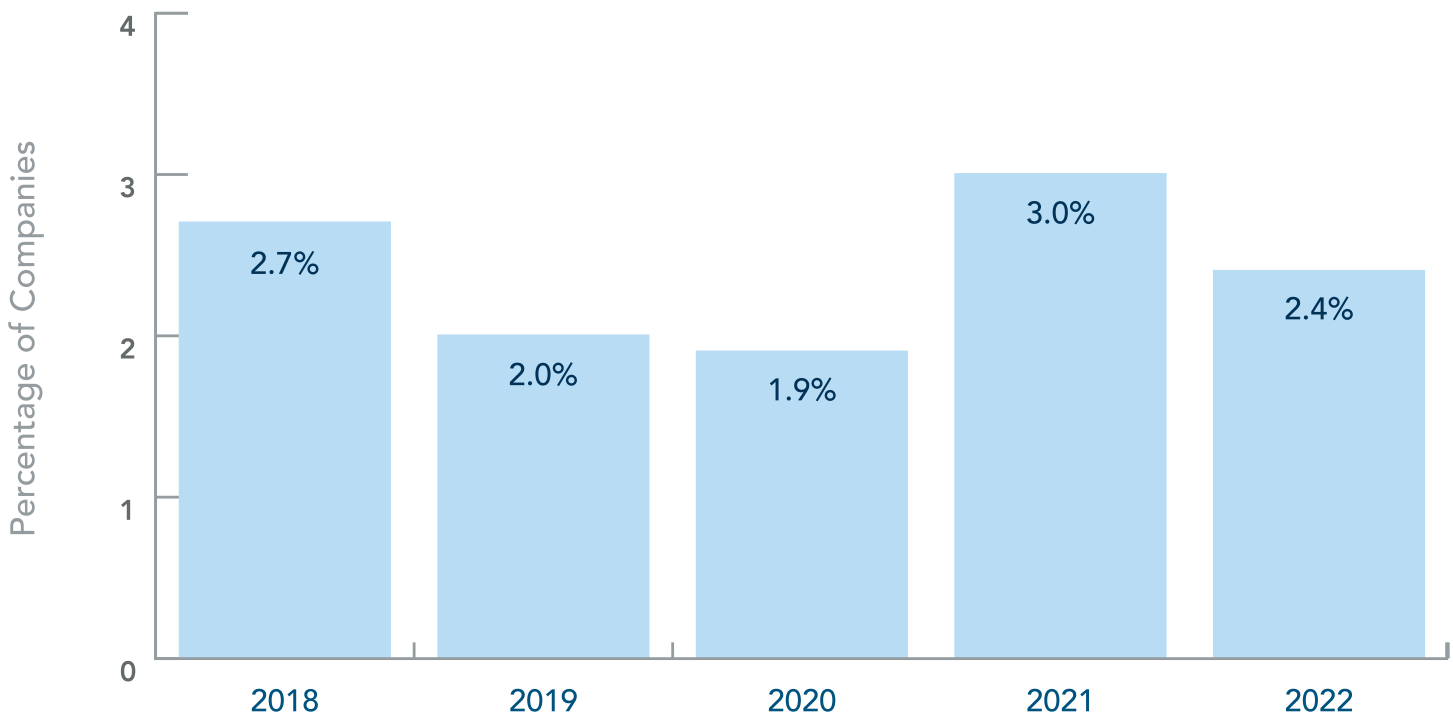



| | <50% | 50-59% | 60-69% | 70-79% | 80-89% | 90-95% | >95% |
|---|---|---|---|---|---|---|---|
| 2018 | 3.2% | 1.1% | 3.2% | 4.5% | 10.4% | 36.0% | 41.7% |
| 2019 | 2.0% | 3.1% | 3.3% | 4.7% | 11.1% | 40.5% | 35.2% |
| 2020 | 2.1% | 2.1% | 4.2% | 7.1% | 13.4% | 41.4% | 29.7% |
| 2021 | 3.2% | 2.1% | 2.1% | 4.3% | 15.2% | 43.6% | 29.4% |
| 2022 | 2.4% | 2.6% | 3.9% | 3.3% | 16.3% | 43.3% | 28.3% |

### Data Points

1. The percentage of Equilar 500 companies that passed Say on Pay with more than 95% approval continued to decrease, falling to 28.3% in 2022—a 32.1% decrease since 2018. *(Fig. 3)*
2. The percentage of companies receiving 90-95% Say on Pay support decreased for the first time during the study period in 2022, falling by less than one percentage point to 43.3%. *(Fig. 3)*
3. In 2022, 8.9% of Equilar 500 companies received less than 70% approval, the largest during the study period. *(Fig. 3)*

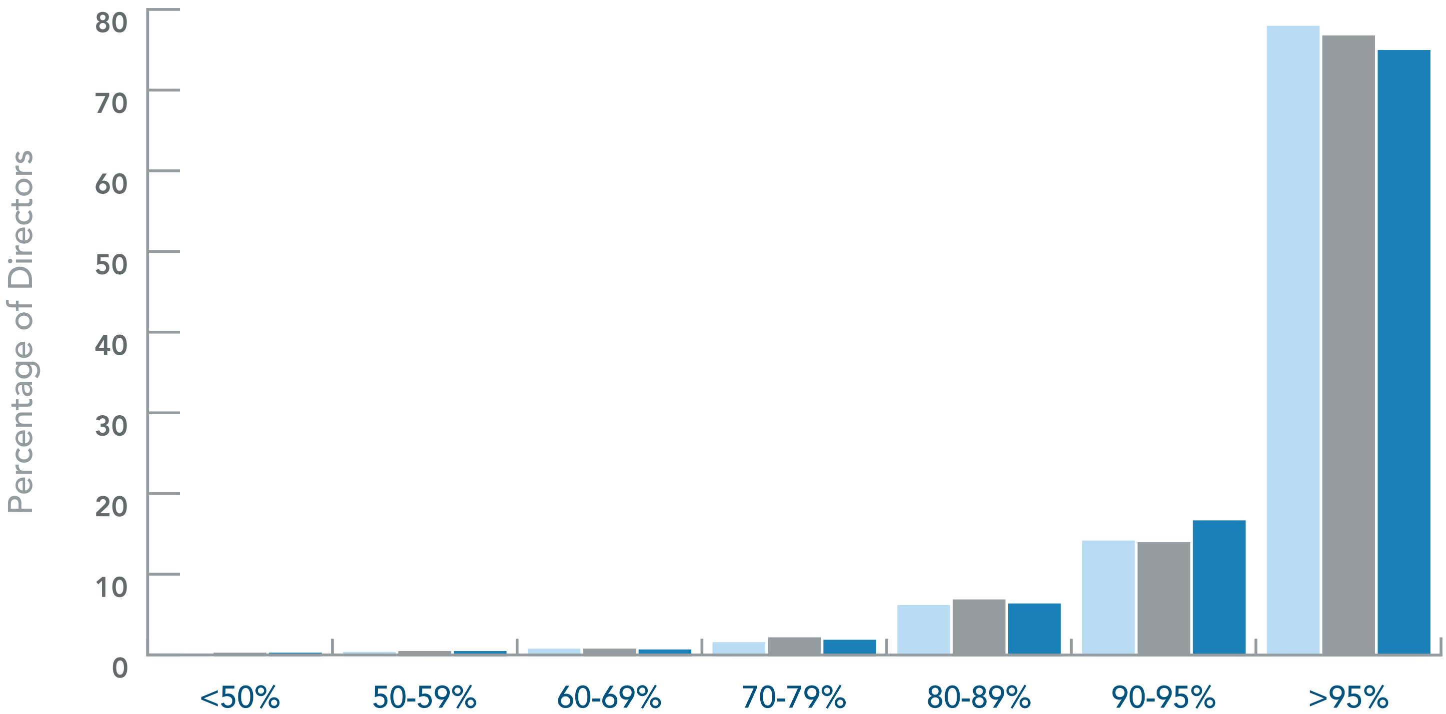
## Figure 04 | Say on Pay Failures (Equilar 500)




### Data Points

1. 2.4% of companies received a failing Say on Pay vote in 2022, down from 3% in the previous year. *(Fig. 4)*
2. Say on Pay failures peaked in 2021, as 3% of Equilar 500 companies failed their vote—2021 was also the only year in the study that saw an increase in failures. *(Fig. 4)*
3. Overall, the percentage of companies that failed Say on Pay fluctuated each year while staying in the range of 1.9% to 3%. *(Fig. 4)*

## Figure 05 | Director Approval (Equilar 500)

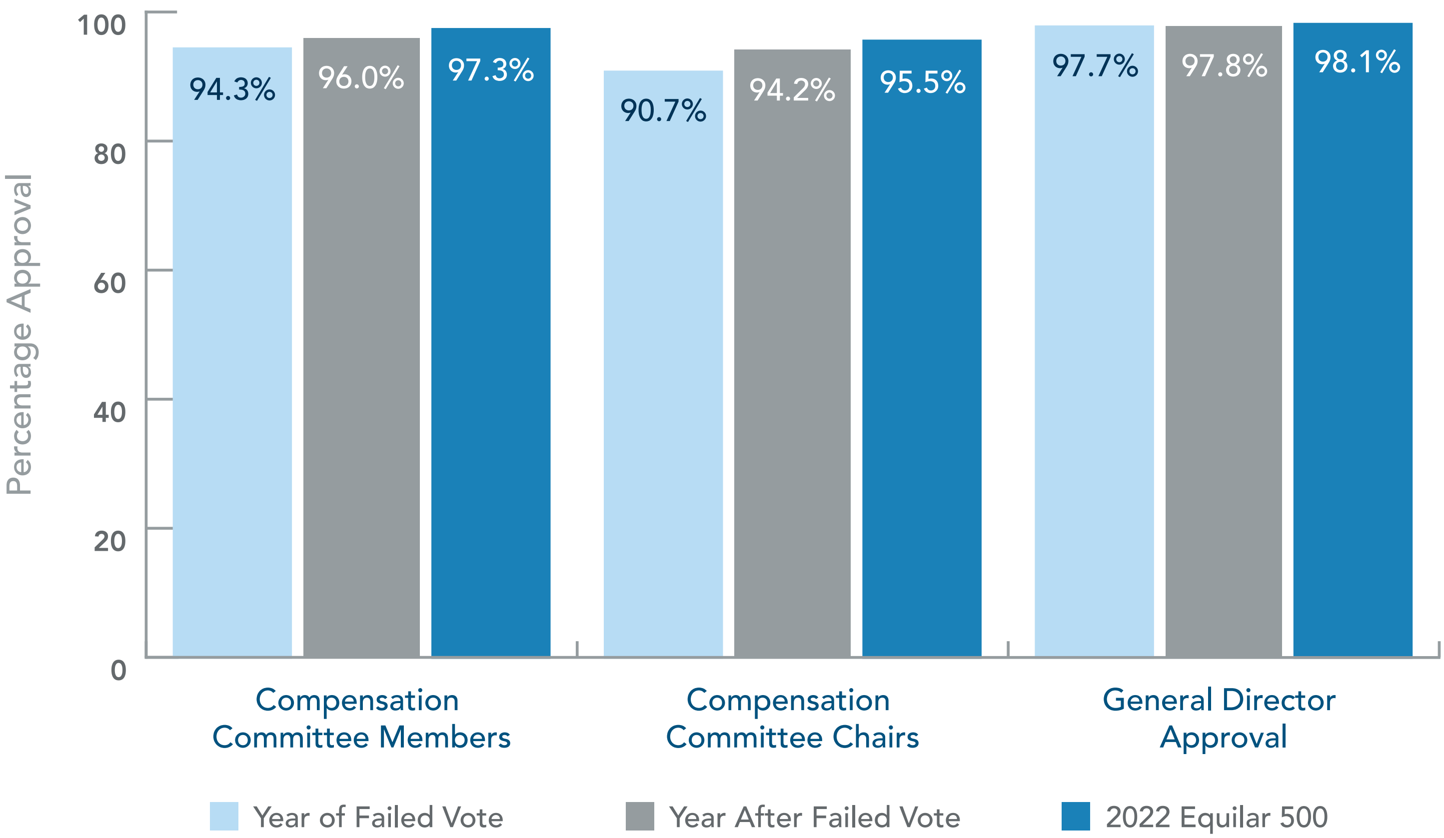



| | <50% | 50-59% | 60-69% | 70-79% | 80-89% | 90-95% | >95% |
|---|---|---|---|---|---|---|---|
| 2020 | 0.0% | 0.2% | 0.6% | 1.4% | 6.0% | 14.0% | 77.8% |
| 2021 | 0.1% | 0.3% | 0.6% | 2.0% | 6.7% | 13.8% | 76.6% |
| 2022 | 0.1% | 0.3% | 0.5% | 1.7% | 6.2% | 16.5% | 74.8% |

### Data Points

1. The share of Equilar 500 directors who received more than 95% approval declined for the second consecutive year, falling by 3.9% to 74.8% from 2020 to 2022. *(Fig. 5)*
2. In 2022, 0.9% of directors received less than 70% approval, down from 1% in 2022 and up from 0.8% in 2020. *(Fig. 5)*

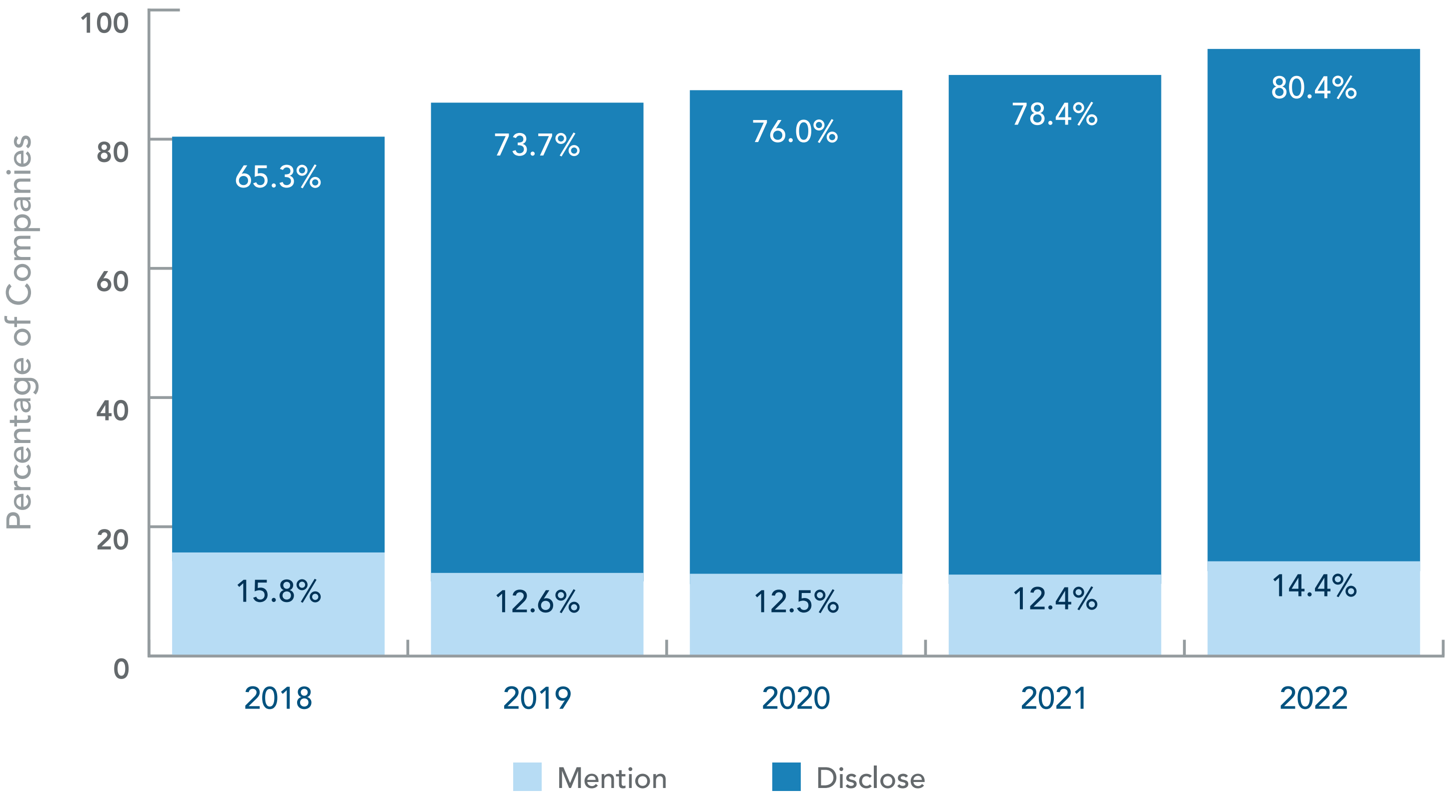
## Figure 06 | Median Compensation Committee Approval After a Failed Say on Pay Vote, 2018-2022 (Equilar 500)




### Data Points

1. During a year of a failed Say on Pay vote, compensation committee chairs were dealt the lowest median approval rates over the last five years at 90.7%—meanwhile, compensation committee members and all other directors received 94.3% and 97.7% approval at the median, respectively. *(Fig. 6)*
2. A year following a Say on Pay failure, median approval increased across all three member levels. *(Fig. 6)*

Figure 07 | **Shareholder Engagement Disclosures (Equilar 100)**




## Data Points

1. The percentage of Equilar 100 companies that discussed their shareholder engagement efforts reached 94.8% in 2022—up 16.9% from 81.1% in 2018. *(Fig. 7)*
2. Equilar 100 companies that included a full disclosure on their shareholder engagement policies increased to a study high of 80.4% in 2022, up from 65.3% in 2018. *(Fig. 7)*
3. For the first time in the study, the percentage of companies that mentioned their policies increased to 14.4% in 2022—the highest since 2018. *(Fig. 7)*

# Disclosure Example | Bank of America

Nearly 95% of Equilar 100 companies discussed their shareholder engagement efforts in 2022, a trend that is likely to continue for the foreseeable future. Bank of America's disclosure summarizes the Company's shareholder engagement cycle with both visual elements and concise descriptions at each step of the process.

## Our Board-driven shareholder engagement process

Our Board **assesses and monitors**:

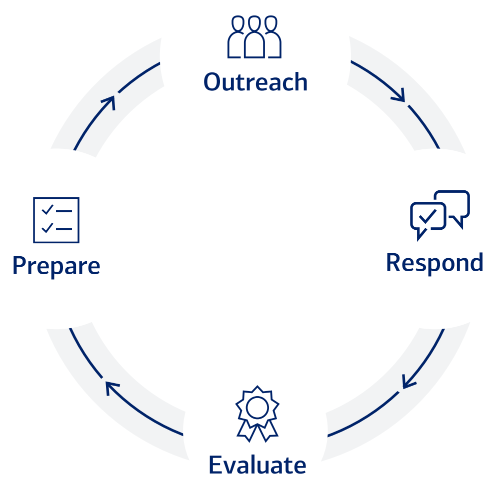
- investor sentiment
- shareholder voting results
- trends in governance, executive compensation, human capital management, regulatory, environmental, social, and other matters

Our Board **identifies and prioritizes** potential topics for shareholder engagement

Directors and executive management regularly meet with shareholders to **actively solicit input** on a range of issues, and report shareholder views to our Board

A **two-way dialogue is maintained** to clarify and deepen our Board's understanding of shareholder concerns, and to provide shareholders with insight into our Board's processes

Our management also **routinely engage with investors** at conferences and other forums




Shareholder input informs our Board's ongoing process of **continually enhancing governance** and other practices

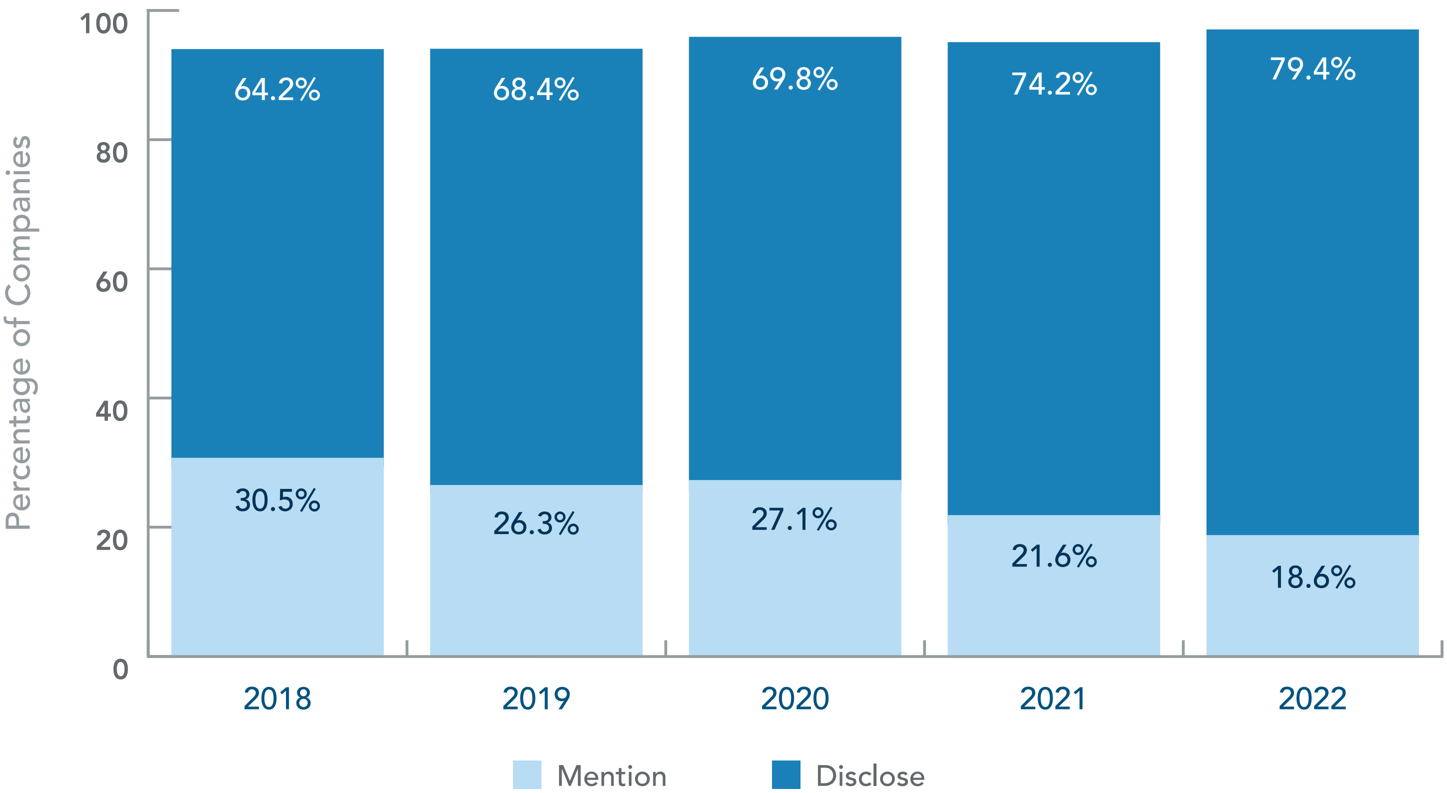
Our Board and executive management review shareholder input to **identify consistent themes**, and **research and evaluate** any identified issues or concerns

**Our Board responds,** as appropriate, with continued discussion with shareholders and enhancements to policy, practices, and disclosure

For more information on **governance enhancements** informed by shareholder input, please see page 37

Filed 3/7/2022

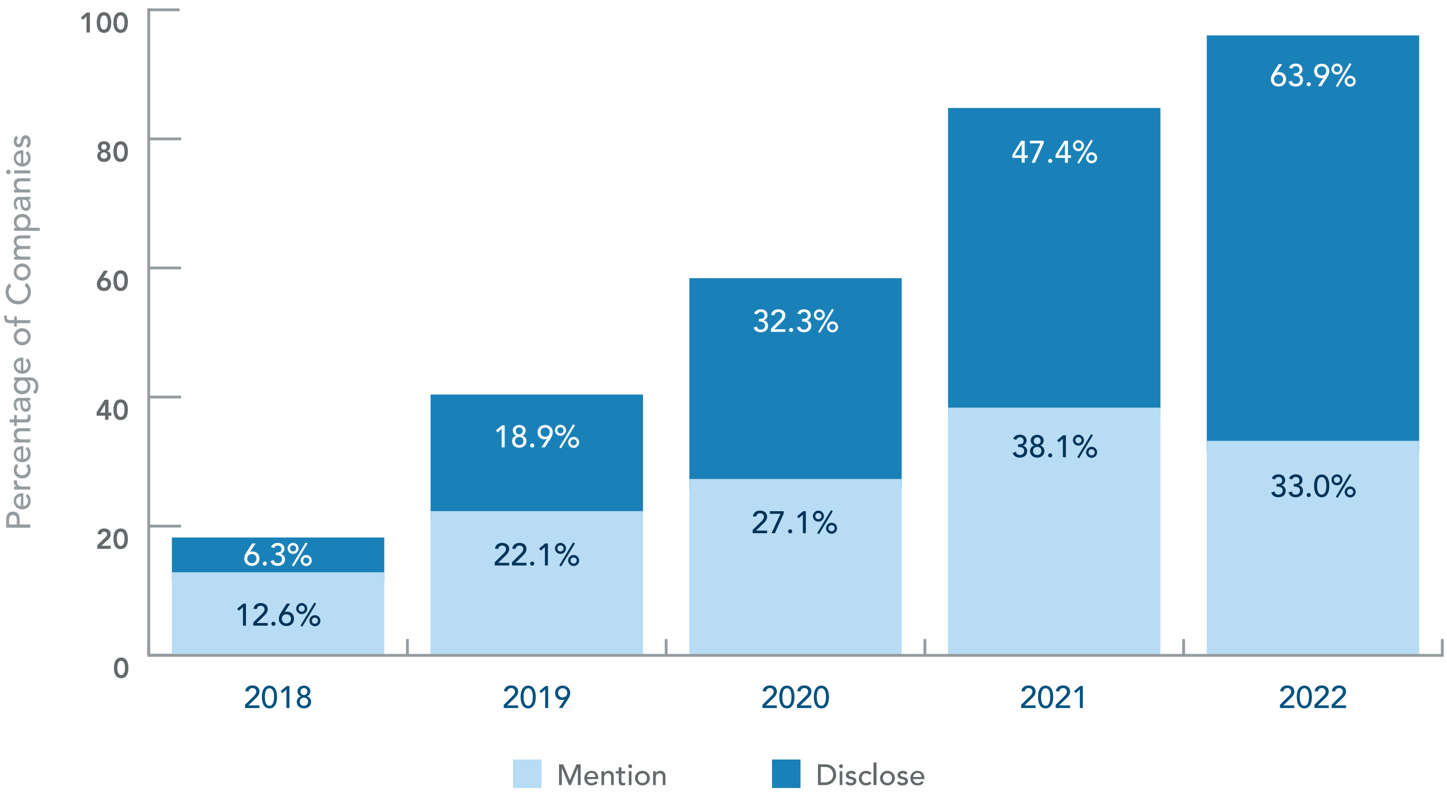
## Figure 08 | Board Evaluation Disclosures (Equilar 100)




### Data Points

1. 98% of Equilar 100 companies either mentioned or fully disclosed their board evaluation processes in 2022—the highest during the study period. *(Fig. 8)*
2. The percentage of companies with a full disclosure increased each year during the study, while those that mentioned their policies decreased each year, with the exception of 2020. *(Fig. 8)*

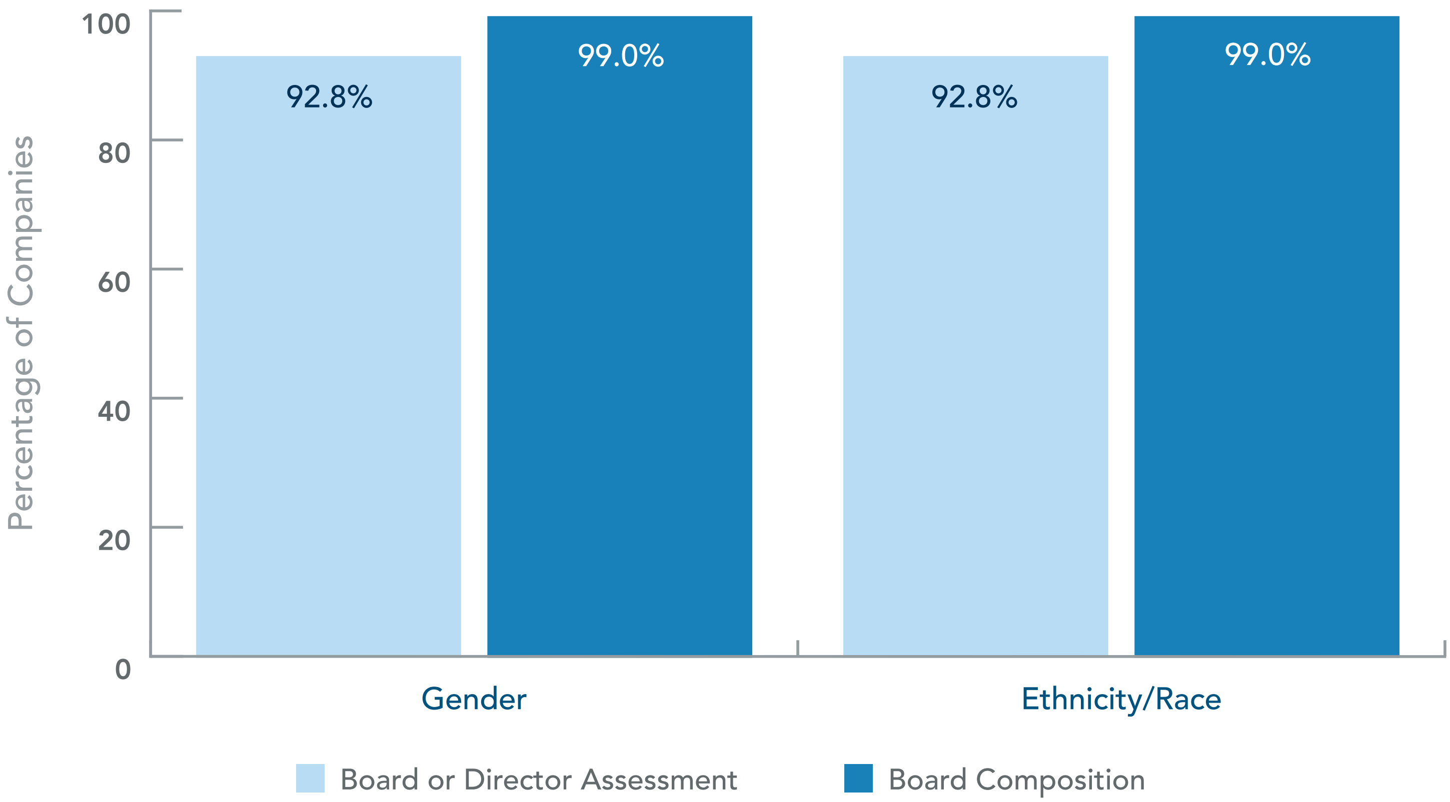
## Figure 09 | ESG Disclosures (Equilar 100)




### Data Points

1. Nearly 97% of Equilar 100 companies discussed their ESG policies to some extent in 2022—up from just 18.9% of companies in 2018. *(Fig. 9)*
2. 63.9% of companies provided a full disclosure of their ESG policies in 2022, up nearly 35% from the previous year. *(Fig. 9)*
3. As more companies elected for full disclosures, 2022 was the first year of the study that saw a decrease in the percentage of companies that made a mention of their ESG policies, declining from 38.1% to 33%. *(Fig. 9)*

## Figure 10 | Board Composition Disclosures on Gender and Ethnicity/Race, 2022 (Equilar 100)




### Data Points

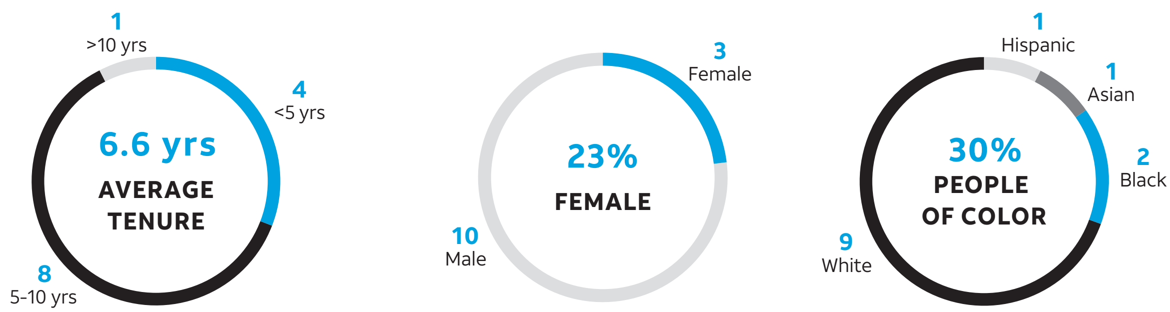
1. In 2022, 99% of Equilar 100 companies included a board composition disclosure on gender, the same percentage as companies that did so for ethnicity/race. *(Fig. 10)*
2. Similarly, 92.8% of companies included a board or director assessment for gender, with the same percentage including one for ethnicity/race. *(Fig. 10)*

# Disclosure Example | AT&T Inc. AT&T

Board diversity will certainly remain a hot-button topic in 2023. In this example, AT&T does an exceptional job of capturing key statistics pertaining to the Company's board diversity. The disclosure features a summary of the board's tenure, gender and race/ethnicity, as well as a breakdown of each individual director.

**DIRECTOR NOMINEES**

**TENURE** | **GENDER** | **RACE / ETHNICITY**




**DIRECTORS AND NOMINEES***

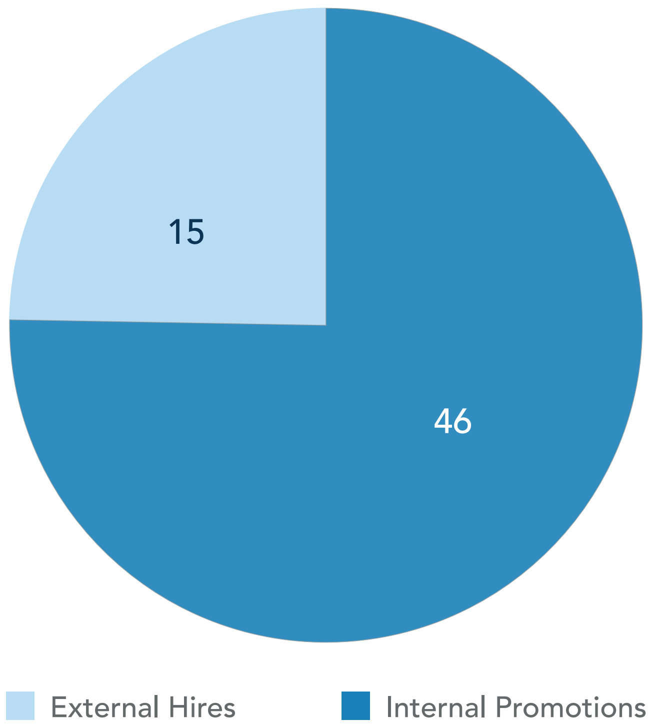
| Name | Age | Gender | Race/ Ethnicity | Director Since | Principal Occupation |
|---|---|---|---|---|---|
| **SAMUEL A. DI PIAZZA, JR.** | 71 | M | W | 2015 | Retired Global CEO, PricewaterhouseCoopers International Limited |
| **SCOTT T. FORD** | 59 | M | W | 2012 | Member and CEO, Westrock Group, LLC |
| **GLENN H. HUTCHINS** | 66 | M | W | 2014 | Chairman, North Island and North Island Ventures and Co-Founder, Silver Lake |
| **WILLIAM E. KENNARD** | 65 | M | B | 2014 | Former United States Ambassador to the European Union and former Chairman of the Federal Communications Commission |
| **DEBRA L. LEE** | 67 | F | B | 2019 | Chair, Leading Women Defined Foundation |
| **STEPHEN J. LUCZO** | 65 | M | W | 2019 | Managing Partner, Crosspoint Capital Partners, L.P. |
| **MICHAEL B. MCCALLISTER** | 69 | M | W | 2013 | Retired Chairman of the Board and CEO, Humana Inc. |
| **BETH E. MOONEY** | 67 | F | W | 2013 | Retired Chairman and CEO, KeyCorp |
| **MATTHEW K. ROSE** | 62 | M | W | 2010 | Retired Chairman and CEO, Burlington Northern Santa Fe, LLC |
| **JOHN T. STANKEY** | 59 | M | W | 2020 | CEO and President, AT&T Inc. |
| **CYNTHIA B. TAYLOR** | 60 | F | W | 2013 | President and CEO, Oil States International, Inc. |
| **LUIS A. UBIÑAS** | 59 | M | H | 2021 | Former President, Ford Foundation |
| **GEOFFREY Y. YANG** | 63 | M | A | 2016 | Founding Partner and Managing Director, Redpoint Ventures |

**All Directors are nominated for re-election. All Director nominees are independent, except for Mr. Stankey.*

*Key: F – Female; M – Male; A – Asian; B – Black or African American; H – Hispanic; W – White*

Filed 3/22/2022

## Figure 11 | CEO Transitions in 2022 (Equilar 500)




### Data Points

1. In 2022, 61 Equilar 500 CEOs departed their positions. *(Fig. 11)*
2. Among the 61 open chief executive positions, 75.4% were filled by internal promotions, while 24.6% were assumed by external hires. *(Fig. 11)*

# Disclosure Example | Procter & Gamble Company

A CEO departure—both planned and unplanned—can take place at any given time of the year. CEO succession planning remains a critical element of a company's corporate governance policies. In this disclosure, The Procter & Gamble Company provides a detailed explanation of its CEO succession planning process, including the development of internal executives as part of the Company's long-term strategy. The Company also details its recent CEO transition and the process that it entailed.

## Succession Planning

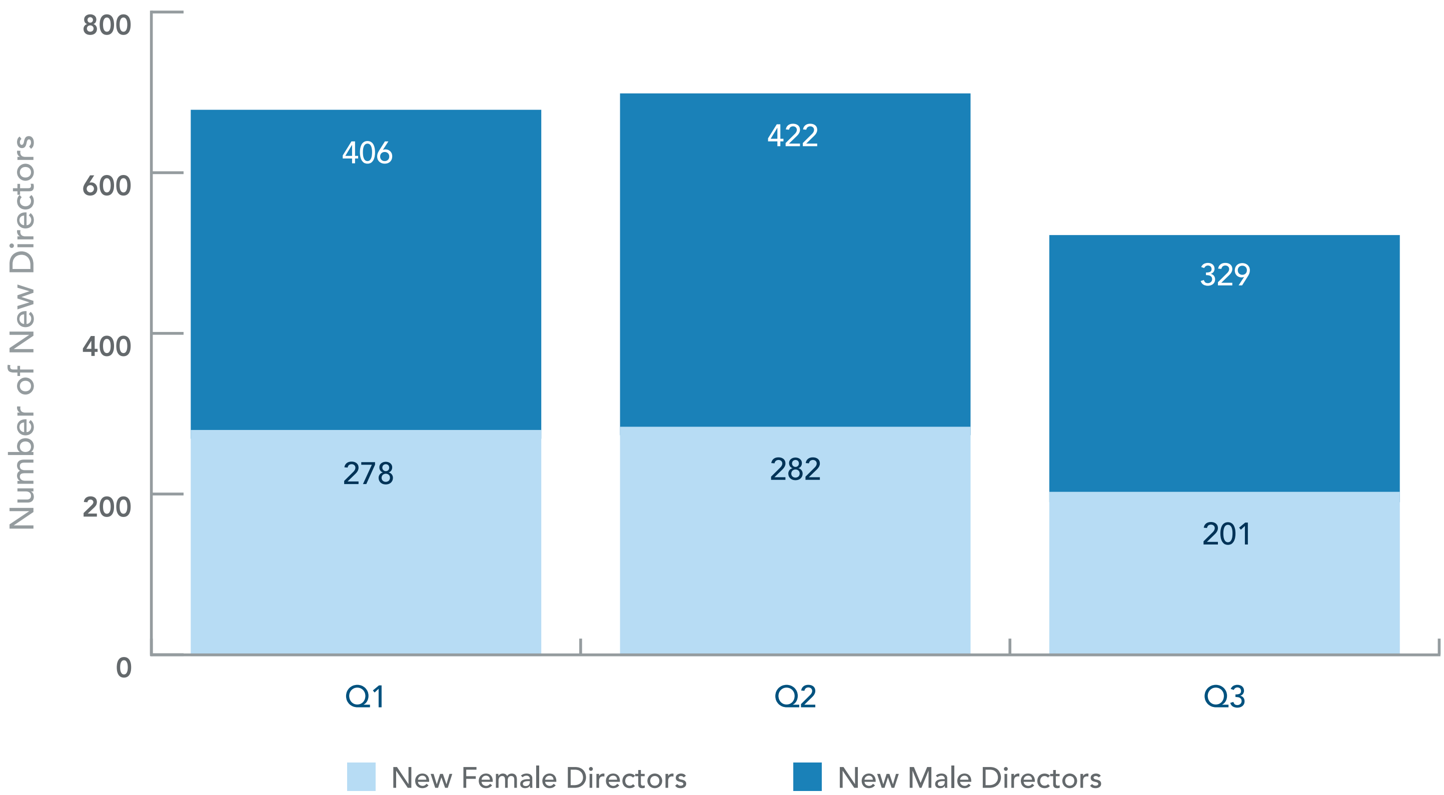
Ensuring that the Company has skilled, seasoned leaders in its executive ranks and talent pipeline is a critical aspect of the Company's long-term strategy and success. Underscoring this importance, the Board, with assistance from the C&LD Committee, directly oversees succession planning for all executive officers, including the CEO. To support its oversight and planning, the Board, in both regular and executive sessions, reviews and discusses the performance of and development plans for the Company's senior executives. The Board also interacts with these executives as part of Board business and functional reviews and in regularly scheduled one-on-one meetings, helping ensure that our Directors are familiar with not only these individuals' business results but also their broader leadership, management, and personal skills.

Leading up to the recently announced CEO transition, the Directors completed extensive assessments of each candidate through one-on-one and group meetings with each candidate and engaged an external consultant to compile detailed feedback and 360° assessments to help inform the discussion. The Board conducted a thorough review process over the course of many regular and special meetings and executive sessions prior to making its decision.

In order to ensure a strong pipeline for future succession, the C&LD Committee also conducts regular reviews of the Company's highly rated more junior executives across business units and functions to ensure that appropriate development plans are in place for the next generation of leadership.

Filed 8/26/2022

## Figure 12 | Prevalence of New Female Directors Through Q3 2022 (Russell 3000)




### Data Points

1. Among the 1,918 new Russell 3000 board members through Q3 2022, 761 (39.7%) were women. *(Fig. 12)*
2. During Q3 2022, 37.9% (201) of new Russell 3000 board members were women—the first quarter of the year that this figure fell below 40%. *(Fig. 12)*

# A Deep Dive | DFIN

## Staying Ahead of Governance Trends in 2023

**Equilar:** Equilar 500 Say on Pay failures declined from 3% to 2.4% in 2022 and have remained around this range during the study period. Will the new Pay Versus Performance rules have any impact on Say on Pay votes, or is it too soon to draw any speculative conclusions?

**Schneider:** As discussed earlier, thus far major investors and proxy advisors are indicating they will review the new disclosures but are not planning significant changes to existing pay for performance and Say on Pay voting analyses and procedures for the coming proxy season. That said, it would not be surprising if companies demonstrating extreme "pay versus performance" misalignment based on the new data receive additional scrutiny. So too soon to tell for the coming year.

However, by "year two" of the new disclosures, this might change significantly, with proxy advisors and investors finding ways to incorporate the new data into their "PfP" and Say on Pay voting models, so I would say "yes" the frequency of poor or even "failed" votes may increase by year two and thereafter.

**Equilar:** 96.9% of Equilar 100 companies disclosed their ESG policies to some extent in 2022. How do companies decipher which ESG issues take priority in their disclosures? What are the top areas of focus for investors?

**Schneider:** Companies often commence their "ESG journey" by conducting some form of "materiality assessment." These are tools or processes used to identify and prioritize ESG issues that are the most critical to a particular organization. At present there are myriad materiality frameworks as well as reporting languages, and these are undergoing rapid convergence or harmonization in the U.S. and globally. We generally suggest our clients take a "hybrid approach" to the major materiality standards. Start with the Sustainability Accounting Standards Board (SASB), the Taskforce on Climate-related Financial Disclosures (TCFD) and the Global Reporting Initiative (GRI). See what the major material topics are for your industry. Then determine for which of those you presently have some data or procedures to report on, and start there (i.e. don't let perfection be the enemy of progress). Thereafter, companies can work on filling major gaps for future reporting.

Investors are seeking material, quantitative, decision-useful and comparable information. They look to company websites for the bulk of this ESG reporting, which may initially take the form of an informational section, quickly evolving to a range of formal report types. These include 10 to 15 page "fact sheets" ideally aligned with one or more of the major reporting standards (TCFD, SASB, GRI), in 20 to 30 page "lite" reports, or 50 to 100 page "full" reports, again ideally aligned with major reporting standards.

Clearly any new SEC requirements will impact future disclosure. At present, the ESG topics investors most frequently expect our clients to discuss in their proxies include:

- Program pillars, tenets, priorities, commitments and progress (aligned with website reporting)
- Board oversight of ESG and related competencies
- References to ESG considerations in CEO and board cover letters (setting the "tone at the top")
- Shareholder engagement discussion of these issues
- Incorporation of ESG factors into executive compensation metrics
- Increasing focus on cybersecurity and water use

**Equilar:** Since 2018, the prevalence of shareholder proposals spiked by nearly 32%. What factors are driving this trend?

**Schneider:** The volume of shareholder proposals filed and going to a vote, as well as the degree of voting support, are clearly very visible evidence of investor interest in traditional or emerging topics, but not the only measures. Bear in mind that investors have several arrows in their engagement and activist quivers, including:

- Vote on proposals filed by others
- Engage with portfolio companies on issues of concern (whether via "letter campaigns" or telephonic or email outreach), with the implicit threat that if engagement isn't deemed sufficiently effective, they can turn up the heat
- Sponsor/file a shareholder proposal

Over the years I have seen institutional investors like CalPERS, State of Wisconsin Investment Board (SWIB), the New York City Controller's Office, as well as groups or individual investors such as As You Sow, the Steiners and Cheveddens, ramp up or down their rates of "mass-filing" of proposals from one year to the next as they toggle between use of the above levers in their tool-kit.

Over the past two decades the focus was primarily on governance, shareholder rights and director election standards. As most companies eventually gave in to investor pressure on these issues, the frequency of those proposals declined. However, as the Equilar data shows, any decline in these traditional governance proposals has been more than offset by significant increases in social and environmental proposals. Here too, we would expect investor proponents to toggle back and forth between voting, engagement and actual proposal sponsoring so anticipate variability in these numbers going forward. The key is to watch for increased support of new proposal types in the years after they first emerge as signs of future adoption by companies.

**Equilar:** Board diversity remains a key area of focus for several stakeholders, as evidenced by the percentage of Equilar 100 companies that disclosed their board assessment and composition. What components make a board diversity disclosure effective and strategically communicate value to shareholders?

**Schneider:** The "problem" for investors in evaluating board strength and individual director contributions is that boards for very valid reasons operate largely in private and out of the sight of investors. For this reason, investors tend to focus (or "over-focus") on visible data and external considerations like gender, race/ethnicity, geographic origin, age, tenure, meeting attendance and biographical history. By no means am I minimizing the contributions that diverse directors can make in offering alternative perspectives and stimulating productive conversation in the boardroom. Some consider such external signs of diversity to be strong indicators of "cognitive" diversity. Of course, diversity of experience, skills and competencies is very important as well, and skills matrices (whether in a "summary" or "full matrix" format) can provide a useful overview.

That said, board bios, diversity graphics and skills matrices are typically a "snapshot in time" of current board makeup. It's equally important to also show the "moving picture," such as increases in diversity and addition of new skill sets via refreshment, whether over the most recent three- or five-year period.

Some of the most effective board-related disclosures we are seeing from leading companies include visual layouts or "process-flow" descriptions of key board processes. These can include:

- Board oversight of risk and of ESG
- Board evaluation process
- Director recruitment and succession process. The most effective of these include the "outcome" from following the process in terms of recent refreshment, enhanced diversity and new skill sets

- Management succession process
- Board/shareholder engagement process, who participates, topics discussed and any subsequent actions taken

**Equilar:** Do you have any closing thoughts or parting wisdom?

**Schneider: Engage with your investors:** Investor informational needs exceed SEC proxy and other disclosure requirements and are ever-expanding. The best way to stay on top of these is to engage regularly with your largest institutional and other investors and let them tell you what they are interested in, and how well (or not) they feel you are meeting their needs. In addition to requesting calls and offering to meet, consider use of newer technologies to promote year-round engagement with investors and not just at proxy-voting time.

**Benchmark your disclosures against those of your peers:** It's advisable to review the practices and disclosures of the acknowledged "governance-leader" companies, as well as those of your industry and other peer companies. Unless you do this regularly, you may find yourself falling relative to peers that are "upping their game" from year to year. This is particularly important in the relatively new field of ESG "raters and rankers" which generally provide "relative" ratings. Keep in mind that many investors consider the broad field of ESG to essentially be a form of long-term risk measurement, so improved ratings can increase demand for your stock.

# About the Contributor | DFIN

Donnelley Financial Solutions (DFIN) is a leading global risk and compliance solutions company. We provide domain expertise, enterprise software and data analytics for every stage of our clients' business and investment lifecycles. Markets fluctuate, regulations evolve, technology advances, and through it all, DFIN delivers confidence with the right solutions in moments that matter.

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Additional proxy disclosure examples, similar to those found in this publication, can be found in DFIN's Guide to Effective Proxies, 10th edition: www.proxydocs.com/xDFINx


## Ron Schneider

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Ron joined DFIN as Director of Corporate Governance Services in April 2013. He is responsible for providing thought leadership on emerging corporate governance, proxy and disclosure issues.

Over the past four decades, Ron has advised senior management, the C-suite and boards of public companies of all sizes, industries and stages of growth facing investor activism, as well as challenging and sensitive proxy solicitations involving corporate governance, compensation and control issues.

His primary recent focus has been helping companies conduct engagement programs with their top institutional investors with the objective of identifying and addressing investor concerns through best practices in proxy disclosure.

At DFIN, Ron works closely with clients and our firm's sales and service teams to identify and implement appropriate changes to proxy statement design, content and navigation that fit each client's unique corporate culture and proxy-related objectives.

During his career he has managed more than 1,600 proxy solicitations, 200 tender or exchange offers and 30 proxy contests, with his proxy fight clients succeeding in over 70% of such situations.

Ron earned a B.A. in Economics from Princeton University.

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