

# PROXY ADVISORS REMAIN A PROBLEM

2023 PROXY SEASON  
ANALYSIS SHOWS  
COMPANIES REPORTED  
AN INCREASED NUMBER  
OF ERRORS DESPITE  
HEIGHTENED SCRUTINY

September 2023

Kyle Isakower

Senior Vice President of Regulatory  
& Energy Policy



**ACCF**

AMERICAN COUNCIL  
FOR CAPITAL FORMATION

# Introduction

Every year, institutional investors are responsible for voting on hundreds of shareholder proposals, which have a significant influence on the strategy, operations and perception of the companies that receive these proposals. The material impact of shareholder proposals on public companies is only increasing, with the number of proposals reaching a [recent high](#) of 889 proposals during the 2023 proxy season. The surge in proposals comes after a [change in policy](#) at the Securities and Exchange Commission (“SEC”), calling on companies to include a wider array of proposals on often contentious environmental, social and political topics that could impact a company’s brand and value.

Despite the increasing significance and prevalence of shareholder proposals, investors still often outsource and defer to the recommendations of proxy advisors to determine how to vote on shareholder proposals and director candidates. Proxy advisors are third-party organizations who investors hire to advise them on how to vote on shareholder proposals. Even though they are not well known to the general public or even many shareholders themselves, their recommendations carry significant weight, with some research suggesting their recommendations have the ability to sway [up to 25 percent](#) of a given vote.

Previous [ACCF research](#) conducted on asset manager “robo-voting,” or automatically voting with proxy advisor recommendations, also found that 175 entities with more than \$5 trillion in assets under management followed proxy advisory firm recommendations over 95 percent of the time. This demonstrated that asset managers often follow their recommendations without taking the time to conduct their own due-diligence, despite being [legally responsible](#) to vote in their clients’ best interests.

In principle, proxy advisors serve a legitimate purpose for market participants. Particularly, many small and mid-sized investors lack the necessary information and resources to conduct research on company-specific issues and make informed voting decisions. For the thousands of investment managers who need to outsource these costly and time-intensive tasks, proxy advisors can be a helpful partner.

Unfortunately, proxy advisors can suffer from similar issues and have limited resources to truly analyze and make informed recommendations on hundreds of shareholder proposals and thousands of director nominations – all within the short three-month window

that most companies vote on these matters. To deal with this issue, proxy advisors frequently employ “one-size-fits-all” guidelines to generate recommendations and often fail to engage with companies when issues arise.

It is unsurprising then that proxy advisors sometimes develop recommendations based on inaccurate information or have serious disagreements with the companies about which they are making recommendations. As a result, these recommendations often require more careful study from investors who are relying on proxy advisors for voting advice. In cases where there is disagreement, proxy advisors’ clients should be better informed about the companies’ position in order to successfully vote in the best interests of shareholders.

As stated in past analyses, these supplemental filings likely only represent a small fraction of issues that public

**In this report, the ACCF documents at least 64 instances from the 2023 proxy season of companies responding to what they deemed inaccurate proxy advisor recommendations through a supplemental filing to the SEC. This represents a 28% increase from 2021, when the ACCF found at least 50 instances of company disagreements documented in supplemental filings with the SEC. These results are consistent with the prior analysis of supplemental filings ACCF conducted over previous proxy seasons dating back to 2016 – which have uncovered a total of over 250 apparent errors and serious disagreements in the examined time periods.**

companies face with proxy advisor recommendations each year. To submit these supplemental filings, companies must take on additional liability and risk damaging their relationships with proxy advisors, and investors are unlikely to review such filings before voting. To improve the functioning of the proxy process as shareholder proposals continue to increase, a better process to inform proxy advisors’ clients of disagreements is needed to promote informed decision making.

Notably, this year's filings uncovered the following issues:

- In one example, the CEO of a company sent two [different letters](#) explaining that the Company publicly disclosed in numerous instances that it does not lobby against the Paris Climate Agreement, despite receiving a shareholder proposal asking it to disclose how its lobbying activities align with the Paris Agreement. Further, the company reiterates that its lobbying activities focus on local policy initiatives that directly impact its business, such as local license to operate issues. Both proxy advisors did not take this material fact into account and failed to engage with the Company to understand this fact. Despite these attempts, the proxy advisor failed to change its adverse recommendation.
- In another [example](#), one proxy advisor recommended against the election of the female chair of the Company's Nominating & Corporate Governance Committee because the Board did not meet the proxy advisors' rigid policies for gender and racial diversity. At the time of the proposal, the gender diversity of the Board was 29%, one point below the 30% threshold one proxy advisor set as a target. However, the company referenced a public commitment that they intend to appoint one or more gender and/or ethnically diverse directors by the next annual meeting. Despite these disclosures, the proxy advisor failed to change its 'against' recommendation. Ironically, the proxy advisors recommended that shareholders vote against a female Board chair candidate in an effort to encourage the company to increase Board diversity.
- Another [filing](#) stated that an advisory firm recommendation against the company's say on pay was based on "egregious factual errors, grossly incorrect methodologies, and insufficient consideration of the facts." Amongst other errors, the proxy advisor incorrectly concluded that the value of stock-price based equity awards were more than 40% higher than the value of cancelled performance-based awards. Still, the proxy advisor failed to change its adverse recommendation.

## Analysis of Findings

As stated above, a search of the SEC's EDGAR database through August 15, 2023, found 64 examples of public companies filing supplemental proxy materials in the

2023 proxy season to dispute a proxy advisory firm recommendation.

Supplemental filings are the only publicly available record of potential proxy advisor errors and the only official way for companies to inform their shareholders that they disagree with a proxy advisors' recommendation. Yet, these filings likely represent the "tip of the iceberg" of various disagreements that occur in any given year because companies – unlike proxy advisors – must assume legal liability to submit a filing.

This additional risk is unlikely to be worth the outcome since supplemental filings are not an efficient or effective way for companies to communicate their point of view with shareholders who subscribe to the proxy advisors' services. Many investors who rely on proxy advisors often automatically vote before filings are submitted or simply do not review such filings. In addition to these issues, companies may be hesitant to submit supplemental filings that point out proxy advisor errors for fear of retaliation from proxy advisors in future recommendations.

Despite current and past scrutiny regarding the quality of proxy advisor recommendations, filings this season increased by 28 percent compared to the 2021 proxy season.

Similar to ACCF's prior analyses, data from this past proxy season involves a wide array of companies that include nearly every sector of the economy. Most are small- or mid-cap entities that do not have the significant legal and compliance resources of their larger counterparts and are not able to easily engage with proxy advisors or communicate to their shareholders in the short time frame between an adverse recommendation and when shareholders vote using the recommendation.

These filings are consistent with our previous research into this topic, which showed at least 250 errors dating back to 2016. They demonstrate that companies are still encountering proxy advisor recommendations that they argue are based on factual and analytical errors, as well as serious disputes, all of which should be considered by investors before casting their votes in corporate elections.

The summary assigns the filings into one or more of three categories to demonstrate the types of issues commonly presented:

## Factual Errors (11 total)

cited by the companies, for example:

**Schnitzer Steel:** Proxy advisor recommendation against company's Omnibus Incentive Plan includes an erroneous calculation of 1.4 million shares being included in the plan. According to company, this error led to a 50% overcalculation of the company's Shareholder Value Transfer Score, and an overcalculation of dilution by 40%.

**Dover Corp:** Proxy advisor recommendation against two directors was based upon assumption that board has no racially or ethnically diverse directors. Company explains that the Board currently contains a minority director and that the Board has had racial or ethnic diversity since 2005.

## Analytical Errors (29 total)

in the application by which the proxy advisors arrive at recommendations. For example, issuers disagree with the proxy advisor justification to arrive at their recommendations such as leveraging inaccurate peer groups or abbreviated timelines. Some specific examples follow:

**Air Lease Corp:** Company explains that proxy advisor recommendation against say on pay was based upon several analytical flaws, including the proxy advisor view of the company's peer group which "does not reflect companies with similar business models."

**Forward Bancorp:** An advisory firm withholds recommendation of a director based upon company by-laws which allow only the Board of Directors to change by-laws. Company explains that provision is in accordance with Indiana law because shareholders do not have ability under Indiana law to amend by-laws as a statutory default.

## Serious Disputes (48 total)

over the appropriateness of the "one-size-fits-all" and other methodologies used by the proxy advisor. Issuers dispute the use of certain rules that automatically induce an unfavorable recommendation just on the basis of not meeting the rule criteria. For example:

**O'Reilly Automotive:** Company disputes proxy advisor recommendations against a director over perceived lack of Board meeting attendance. Company explains that the director notified the company prior to his first meeting that he had a preexisting conflict. In addition, the director was scheduled to attend another meeting but was unable to attend due to an immediate family member suffering a serious medical issue.

**Tanger Factory Outlet Centers:** Two proxy advisors recommended voting against a board member who was considered "overboarded", a term proxy advisors use to describe directors who have certain commitments to other company boards. The board member was a CEO and board member on two other public companies. Generally, proxy advisors recommend voting against director candidates who are CEOs and serve on this many boards. However, ahead of the annual meeting, one company announced that the director candidate notified his intention to resign from his position as CEO and their board. Despite this announcement, the proxy advisor failed to take this update into account and inform investors when making their recommendation against the director candidate.

Of these classifications, just over one-third of filings included more than one type of error. In addition, three-fourths of all supplemental filings included a serious dispute in which the proxy advisor applied a “one-size-fits-all” approach to its recommendation. While useful from an efficiency standpoint for the proxy advisor, the sheer incidence of applying these rigid rules suggests that proxy advisors sometimes fail to capture the nuance when they make voting recommendations about specific company issues.

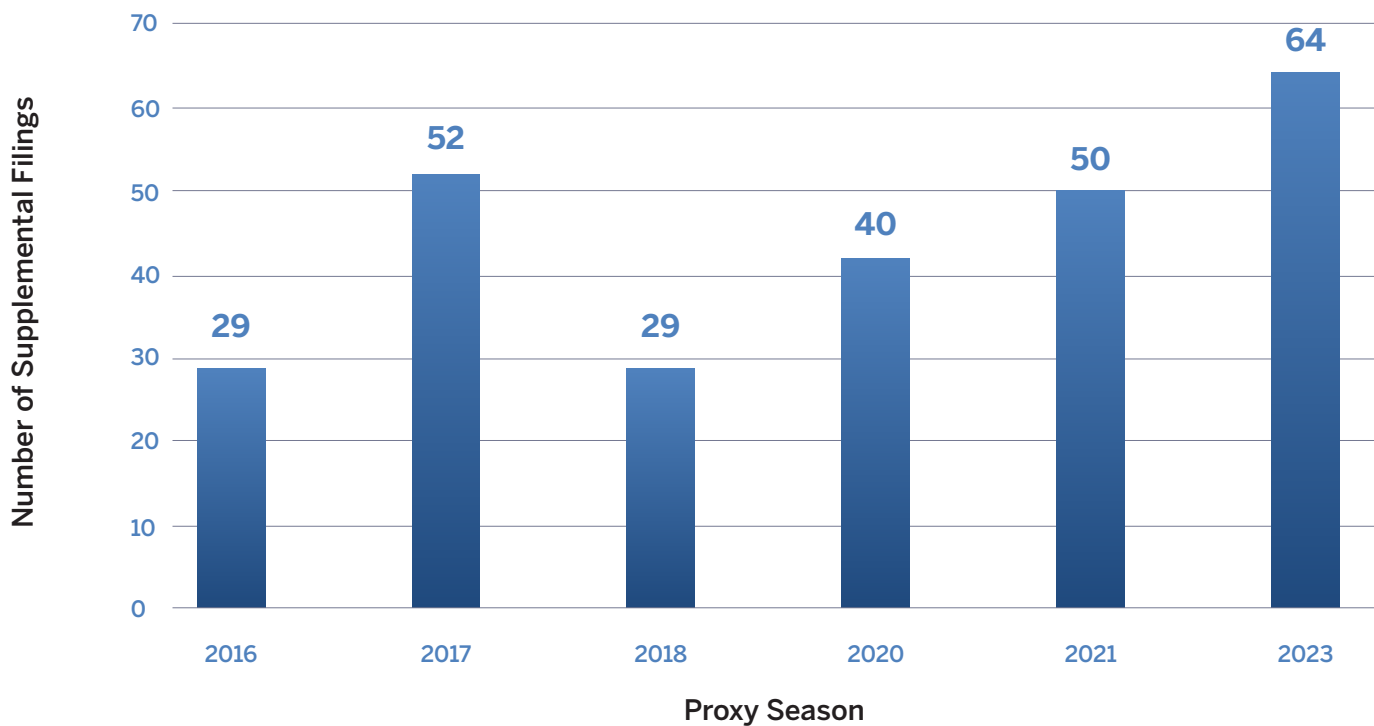
In instances where there is a serious dispute, it is particularly important for proxy advisors’ clients to have sufficient time to review the dispute before voting. In many of the supplemental filings classified as serious disputes, the company received an adverse recommendation from the proxy advisor because the company failed to reach an arbitrary requirement: e.g.,

ensuring a certain percentage of the board comes from diverse groups, reviewing whether board members sit on too many boards or a board member failing to attend a particular number of meetings.

These requirements may be important for companies to adhere to or work towards in achieving greater objectives that investors have identified as priorities, but there are often extenuating circumstances that investors should also evaluate on a case-by-case basis to ensure they are voting in a way that will maximize value for the specific business in question.

A full list of the descriptions of supplemental filings and their corresponding error classifications are included for review in the appendix.

### Company Supplemental Filings Per Year Analyzed



### Recent Scrutiny of Proxy Advisors from Congress, Regulators and Attorneys General

Policymakers have been aware of the potential problems posed by proxy advisors for a long time and have attempted to regulate them for a number of years. However, the recent politicization of environmental,

social and governance investing, and the increase in related shareholder proposals and broader concerns about asset manager concentration is bringing these firms back into the spotlight.

Congress is currently considering legislation to introduce more robust regulatory oversight of proxy

advisors to address these issues. In December 2022, Congressman Steil (R-WI) introduced the [Putting Investors First Act](#), a bill that Senator Hagerty (R-TN) also [introduced](#) in June 2023. The bill contains important reforms that would require proxy advisors to provide additional disclosure about their conflicts of interest, voting methodologies, and require them to update their voting recommendations if they were found to be materially incorrect. One notable provision would hold advisory firm executives accountable by mandating executive certification that recommendations distributed are designed with accurate information, abide by state and federal laws and prioritize shareholder returns. The bill would also require advisors to make the data and information upon which recommendations are based available at least one week before the publication of a recommendation. Further, it would eliminate potential conflicts of interest by prohibiting proxy advisors from offering consulting services for corporate issuers related to shareholder proposals for corporate governance. These provisions could help establish beneficial checks on proxy advisors. As of this writing, both the House and Senate bills are under review in committee.

In July 2023, the U.S. House Financial Services Committee held a [hearing](#) titled, “Oversight of the Proxy Advisory Industry,” that investigated the role and influence that proxy advisors play in investor decision-making. Members questioned witnesses about the lack of transparency in the proxy advisory process and noted the frequency of errors that proxy advisors make when issuing recommendations. One member cited a 2019 Society of Corporate Governance [study](#) which found that 42 percent of respondents reported or noticed errors in proxy firm voting recommendations. The Chair of the Financial Services Committee, Representative Huizenga (R-MI), also entered into the record a [letter](#) from the Business Roundtable that referenced a recent member survey that found 95% of respondents identified factual errors in proxy advisory reports about their companies. It was therefore notable that representatives of the proxy advisors testified at the hearing that they are not subject to audits of their businesses.

U.S. state regulators have also recently expressed concern with the voting advice that proxy advisors provide to state investment vehicles. In January 2023, a coalition of twenty-one state attorneys general sent a

[letter](#) to the two leading proxy advisors citing potential violations of their legal and contractual duties. The letter suggested that proxy advisors may be promoting certain social goals that may be contrary to the financial interests of their clients, such as state pension funds. In May 2023, twenty-three state attorneys general also sent a [letter](#) to the largest U.S. financial institutions reminding them of their fiduciary duties when voting their shares directly or through a proxy advisor.

## Previous SEC Attempts to Regulate Proxy Advisors and Ongoing Litigation

After nearly a decade of debate, the first comprehensive rules regulating proxy advisors were finalized by the SEC in 2020, when the Commission adopted amendments to its rules governing proxy advisors and shareholder solicitations. [The rules](#) introduced reforms that would have addressed some concerns about proxy advisors’ outsized influence over shareholder voting outcomes.

However, in an abrupt and surprising reversal, the SEC voted to rescind the rules in 2022. This shift in policy occurred despite the 2020 rule having never taken effect, since SEC Chairman Gensler [announced](#) that he would not enforce the rule ahead of the 2021 proxy season.

The National Manufacturers Association (“NAM”) [filed a lawsuit](#) in the U.S. District Court for the Western District of Texas suing the SEC on the grounds that the Commission engaged in “arbitrary and capricious” rulemaking. The NAM’s [rationale](#) for the lawsuit was clear:

“Federal agencies are required to articulate a reasoned explanation for making a new policy decision—especially when that decision is based on the same facts but reaches a different outcome than a recent rule. In this case, the SEC finalized a compromise rule in 2020 based on a decade of bipartisan research, analysis and discussion—and no new evidence has emerged since 2020 given that the SEC prevented the rule from taking effect. So, the agency’s about-face “epitomizes ‘arbitrary and capricious’ rulemaking.”

The U.S. Chamber of Commerce also filed a similar lawsuit against the SEC in the U.S. District Court for the Middle District Of Tennessee. Both lawsuits are currently ongoing in an appeal.

Without the 2020 rules in effect, proxy advisors continue to make recommendations without being obligated to engage with companies or inform their clients of any potential disagreements, limiting the information easily available to investors when they are executing their voting decisions.

In our prior report, we documented the decade of debate that the SEC considered ahead of finalizing its 2020 proxy advisor rule. The 2020 rule would have imposed requirements designed to suppress the influence that proxy advisors wield in shareholder voting. The provisions included the following:

- Provided companies with the proxy advisor's voting recommendation before or at the same time it is released to the clients of the proxy advisor;
- Provided proxy advisor clients with a mechanism by which they can be reasonably expected to be aware of written statements from the company regarding the recommendation; and
- Provided proxy advisors with safe harbors from SEC enforcement actions due to noncompliance with the rule if companies did not file their proxy statement at least 40 days prior to the date of the meeting where votes that the subject of the recommendations would take place.

On the same day, the Commission approved additional [supplemental guidance](#) to investment advisors directing them to review the new information that would be

made easily available from the rule. The guidance also reminded investment advisers of their disclosure obligations when using automated voting services like proxy advisors.

Many of the critical reforms introduced in the 2020 rule were scrapped in the SEC's new 2022 proxy [advisor rule](#) including:

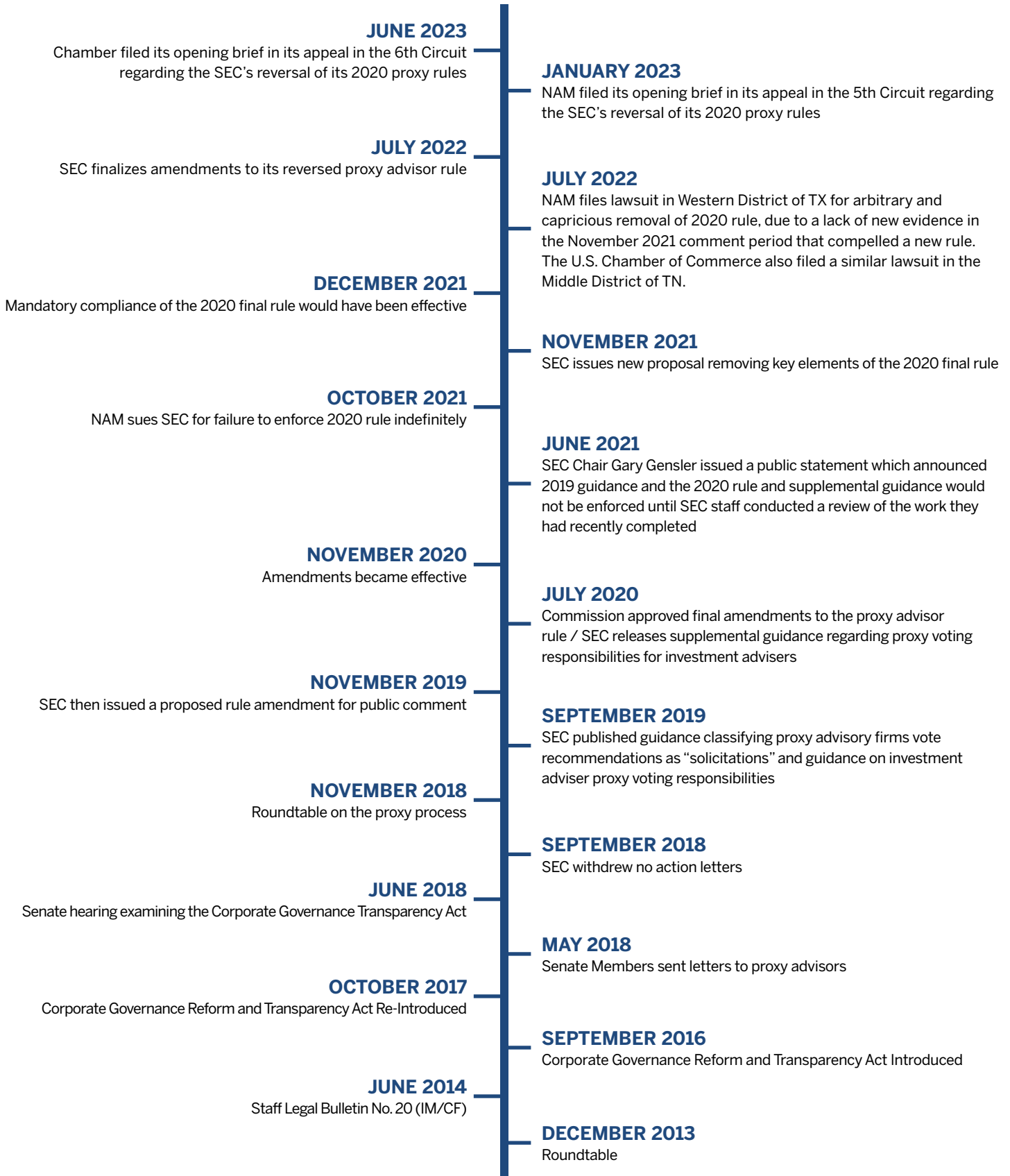
- Removal of the requirement that proxy advisors must provide their proxy voting advice to subject companies before or at the same time proxy advisors make it available to their clients;
- Removal of the requirement that proxy advisor clients must be notified of any written responses by companies to such proxy voting advice; and
- Revocation of a note to Rule 14a-9 that provided examples of situations in which the failure to disclose material information regarding proxy voting advice may be considered misleading and discussed the limited circumstances under which statements of opinion would subject proxy advisors to liability under 14a-9.

In addition, the SEC rescinded the supplemental guidance to investment advisors regarding "robo-voting" and the directive to review additional materials.

The rescinded reforms would have addressed many of the key issues discussed in this report by ensuring that the clients of proxy advisors could easily access information when companies believe that proxy advisor recommendations were factually incorrect or if they have good reason to disagree with a recommendation. They would also ensure companies are able to review proxy advisor recommendations for any potential errors.



## Timeline of SEC Consideration of Proxy Advisors





## Conclusion

Since our last report in 2021, proxy advisors have continue to gain influence due to the lack of regulatory safeguards. The advisors have continued their businesses unhindered by the sensible rule changes that the SEC spent years carefully crafting with input from all stakeholders, including from the proxy advisors themselves. Legislation in Congress would also introduce important reforms and reduce the ability of proxy advisors to have sway over voting outcomes. Meanwhile, adjacent developments in corporate governance, including a change to Rule 14a-8 ensures greater need for proxy advisors' services as shareholder submit more proposals on a diverse array of topics.

Proxy advisors should play some role in helping investors make voting decisions. But they should do so accurately, reliably and transparently. The continued incidence of supplemental filings each proxy season indicates that proxy advisors fail too often on all three accounts. Too many questions about proxy advisors' business models, and their potential conflicts of interests, also remain unanswered.

Concerns will be alleviated if the SEC reverts back to its 2020 proxy advisor rule. In addition, Congress should consider legislation to impose better oversight and regulation over the proxy advisors. These and any future reforms should prioritize transparency and accountability so that market participants will be able to make more informed voting decisions and do not disproportionately rely on proxy advisory firms.



# Appendix

Company	Date of filing	Nature of Error	Summary of Error / Topic
<b>Schnitzer Steel</b>	1/12/23	Factual Error X Analytical Error X Serious Dispute	ISS recommendation against company's Omnibus Incentive Plan includes erroneous calculation of 1.4 million shares being included in plan. According to company, this error led to a 50% overcalculation of the company's Shareholder Value Transfer Score, and an overcalculation of dilution by 40%
<b>Aramark</b>	1/17/23	Factual Error X Analytical Error X Serious Dispute	ISS vote recommendation against company's 2023 stock incentive plan included assumption that 3+ million shares would be available for future grants. Company cites recent proxy statement which explains that it does not plan to make further grants under incentive plan.
<b>RH Inc.</b>	2/3/23	Factual Error Analytical Error X Serious Dispute X	Company explains that ISS did not fully take into account share repurchases and other factors when it recommended voting against company's stock incentive plan. Company also points flaws in ISS calculation of burn rate under incentive plan.
<b>F5 Inc.</b>	2/22/23	Factual Error Analytical Error X Serious Dispute X	Company explains that ISS recommendation against proposal to increase shares issuable under incentive compensation plan contains several analytical flaws, including overstatement of past equity usage and potential dilution of proposal.
<b>CNX Resources</b>	3/30/23	Factual Error Analytical Error Serious Dispute	Supplemental filing contains letters company sent to ISS and Glass Lewis regarding shareholder proposal from Handlery Hotels. Company explains that the proposal - which calls for a report regarding the company's lobbying - is immaterial and an abuse of the shareholder proposal process.
<b>1st Source Corporation</b>	4/6/23	Factual Error X Analytical Error X Serious Dispute	ISS withhold recommendations against three directors contained erroneous statements regarding recent by-laws adopted by the company related to director elections. Company explains by-laws were adopted to conform with Indiana state law and were technical in nature.
<b>Coca-Cola</b>	4/10/23	Factual Error Analytical Error Serious Dispute X	Company disagrees with ISS recommendation against say on pay; highlights previous shareholder support for say on pay and outreach company has conducted to address concerns contained in ISS report.
<b>Finward Bancorp</b>	4/14/23	Factual Error Analytical Error X Serious Dispute	ISS withhold recommendation against a director is based upon company by-laws which allow only the board of directors to change by-laws. Company explains that provision is in accordance with Indiana law because shareholders do not have ability under Indiana law to amend by-laws as a statutory default.

# Appendix

Company	Date of filing	Nature of Error	Summary of Error / Topic
<b>Empire State Realty Trust</b>	4/18/23	Factual Error Analytical Error Serious Dispute X	Company addresses Glass Lewis withhold recommendation against director due to concerns over lack of board diversity. Company explains that diversity of board was affected by recent departure of board member to serve in government and that the recommendation does not recognize the company's commitment to board diversity.
<b>Horizon Bancorp</b>	4/18/23	Factual Error Analytical Error Serious Dispute X	Disagreement with ISS recommendation against say on pay due to concerns over compensation agreement entered into with former CEO. Company explains that ISS recommendation fails to consider aspects of former CEO's compensation and incentives to ensure a successful transition.
<b>Dover Corp.</b>	4/18/23	Factual Error X Analytical Error Serious Dispute	ISS recommendation against two directors was based upon assumption that board has no racially or ethnically diverse directors. Company explains that board currently contains a diverse director and board has had racial or ethnic diversity since 2005.
<b>Crown Holdings</b>	4/19/23	Factual Error Analytical Error X Serious Dispute X	Company disputes ISS recommendation against say on pay which was based upon a retirement payment to a former Singapore-based executive. Company explains that payment was made in part due to compensation practices and customs in Singapore.
<b>Axis Capital Holdings</b>	4/19/23	Factual Error Analytical Error Serious Dispute X	Company disputes Glass Lewis recommendation against say on pay and provides rationale for CEO equity awards and pay for performance.
<b>Community Healthcare Trust Inc.</b>	4/19/23	Factual Error Analytical Error Serious Dispute X	Company explains that ISS recommendation against say on pay does not properly take into account 100% of CEO compensation under pay for performance being taken in stock with 8-year cliff vesting.
<b>Simon Property Group</b>	4/20/23	Factual Error X Analytical Error X Serious Dispute	Company disputes ISS and Glass Lewis recommendations against say on pay, as well as ISS recommendation against directors and Glass Lewis recommendation against director based upon perceived lack of gender diversity. Company states Glass Lewis recommendation is "based on an incorrect application of facts to a guideline relating to gender diversity."
<b>Air Lease Corp.</b>	4/20/23	Factual Error Analytical Error X Serious Dispute	Company explains that ISS recommendation against say on pay was based upon several analytical flaws, including ISS' view of the company's peer group which "does not reflect companies with similar business models."

# Appendix

Company	Date of filing	Nature of Error	Summary of Error / Topic
<b>Barnes Corporation</b>	4/21/23	Factual Error Analytical Error Serious Dispute X	Company disagrees with ISS recommendation against say on pay and outlines shareholder outreach efforts/adjustments to executive compensation plan made since 2022.
<b>CNX Resources</b>	4/21/23	Factual Error X Analytical Error X Serious Dispute X	Company responds to ISS recommendation in favor of proposal from Handlery Hotels regarding company lobbying and alignment with Paris Agreement. Company explains that it does not lobby, directly, or indirectly, against the Paris Agreement, and that proponent has continually declined to meet with the company regarding the proposal.
<b>Ares Capital Corp.</b>	4/24/23	Factual Error Analytical Error Serious Dispute X	Dispute with ISS recommendations against certain directors over concerns about serving on multiple company boards.
<b>Agree Realty</b>	4/25/23	Factual Error Analytical Error Serious Dispute X	Company responds to Glass Lewis recommendation against director over perceived lack of adequate gender diversity on board.
<b>Phillip Morris International</b>	4/26/23	Factual Error Analytical Error Serious Dispute X	Company disputes ISS recommendation against say on pay; points out that ISS report finds that CEO pay and performance are "reasonably aligned" for the year in review. Disagrees with basis for ISS report that company has not done enough regarding executive compensation plans in response to 2022 say on pay vote.
<b>Pitney Bowes</b>	4/27/23	Factual Error Analytical Error Serious Dispute X	Company responds to ISS recommendation against certain directors; says that ISS recommendations would "destabilize" board and make erroneous assumptions about director independence based on past employment.
<b>Amplify Energy</b>	4/28/23	Factual Error Analytical Error Serious Dispute X	Company argues that ISS and Glass Lewis recommendation against chair of nominating and governance committee based upon lack of board gender diversity is misguided; outlines current board diversity information and company's commitment to board diversity.
<b>Kinder Morgan</b>	5/1/23	Factual Error X Analytical Error X Serious Dispute	Response to ISS recommendation against director based upon a misinterpretation of Climate Action 100+ list of greenhouse gas emitters.
<b>Pinnacle West Capital</b>	5/1/23	Factual Error Analytical Error Serious Dispute X	Disagreement with Glass Lewis recommendation in favor of proposal that would separate Chairman/CEO roles.

# Appendix

Company	Date of filing	Nature of Error	Summary of Error / Topic
<b>ACCO Brands</b>	5/1/23	Factual Error Analytical Error X Serious Dispute	Response to Glass Lewis recommendation against proposal to increase shares for issuance under company's incentive compensation plan. Company disputes Glass Lewis calculation of dilution if proposal were to be approved.
<b>NMI Holdings</b>	5/2/23	Factual Error Analytical Error Serious Dispute X	Response to ISS recommendation against say on pay; company outlines outreach and adjustments made since last year.
<b>Marriott International</b>	5/2/23	Factual Error X Analytical Error X Serious Dispute	Company explains that ISS recommendation against company's Stock and Cash Incentive plan is based upon erroneous assumption that all shares under previous incentive plan would be available for grant prior to the effective date of the new plan.
<b>Minerals Technologies</b>	5/3/23	Factual Error Analytical Error X Serious Dispute X	Company response to Glass Lewis recommendation against say on pay and director based upon perceived lack of board gender diversity. Company states Glass Lewis made several analytical flaws in developing its say on pay recommendation.
<b>TrustCo Bank Corp</b>	5/3/23	Factual Error Analytical Error Serious Dispute X	Company response to Glass Lewis recommendation against one director (based upon perceived lack of board gender diversity) and another (based upon perceived lack of independence).
<b>Envista</b>	5/5/23	Factual Error Analytical Error X Serious Dispute X	Company response to ISS / Glass Lewis withhold recommendation against director based upon perceived lack of independence; company points out differences with ISS/ GL "lookback" periods and those periods contained in NYSE listing rules.
<b>Piper Sandler</b>	5/8/23	Factual Error Analytical Error X Serious Dispute X	Company explains that ISS and Glass Lewis recommendation against proposal to increase shares for issuance under long-term incentive plan were based upon wrong assumptions and that 1.2 million retention share grants were a one-time occurrence stemming from a major acquisition.
<b>O'Reilly Automotive</b>	5/8/23	Factual Error Analytical Error Serious Dispute X	Company disputes ISS and Glass Lewis recommendation against director over perceived lack of board meeting attendance. Company explains that director notified company prior to his first meeting that he had a preexisting conflict. Director was scheduled to attend another meeting but was unable to attend due to an immediate family member suffering a serious medical issue.

# Appendix

Company	Date of filing	Nature of Error	Summary of Error / Topic
<b>JP Morgan</b>	5/8/23	Factual Error X Analytical Error X Serious Dispute	Company letter to ISS explaining several analytical flaws and assumptions contained in ISS report recommending against say on pay.
<b>Invitation Homes</b>	5/8/23	Factual Error Analytical Error X Serious Dispute	Company response to ISS recommendation against say on pay; filing points out several analytical flaws contained in ISS report, including a mischaracterization of awards in 2022 compensation program as being "supplemental" in nature.
<b>Kinsale Capital Group</b>	5/9/23	Factual Error Analytical Error Serious Dispute X	Company response to ISS recommendation against director based on perceived lack of independence; company points out director is in line with NYSE independence standards.
<b>Royal Gold</b>	5/10/23	Factual Error Analytical Error Serious Dispute X	Response to Glass Lewis recommendation against proposal that would amend company's articles of incorporation to align them with recent changes to Delaware law regarding executive liability. Also a response to GL recommendation against director based upon perceived lack of board gender diversity.
<b>White Mountain Insurance Group</b>	5/10/23	Factual Error Analytical Error X Serious Dispute X	Company response to Glass Lewis recommendation against say on pay. Company points out that in calculating return on equity and assets, GL excludes transaction gains. As a result, GL methodology "significantly understates" company's performance.
<b>Employers Holdings</b>	5/11/23	Factual Error Analytical Error Serious Dispute X	Company response to ISS and Glass Lewis recommendations against certain directors.
<b>Illumina Inc</b>	5/12/23	Factual Error Analytical Error Serious Dispute X	Company explains that Glass Lewis' own criteria should lead it to recommend voting against an activist investor's slate of nominees; however Glass Lewis recommended in favor of the dissident slate.
<b>Avid Technology</b>	5/15/23	Factual Error Analytical Error X Serious Dispute	In response to ISS' reasoning for its recommendation against say on pay, company clarifies circumstances surrounding the recent departure of a former executive.
<b>Castle Biosciences</b>	5/15/23	Factual Error Analytical Error Serious Dispute X	Response to ISS and Glass Lewis recommendation against say on pay. Company clarifies provisions of executive compensation program in response to concerns laid out in ISS/GL reports.

# Appendix

Company	Date of filing	Nature of Error	Summary of Error / Topic
<b>Tangery Factory Outlet Centers</b>	5/16/23	Factual Error Analytical Error Serious Dispute X	Response to ISS and Glass Lewis recommendation against nominee due to "overboarding" concerns. Company explains that recent departure of nominee from another board aligns nominee with ISS/GL overboarding guidelines.
<b>OpenLending</b>	5/17/23	Factual Error Analytical Error X Serious Dispute X	Company response to ISS and Glass Lewis recommendations against nominees; additional response to Glass Lewis recommendation against say on pay.
<b>Exxon Mobil</b>	5/17/23	Factual Error Analytical Error Serious Dispute X	Company proxy report feedback statement to Glass Lewis outlining positions on several shareholder proposals considered during proxy season. Letter counters conclusions reached by Glass Lewis in connection with certain proposals.
<b>New York Community Bancorp</b>	5/24/23	Factual Error Analytical Error Serious Dispute X	Company response to Glass Lewis recommendation against director over perceived lack of board gender diversity.
<b>Universal Insurance Holdings</b>	5/25/23	Factual Error Analytical Error Serious Dispute X	Company response to Glass Lewis recommendation against say on pay, based upon a one-time cash compensation payment to CEO in lieu of stock.
<b>UnitedHealth Group</b>	5/25/23	Factual Error X Analytical Error X Serious Dispute	Company letter to ISS regarding ISS recommendation against proposal seeking ratification of termination pay. Company points out, amongst other problems, ISS erroneously asserts that the proposal only applies to future severance payments.
<b>Comcast</b>	5/26/23	Factual Error Analytical Error X Serious Dispute X	Company response to ISS recommendation against equity incentive plan. Company explains that ISS inappropriately includes shares remaining available for future grants under the prior plan.
<b>ATN International</b>	5/26/23	Factual Error Analytical Error Serious Dispute X	Company response to ISS recommendation against company's equity incentive plan. Company disputes, amongst other things, burn rate used by ISS as part of its calculations.
<b>International Seaways</b>	5/30/23	Factual Error Analytical Error Serious Dispute X	Company response to ISS and Glass Lewis recommendations against say on pay. Company explains that its stockholder outreach efforts did not result in major concerns over executive compensation program.
<b>Titan International</b>	6/1/23	Factual Error Analytical Error Serious Dispute X	Letter from Titan Chairman to ISS and Glass Lewis regarding past recommendations against Titan board members and management priorities.

# Appendix

Company	Date of filing	Nature of Error	Summary of Error / Topic
<b>Adaptive Biotechnologies</b>	6/1/23	Factual Error Analytical Error Serious Dispute X	Company outlines its stockholder engagement initiatives and adjustments to compensation programs following 2022 say on pay vote, in response to ISS recommendation against say on pay.
<b>Chegg Corporation</b>	6/1/23	Factual Error Analytical Error X Serious Dispute	Company addresses confusion surrounding equity incentive plan caused by data that was included in ISS benchmark voting recommendations.
<b>GoPro</b>	6/2/23	Factual Error Analytical Error X Serious Dispute	Company addresses confusion surrounding equity incentive plan caused by data that was included in ISS benchmark voting recommendations.
<b>Piedmont Lithium</b>	6/2/23	Factual Error Analytical Error Serious Dispute X	Company response to ISS and Glass Lewis reports recommending votes against say on pay and proposals related to equity grants awarded to CEO.
<b>Moelis</b>	6/5/23	Factual Error Analytical Error X Serious Dispute X	Company response to ISS and GL recommendations against certain directors, and GL recommendation against say on pay. Company points out that GL reliance on summary compensation table leads to flawed analysis and does not reflect how company actually awards annual incentive compensation.
<b>Monolith Power Systems</b>	6/5/23	Factual Error X Analytical Error X Serious Dispute X	Company explains that Glass Lewis recommendation against say on pay is based on "egregious factual errors, grossly incorrect methodologies, and insufficient consideration of the facts." Amongst other errors, Glass Lewis incorrectly concluded that the value of stock-price based equity awards were more than 40% higher than the value of cancelled performance-based awards.
<b>Sage Therapeutics</b>	6/7/23	Factual Error Analytical Error Serious Dispute X	Company explains stockholder engagement initiatives and adjustments to compensation programs following 2022 say on pay vote, in response to ISS recommendation against say on pay.
<b>Cano Health</b>	6/7/23	Factual Error Analytical Error X Serious Dispute X	Company response to ISS and Glass Lewis recommendation against directors. Company explains: "Glass Lewis refused to meet with us and their commentary makes clear that they simply do not understand our business, the steps we are taking to create value for ALL of our stockholders, and the destructive actions of the former directors. ISS' analysis similarly fails to recognize several critical points that stockholders should understand."



# Appendix

Company	Date of filing	Nature of Error	Summary of Error / Topic
<b>Modivcare</b>	6/7/13	Factual Error Analytical Error Serious Dispute X	Company response to ISS and Glass Lewis regarding recommendations against director for board meeting attendance.
<b>Natural Gas Services Corp</b>	6/7/23	Factual Error Analytical Error Serious Dispute X	Company response to ISS recommendation against Chairman de to perceived lack of gender diversity. Company explains it met ISS board diversity requirements until a resignation by a board member just before the 2023 proxy season, making it extremely difficult for the board to meet ISS' standards prior to the annual meeting.
<b>Activision Blizzard</b>	6/9/23	Factual Error Analytical Error Serious Dispute X	Company disagreement with Glass Lewis recommendation in favor of proposal that would require shareholder approval for certain severance or termination payments.
<b>Monster Beverage</b>	6/12/23	Factual Error Analytical Error X Serious Dispute X	Company response and dispute with ISS and Glass recommendations against company proposal to increase number of authorized shares.
<b>Balchem</b>	6/12/23	Factual Error Analytical Error Serious Dispute X	Company response to ISS and Glass Lewis recommendations against say on pay.