

EY Center for Board Matters

Four key takeaways from the 2022 proxy season

Environmental, social and governance (ESG) matters continued to take center stage this proxy season with investors and companies navigating an evolving and complex proxy landscape.

This included an influx of environmental and social shareholder proposals, a changing regulatory environment and growing expectations about the role companies play in society – all against a backdrop of continued social upheaval and division, rising inflation and pressures on the energy market.

Considerations for boards coming out of this proxy season are more nuanced than in years past. Expectations for rising support of environmental and social shareholder proposals are being recalibrated as investors reject more prescriptive proposals; instead, they are evaluating proposals against the significant steps companies are already taking. The stakes for directors also continue to rise as investors adopt stricter

director voting policies, but so far the impact of those changes on actual votes is relatively minimal, with companies taking steps to meet shareholder expectations around topics such as diversity, climate and ESG reporting and oversight.

To help directors understand the evolving proxy landscape and keep pace with changing stakeholder expectations, this report examines four key takeaways from the 2022 season and offers questions for boards to consider.¹

¹ All vote results and shareholder proposal data for 2022 are based on a universe of S&P 1500 companies with meetings through June 24 where voting results were available. Proxy disclosure data is based on the 75 companies on the 2022 Fortune 100 list that filed proxies as of June 8.

In brief

- Support for environmental/social shareholder proposals narrowed amid a flood of more prescriptive proposals, corporate progress and pressures on the energy market.
- Despite stricter voting approaches, average support for directors held strong, with companies and boards satisfying at least minimal investor expectations.
- Proxies are evolving to address investor interest in how ESG is governed, including related committee responsibilities and director qualifications.

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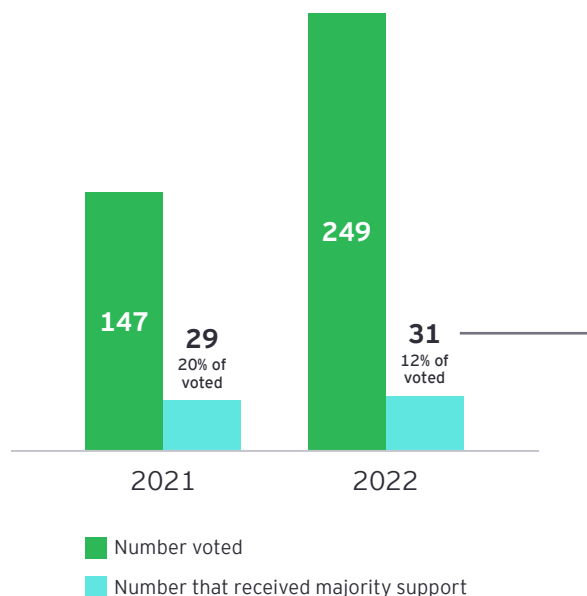
Environmental and social shareholder proposal activity went up, but support became more targeted

Last year's proxy season was marked by the momentum behind environmental and social shareholder proposals, which garnered record levels of support and signaled increased investor willingness to vote against management. This year, though there were more proposals in these categories, the support rates fell, dropping from an average of 32% in 2021 to 27% this year, as several developments impacted the shareholder proposal landscape.

Most notably, an influx of more prescriptive proposals reached the ballot this season under the SEC's new approach to no-action requests, which makes it more difficult for companies to exclude environmental and social shareholder proposals. In recent years, companies refused proposals if they could demonstrate that the matter raised was not significant to the company, even if it was significant to society more broadly, or sought to micromanage the company. Under the new guidance, which is actually a return to historical practice, SEC staff is no longer focused on determining the nexus between a policy issue and the company but is instead focused on the social significance of the issue. Further, SEC staff is taking a narrower approach to what constitutes micromanagement.²

Many of these new proposals, which might have otherwise been omitted in recent years, failed to gain traction with investors broadly. For example, companies facing proposals calling for them to end their financing of new fossil fuel supplies were denied no-action relief, and the proposals averaged just

Environmental and social shareholder proposals voted, S&P 1500



Environmental and social shareholder proposal topics that secured majority support

- Civil or racial equity audits
- Climate risk and the energy transition
- Concealment clauses in the context of harassment or discrimination
- Deforestation
- Efforts to prevent abuse, harassment and discrimination against protected classes of employees
- Greenhouse gas emissions, including financing activities
- Human rights related to gun violence
- Pay equity
- Plastic pollution
- Political or lobbying spending
- Sustainable packaging

Source: Analysis by EY Center for Board Matters

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² Shareholder Proposals: Staff Legal Bulletin 14L, SEC, November 2021, accessed via <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>.

12% support, whereas majority support was secured on a less prescriptive proposal asking companies to report on how they will reduce the greenhouse gas emissions associated with their financing activities. Under the SEC's new approach, the number of environmental and social proposals that went to a vote was up nearly 70% from last year, but just 12% of those proposals secured majority support, down from 20% in 2021.

Investors are also evaluating environmental and social shareholder proposals against the specific company's progress in addressing and reporting on related matters, including learnings from direct dialogue with the company. Additionally, they are considering the impact of external developments such as new pressures on the energy transition in the wake of the war

in Ukraine. As a result, some investors may have voted against specific shareholder proposals (e.g., because they thought the proposal was too prescriptive or that the company is making sufficient progress under the current circumstances) even if the broader underlying cause or concern (e.g., achieving net zero emissions globally by 2050) is generally aligned with the investors' priorities.

These developments underscore the need for management to directly engage with the governance and stewardship teams of key shareholders to understand their views on the company, their expectations for progress on stewardship priorities, and the rationale behind their votes.

Key environmental and social shareholder proposal topics in 2022

- ▶ **Climate risk and the energy transition** – Most of the climate-related shareholder proposals submitted this year were withdrawn, reflecting companies' ongoing engagement with shareholders on this issue. Still, the number of those proposals voted more than doubled from 2021, but they only averaged 35% support, down from 46% last year. This decrease in support likely reflects a combination of more prescriptive proposal requests further tempered by the activity companies are undertaking to address climate risk.
- ▶ **Diversity, equity and inclusion (DEI)** – The number of DEI-related proposals voted more than doubled this year, in part due to a jump in proposals calling for civil rights or racial equity audits. Twenty-one such proposals went to a vote this year, and they averaged 44% support, up from just nine averaging 34% in 2021. Other notable DEI themes this year were pay equity across race and gender (31% average support), risks stemming from the use of concealment clauses in the context of harassment or discrimination (48%) and risks and costs associated with state laws restricting women's reproductive rights (25%).
- ▶ **Corporate political responsibility** – While the number of proposals voted on corporate political and lobbying expenditures stayed relatively flat, the focus of many shifted from transparency and board oversight to the alignment of political and lobbying spending with the company's stated values and public policy positions. Nine political- or lobbying-focused proposals with this values and policy alignment lens went to a vote this year and averaged 41% support, up from five last year that averaged 38%. Additionally, a few proposals that focused specifically on climate lobbying averaged 31% support, down from 61% in 2021; however, more of these proposals were successfully withdrawn this year, often because the investors submitting the proposal and the company found common ground and reached agreement.

Key board takeaways

- ▶ Understand that investors are assessing shareholder proposals based on company-specific circumstances (including the investor's engagement with the company), the proposal's particular requests and external developments.
- ▶ Do not assume that a vote against a shareholder proposal means the investor does not have concerns related to the proposal's subject matter. For example, an investor with concerns about whether a company is sufficiently addressing risks related to the energy transition may still vote against a related proposal if they disagree with its specific, more prescriptive request.
- ▶ Engage with key investors outside proxy season to understand their views on the company's ESG strategy, performance and reporting, and the rationales behind their votes.

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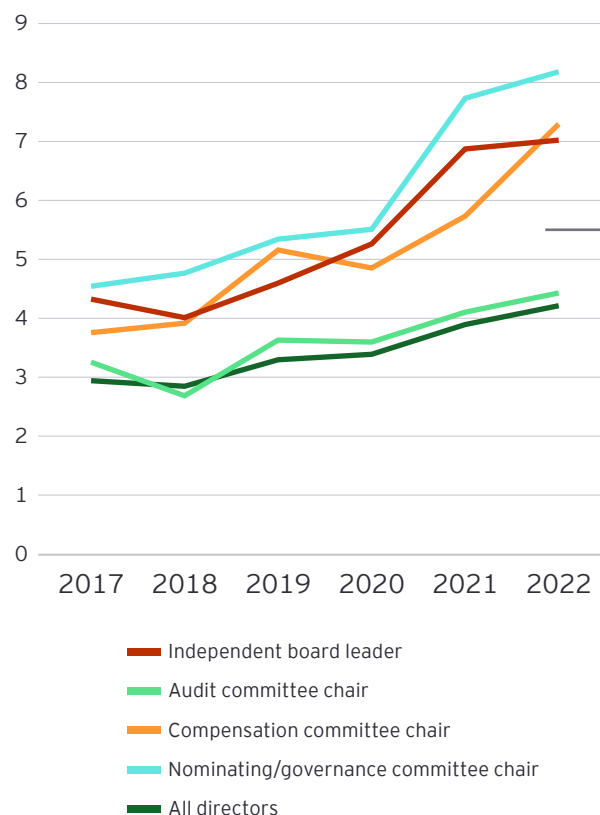
Support for directors remained stable despite signals that opposition would increase

Heading into the proxy season, investors told EY researchers that ESG oversight – and particularly oversight of climate risk – would be a more important factor in how they evaluate and vote on directors this year, with some citing the director vote as their most powerful tool to drive change. Changes to investor proxy voting guidelines and proxy advisory firm policies also signaled a broadening of negative voting factors for directors, including expectations related to board and workforce diversity and related disclosures, climate risk, broader ESG oversight and overboarding policies.

However, despite these signals that votes against directors would increase, overall director support remained fairly stable, with average votes against S&P 500 directors inching up to 4.2%, compared with 3.9% over the same time period in 2021. This relatively sustained support for directors may reflect the significant efforts companies made to address investor concerns and meet their expectations around key investor engagement priorities. It may also reflect an element of investor concern about losing access to directors and damaging the investor's relationship with the board.

Opposition to directors has, however, crept up in recent years, particularly for certain board roles. This year average voting opposition for nominating and governance chairs at S&P 500 companies was 8.2%, up from 4.6% in 2017. Similarly, average voting opposition for compensation committee chairs at S&P 500 companies was 7.3%, up

Average voting opposition to directors by role, S&P 500



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► Sectors with the highest average director opposition votes are telecommunication services (7.1%) and information technology (5.0%).

► Sectors with the lowest average director opposition votes are utilities (3.0%) and materials (3.1%).

Source: Analysis by EY Center for Board Matters

from 3.8% over the same period. In addition, opposition to independent board leaders (i.e., independent chair, lead or presiding director) rose to 7.0% from 4.3%.

While director voting results indicate that this year most companies met at least the minimum thresholds for director

support, overall trends (including changes in investor voting policies and in the shareholder proposal landscape) point to the director vote as a lever of change that investors may be more inclined to use going forward to accelerate their stewardship goals.

Shareholder activism trends raise the stakes for directors

Shareholder activists pulled back during the 2022 proxy season, with the lowest number of campaigns in at least five years. However, one potential side effect of recent market volatility could be an increase in activism activity, exposing vulnerable companies and directors. Also, more activists are taking advantage of the energy transition and ESG investing trends to link poor environmental performance to external business risks and shareholder value and pressure major companies to accelerate progress. These developments are occurring against the backdrop of a new universal proxy rule that takes effect in September 2022 and will make it easier for investors voting by proxy to support individual dissident directors while generally supporting the rest of the board. That is likely to encourage activists, particularly small and medium-sized funds, to pursue proxy contests, which in turn will increase pressure on boards to settle. Boards should expect a higher volume of proxy contests in coming years, with more individual directors being targeted and more shareholders potentially willing to vote for change.

Key board takeaways

- ▶ Monitor director voting-related changes to key investor proxy voting guidelines and stewardship goals and engage investors to better understand their expectations of the board.
- ▶ Prepare a holistic activist vulnerability analysis, and take action based on the findings.
- ▶ Challenge whether company communications can more effectively address areas of investor focus and demonstrate the board's competency, informed engagement and oversight.



3

The governance of ESG stayed in the spotlight

In our conversations with investors, many made clear that they want companies to define how ESG matters are included in the work of the board and its committees. This year companies answered that call with enhanced and prominent disclosures on board oversight of ESG-related risks and opportunities.

More companies highlighted an integrated model for ESG oversight by committees

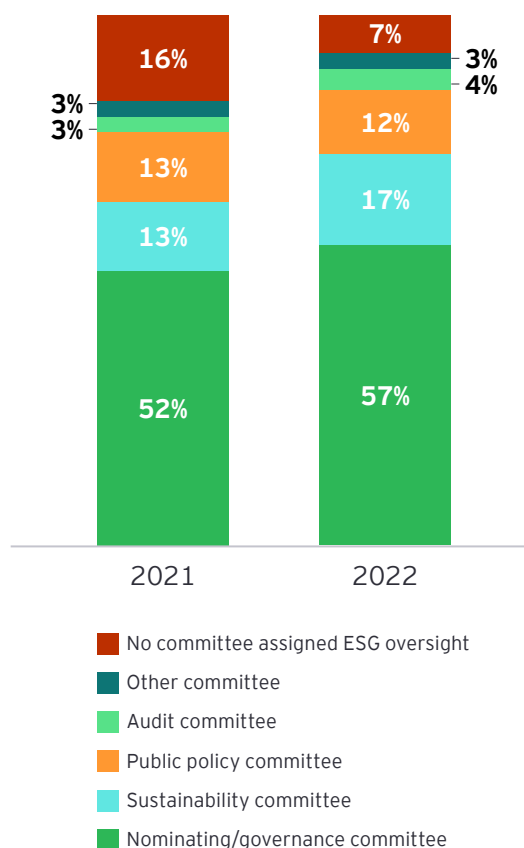
Nominating and governance committees increased their oversight of ESG at the committee level. However, an emerging trend is companies highlighting a more integrated oversight model whereby the board's various committees oversee different aspects of ESG related to that committee's purview.

Integrating relevant ESG matters into the charter of the board's key committees aligns environmental and social oversight responsibilities with the core work of those committees. Such an approach may help integrate related topics into the work of the board and align to the strengths of the directors serving on those committees. For example, audit committees are well-positioned to oversee that ESG reporting has robust processes and controls with a supporting audit trail, like what exists for financial reporting. We found significantly more companies disclosing ESG-related oversight responsibilities for audit committees as ESG reporting expectations and requirements rapidly evolve.

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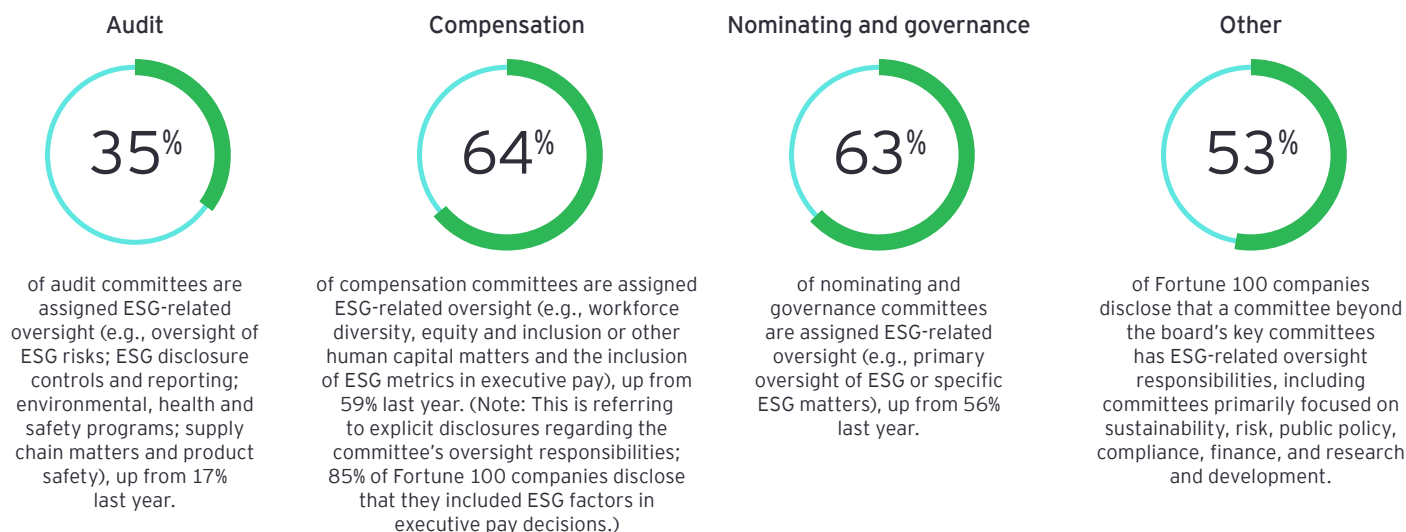
Committee with primary oversight of ESG, sustainability or corporate social responsibility matters
(% Fortune 100)



Source: Analysis by EY Center for Board Matters

Committee-level oversight of ESG-related matters*

% Fortune 100 companies whose proxy explicitly disclosed ESG-related responsibilities for:



* What falls under the ESG umbrella can be subjective. This data excludes some topics commonly assigned to committees that may be considered part of ESG, e.g., audit committee oversight of compliance and ethics and cybersecurity.

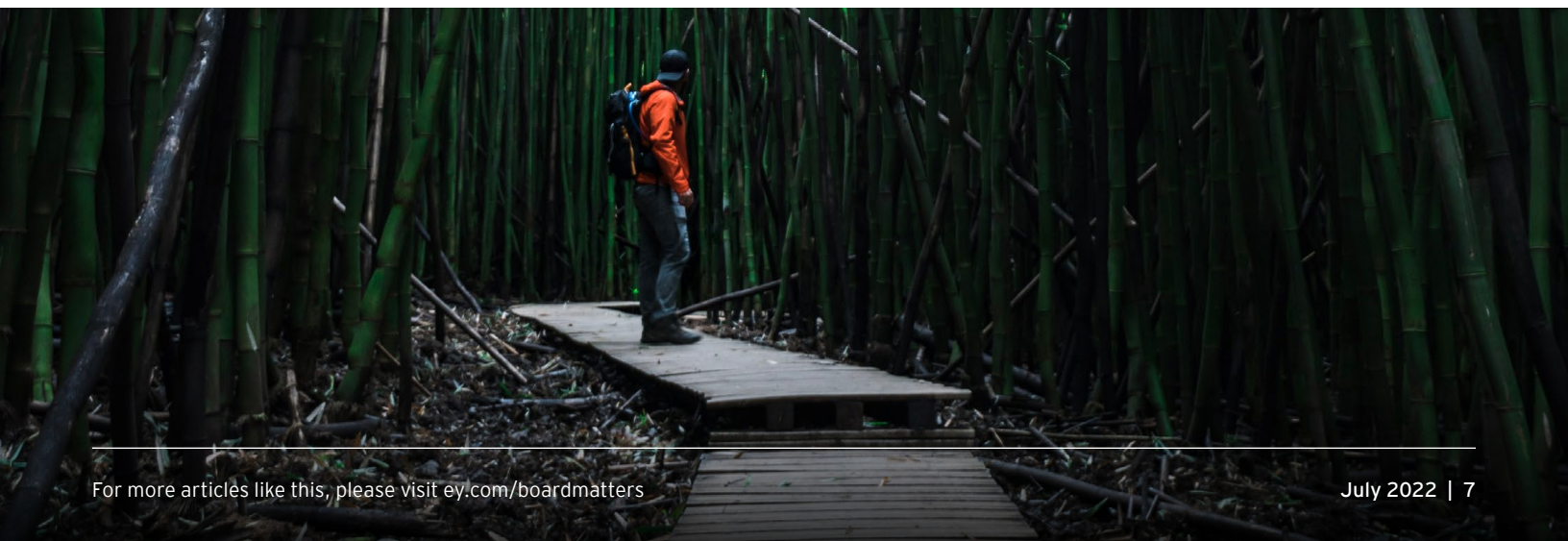
Still, tailoring the board's ESG oversight approach to the company's specific circumstances is important, and the most effective structure may change over time based on those circumstances and the advancement of the company's sustainability journey. There is no one-size-fits-all best practice, and investors do not expect boards to implement a standard or template approach to oversight.

More companies cited ESG in director qualifications

Nearly two-thirds of Fortune 100 companies cited ESG or sustainability as a director qualification this year, up from 51% in 2020. These qualifications were cited in director

biographies or highlighted at the board level via a skills matrix and were more prevalent in certain sectors. For example, 86% of energy companies and 75% of consumer products and industrials companies cited ESG or sustainability as a director qualification vs. 43% of information technology and 27% of health care companies.

The backgrounds and related experience of these directors varies widely, which is indicative of the vastly different dimensions of experience that can be relevant for a skills category as broad as ESG. For example, directors' ESG qualifications were attributed to experience that included overseeing sustainability initiatives as a CEO, addressing ESG issues on a policy level through a background in government



or law, work related to sustainability reporting frameworks, leadership roles with an environmental advocacy organization, service on another company's board committee that oversees sustainability, climate science expertise or experience in leading business transformation more broadly.

These observations are based on companies' disclosures that explicitly linked the director's background or experiences to the assertion that she or he has ESG or sustainability qualifications. Not all companies connected the dots in this way. In fact, in many cases directors were marked in a skills matrix or as part of their biography as bringing ESG or sustainability expertise without a clear explanation for what constitutes that assertion.

Investors raised this lack of clarity with us as a pain point during our conversations and urged companies to be more thoughtful about what director biographies and skills matrices imply about the board's expertise.

Notably, proposed SEC rulemakings on [climate](#) and [cybersecurity](#) may require companies to revisit their disclosures on related director qualifications. The rules would require companies to disclose whether any member of the board has expertise in climate-related or cybersecurity risks, respectively, with disclosure in such detail as necessary to fully describe the nature of the expertise.

More companies highlighted ESG initiatives and goals, plus incorporated ESG into executive pay

Beyond prominent disclosures on the governance of ESG, more companies continued to use the proxy to communicate their ESG strategy, initiatives and goals, and more companies disclosed that ESG factors were incorporated into executive pay decisions.

ESG initiatives and goals

- ▶ More than 90% of Fortune 100 companies disclosed initiatives or commitments related to climate risk and workforce diversity – two top investor stewardship priorities for 2022.
- ▶ Further, 68% of companies disclosed greenhouse gas emissions reduction goals in the proxy, up from 59% last year, while 33% disclosed goals to advance workforce diversity, up from 25%.
- ▶ As companies continue to integrate ESG disclosures into their proxy statements to address critical areas of investor interest, it is vital that such disclosures are consistent across the company's various reporting domains. The board can play a key role in overseeing the credibility of the company's ESG narrative.

ESG pay considerations

- ▶ This year 85% of Fortune 100 companies disclosed that ESG factors were considered in the executive pay program, up from 67% in 2021.
- ▶ How companies are incorporating ESG into pay is taking different forms. The most common approach we're seeing is to integrate ESG factors into the annual incentive plan, either with weighting (20%) or without specific weighting (31%) or as a pay modifier (13%). Just 5% of companies incorporated ESG factors into the long-term incentive plan, either as a weighted component or a modifier.
- ▶ Boards should be aware that this is an area of investor scrutiny. Some investors have raised concerns around the potential for ESG metrics to be misused to increase executive pay. They want to see key ESG performance indicators that are objective, transparent and advance the strategy.

Key board takeaways

- ▶ Assess whether the proxy statement and the board's governing documents make clear how the board is overseeing ESG matters and consider the effectiveness of that oversight model.
- ▶ Challenge whether director qualifications disclosures clearly connect the dots on how director experience and related ongoing training aligns with material ESG oversight responsibilities.
- ▶ Consider gaps between current director qualifications disclosures and board expertise disclosures under proposed SEC rulemakings on climate and cybersecurity.

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Board diversity disclosures continued to evolve

This year, nearly all Fortune 100 companies (97%) voluntarily disclosed the board's racial/ethnic diversity, up from 82% last year, representing a sea change in board diversity disclosures in recent years.

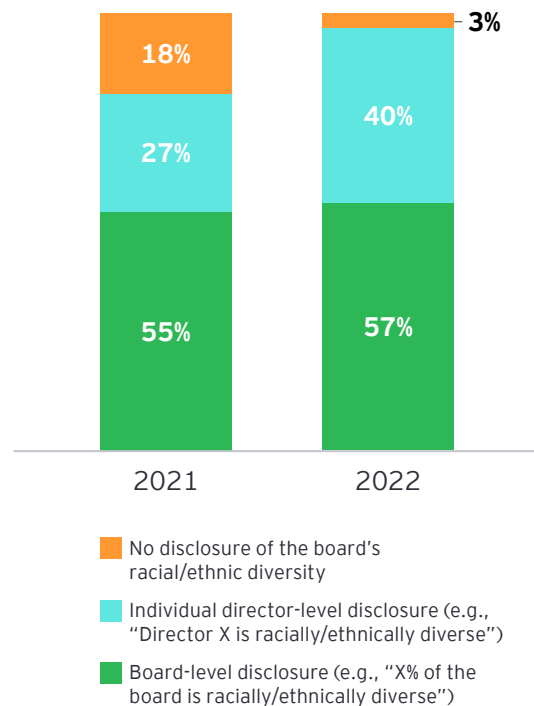
More companies provided racial/ethnic diversity characteristics at the individual director level with 40% of companies doing so, up from 27% last year. Still, the most common approach (57% of companies) was to disclose the percentage of the board that is racially/ethnically diverse on an aggregated level without assigning diversity characteristics to individual directors.

While many companies continued to provide these disclosures using pie charts or similar graphics, 44% included a matrix such as that required under [Nasdaq's board diversity rule](#), which allows for a board-level or director-specific disclosure approach. A third of companies included diversity characteristics in a director-specific matrix (often adjoined to a broader skills matrix) that assigned diversity characteristics to individual directors, and 11% used an anonymized board-level matrix.

Some companies also disclosed additional categories of diversity. The most common of these were LGBTQ+ status (17% of Fortune 100 companies disclosed this), director nationality (12%) or military service (5%).

More standardization in how companies make these disclosures may be on the horizon. The [SEC's current regulatory agenda](#) includes rulemaking related to board diversity disclosures.

Board racial/ethnic diversity disclosures
(% Fortune 100)



Source: Analysis by EY Center for Board Matters

Key board takeaways

- ▶ Consider whether there are opportunities to enhance the board's diversity disclosures to meet investor demand for this information.
- ▶ Realize that not disclosing board diversity data may put certain directors at risk of opposition votes.
- ▶ Communicate the board's strategy for advancing diversity in the boardroom.



Going forward

A key theme running through this year's proxy season takeaways is the importance of engagement with key constituencies of the firm's investors, including those firms' governance and stewardship teams in addition to analysts and portfolio managers. As the proxy voting landscape becomes more complex and nuanced, particularly with respect to votes on directors and shareholder proposals, investors' perspectives and the degree of their support for management may not always be clear from proxy voting results. With activism trends further raising the stakes, investor engagement is a vital tool for understanding key shareholders' perspectives on the company's governance and strategy, enhancing the company's communications and deepening relationships.

Questions for the board to consider

- ▶ How is the board overseeing the company's investor engagement program and hearing feedback from those discussions? Under what circumstances do individual directors participate in investor engagement?
- ▶ How is the board kept informed of the views and stewardship priorities of key shareholders' governance teams, and significant changes to their proxy voting policies?
- ▶ How does the board learn about shareholder proposal trends relevant for the company's industry? Does the board engage in discussions and role play how it would respond to some of the shareholder proposals currently securing majority support?
- ▶ How is the board regularly challenging and refreshing its composition in light of strategic and risk oversight needs? Does the proxy statement clearly communicate the rationale for each director's role on the board and substantiate any claims about director qualifications?
- ▶ Has the company conducted a holistic activist vulnerability analysis and taken action based on the findings?
- ▶ How do the board's governing documents and committee charters clarify the ways in which the board and its committees are overseeing material ESG matters? Are there opportunities for the proxy statement to better communicate how that oversight is executed?
- ▶ What steps is the board taking to advance its diversity across multiple dimensions? How is it communicating those efforts and the board's current diversity to investors?

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