

SEC 14a-8 No-Action Letter Trends 2019



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Introduction

Public companies may ask the Securities and Exchange Commission (SEC) for permission to omit shareholder proposals from their proxy votes through a no-action letter request under Rule 14a-8. This report analyzes the SEC's responses to these requests from January 1, 2019 through June 25, 2019.

Executive Summary

Our analysis of the 212 no-action letters issued by the SEC from January 1, 2018 through June 25, 2019 found that:

- Half were approved, which was the same as last year
- A quarter were denied, which is less than the third that were denied last year
- Climate change was the most frequent no-action request, followed by majority voting.
- The next largest were employment compensation and executive compensation.
- The ordinary business operation justification under 14a(8)(i)(7) was not as successful as last year
- Drug pricing continues to be considered a significant ESG policy issue by SEC staff.
- Climate change had mixed rulings, with only five of them allowed to go forward.
- Allocation of tax savings from the Tax Cuts and Jobs Act at Gilead was allowed to go forward

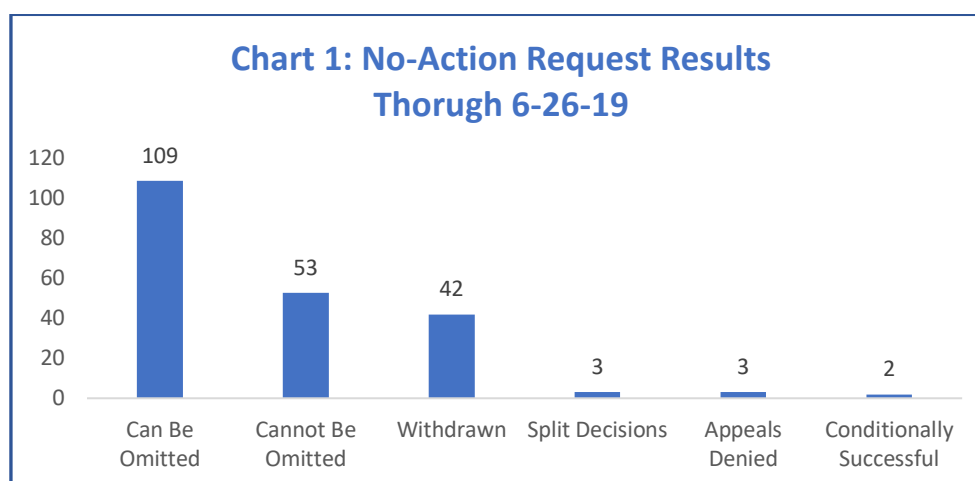
Methodology

Our CompanyIQ™ platform surveyed no-action requests on shareholder proposals filed by US publicly traded companies with the SEC under SEC Rule 14a-8 and the responses from SEC staff from January 1, 2019 through June 25, 2019. This report identifies trends in shareholder proposals, company arguments, and SEC staff responses.

General Findings

- 212 no-action letters on shareholder proposals were issued by SEC staff from January 1, 2019 through June 25, 2019
- 51% were approved
- 25% were denied
- 24% were withdrawn
- 100% of reconsiderations requests were denied
- 22% were sponsored or co-sponsored by John Chevedden
- 25% cited Rule 14a8(i)(7), ordinary business operations, as a principal basis for the no-action request
- 57% of ordinary business operations no-action requests were approved.

Chart 1 below has the breakdown of the no-action results YTD in 2019.



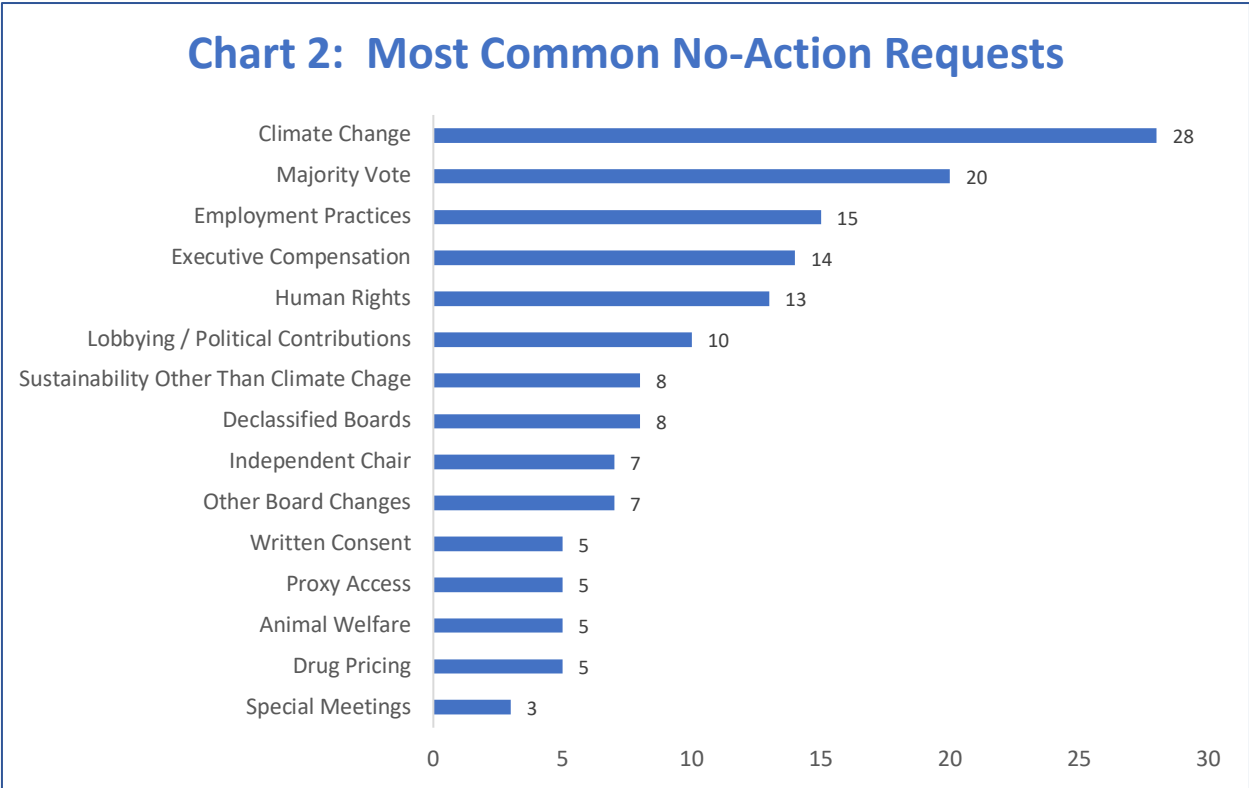
The Major Concerns

The most common subjects of no-action requests were climate change and majority vote.

Twenty-eight companies facing climate change shareholder proposals pursued no-action relief from the SEC.

Another 20 had majority vote proposals. Employment practices, executive compensation, and human rights proposals were the next highest.

Chart 2 on page 4 below details our findings.



No-Action Successes

As mentioned, 51% of the no-action requests on shareholder proposals were successful.

The most effective no-action justification was the “ordinary business” exemption, 14a-8(i)(7).

The second most effective was 14a-8(i)(10), the “already implemented” provision.

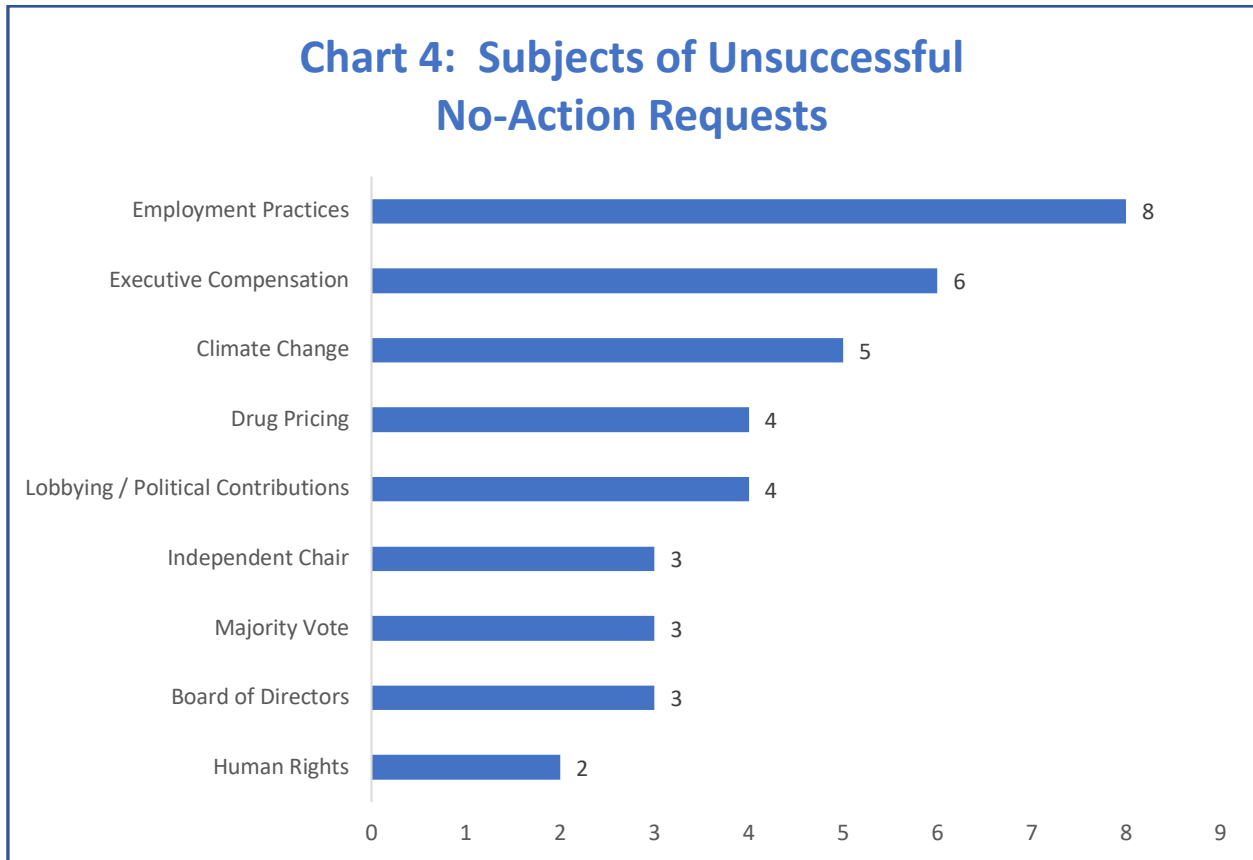
Chart 3 on page 5 below has the details.



Unsuccessful No-Action Requests

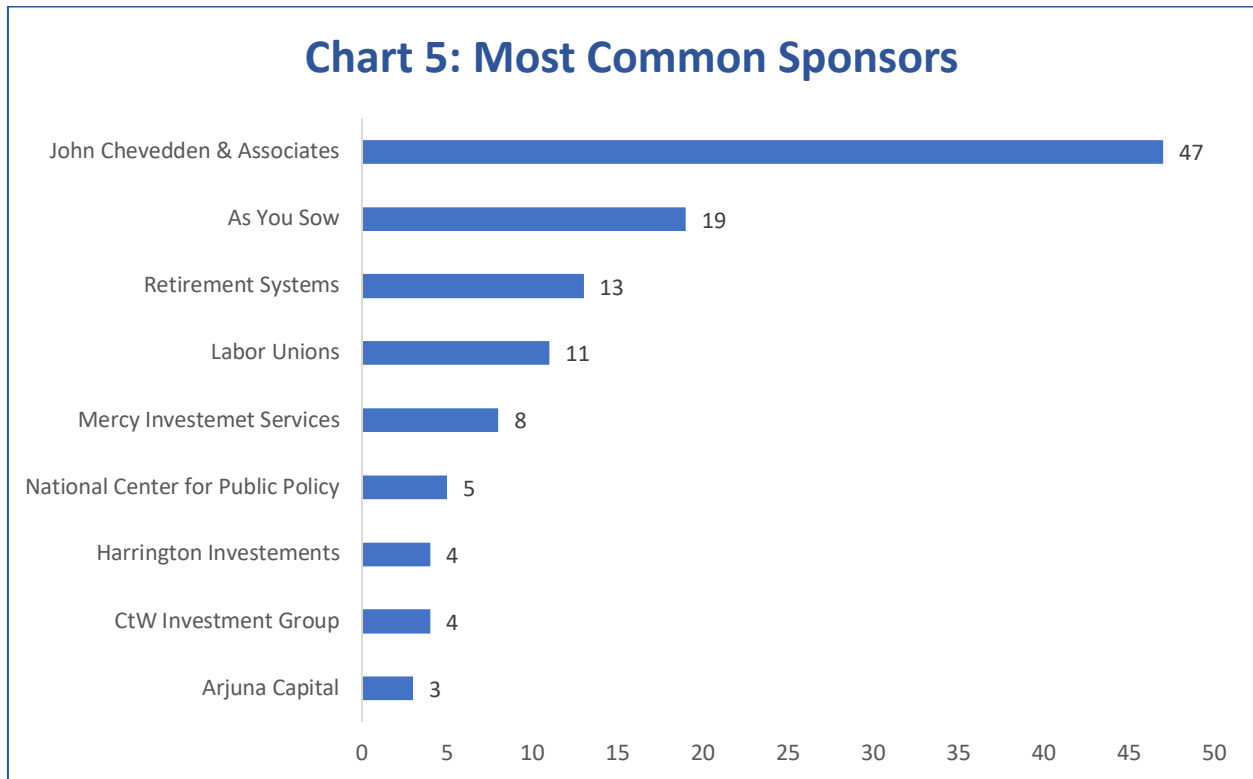
Employment practices and executive compensation were the top two topics of unsuccessful no-action requests on shareholder proposals.

Chart 4 on page 6 has the specifics.



Sponsorships

John Chevedden and his associates continue to be prolific sponsors of shareholder proposals that were sent to the SEC for no-action relief. Another major sponsor was As You Sow. Chart 5 on page 7 has the details.



Conclusion

At the midpoint of 2019, Rule 14a-8 no-action requests on shareholder proposals have an approximately 50-50 chance of being accepted by SEC staff. The ordinary business operations exception appears to continue to be a generally successful justification for no-action success. Climate change proposals continue to be a significant policy issue.

For More

For more, detailed 14a-8 no-action requests and shareholder proposal reports are available. Contact us at reprots@mylogiq.com or 888.564.4910.

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- 2) How Efficient Are Company Disclosures in Their Ks and Qs, and What Has the Season Taught Us?
- 3) Benchmarking Financial Footnotes in Annual and Quarterly Filings
- 4) Changes in MD&A Discussion
- 5) Non-GAAP Disclosures and Compliance
- 6) What Has Been the SEC's Focus on Comments?
- 7) ASC 842 Lease Commitments, Early Adopters Trend

Corporate Governance:

- 1) Director Gender and Diversity
- 2) Are You an Independent Board Member If You Serve More Than 10-15 Years?
- 3) How Much Does a Board of Director Earn Per Meeting?
- 4) Analysis of Shareholder Proposals and Leading Trends
- 5) Risk Oversight and Cyber-Security and Company Boards - Who Is Responsible?

Executive Compensation:

- 1) CEO Pay Ratio - S&P 500 and Russell 3000 - How Long Does a CEO Work to Earn a Median Employee's Annual Pay?
- 2) What Is the CFO Pay-Ratio and How Does It Compare with the CEO Pay-Ratio?
- 3) Pay Elements of CEO and CFO Compensation Across Large Cap, Mid-Cap and Small-Cap Companies

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