

## 2012 PROXY SEASON REVIEW: SHAREHOLDER RESOLUTIONS

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*As a follow-on to our mid-year review of say on pay, this article examines some of the key shareholder proposals seen this proxy season.*

### Overview

The 2012 proxy season was a highly active one for shareholder proponents. Through August, over 1,000 shareholder proposals had been filed and nearly 500 were brought to a vote, well ahead of last year's pace. Although two signature campaigns of the season—proxy access and audit firm rotation—were largely suppressed through company exclusions, shareholder activists more than made up for them with other proposal submissions. For a second year in a row, corporate campaign finance surpassed all other categories of resolutions in sheer number, followed by proposals calling for board declassification and the appointment of an independent chairman. Compensation-related proposals were up in count as well by nearly 50%.

The number of shareholder resolutions receiving majority support, based on votes cast “for” and “against,” also increased over last year (117 in 2012 vs. 100 in 2011), though they largely occurred among three classes of resolutions: board declassification, the adoption of majority voting in director elections, and the repeal of supermajority vote requirements (see Table 1). One notable change was a drop in the number of written consent proposals receiving majority support: only six this year (29% of the total on ballots), compared to 12 in 2011 (36% of the total).

Vote results only tell half the story of where shareholder activists made inroads in advancing their agendas. Over 300 shareholder resolutions were withdrawn or omitted because the companies chose to address the underlying issue in a competing management proposal. Among governance proposals, issuers primarily capitulated on board declassification,

adoption of majority voting, and expanding special meeting rights. Among environmental and social proposals, companies and proponents most often reached agreements on sustainability reporting, disclosure of political and lobbying expenditures, and adding sexual orientation and gender identity to equal employment policies.

Below is a more detailed discussion of this year's most significant shareholder initiatives.

### Proxy Access

Private ordering of proxy access made its debut this season after a federal court overturned the SEC's Rule 14a-11 in 2011. While there were some ambitious filings by retail activists, institutional proponents took a more measured approach in their targeting and ultimately achieved the highest success rate. Through mid-September, 24 shareholder resolutions to adopt proxy access had been submitted, though only 12 made it to ballots (see Tables 2 and 3).

Access proposals sponsored by union and public pension funds made the biggest impact by virtue of mirroring the SEC's vacated 3%/3-year rule and by being directed at companies that already faced negative investor sentiment over governance, pay, and performance. Two won majority support (Chesapeake Energy and Nabors Industries), and a third at Hewlett-Packard was withdrawn after the company agreed to put a management-sponsored proxy access proposal on the ballot in 2013.

Binding proxy access proposals also made a respectable showing, but fell well short of the necessary approval to amend the targeted companies' bylaws. Norges Bank Investment Management (NBIM) sponsored four ballot resolutions that would allow a 1%/1-year holder to nominate up to 25% of the board, while Furlong Fund founder Daniel Rudewicz proposed a bylaw at KSW

that would allow a 2%/1-year holder to nominate one director. KSW was the only company that adopted its own proxy access bylaw in response to a shareholder resolution, albeit at a higher (5%) ownership threshold. Although KSW was unable to exclude the Furlong Fund proposal as substantially implemented, shareholders and proxy advisors ultimately preferred the company's higher ownership requirement given its small market capitalization.

Retail investors affiliated with the U.S. Proxy Exchange (USPX), including John Chevedden, James McRitchie, and Kenneth Steiner, were the most prolific proxy access filers, though many of their proposals were successfully omitted by companies that challenged them. Styled to put board nominations within reach of small institutions and retail holders, the initial USPX resolutions sought proxy access for 1%/2-year holders or, alternatively, a group of 100 shareholders who each met Rule 14a-8(b) eligibility requirements (i.e., owned \$2,000 of stock for one year). Each nominating group could nominate one director or, if greater, 12% of the board. After a flurry of exclusions, the proponents revised their second eligibility requirement to permit proxy access for a group of 50 holders who each owned \$2,000 in stock at some point in the preceding 60 days. Neither version of the USPX proposal made serious headway with investors, other than at financially-troubled Princeton National Bancorp where support reached over 30% (for the first version). However, this is unlikely to deter the USPX proponents from continuing their filings, particularly since their newer proposal withstood no-action challenges by Forest Laboratories and Medtronic.

Proxy advisor opinions had limited influence on proxy access votes, particularly on the NBIM and USPX proposals where their recommendations often diverged (see Table 2). Although both Institutional Shareholder Services (ISS) and Glass Lewis support proxy access in principle, their analytical approaches differed. ISS primarily focused on the parameters of the proposed proxy access regime, particularly the ownership threshold relative to the company's market capitalization. As a result, ISS supported the U.S. pension funds' 3%/3-year proposals and NBIM's 1%/1-year proposals as reasonable ownership levels for

invoking proxy access at large-cap companies. On the same basis, ISS rejected the Furlong Fund's 2%/1-year proposal at KSW because it felt the company's 5%/1-year eligibility requirement represented a more meaningful stake in a small-cap firm. ISS also rejected all of the USPX proposals because they would allow holders of only \$100,000-\$200,000 of stock to nominate board candidates.

Glass Lewis, for its part, attached more importance to governance issues at the targeted firms, which could justify a need for proxy access, rather than the structure of the actual proposal. While Nabors Industries and Chesapeake Energy were easy calls, at other companies it was difficult to discern where Glass Lewis was setting the bar in terms of deficient governance. For example, Glass Lewis supported proxy access at Wells Fargo, even though it acknowledged that the company had strong governance and financial performance. On the other hand, Glass Lewis rejected proxy access at Medtronic, which arguably has weaker governance, compensation practices, and performance.

Because the SEC has no immediate plans to revisit proxy access, shareholder proponents can be expected to continue their campaigns in 2013 with some fine tuning of their proposals and targets. While it is evident from this year's votes that mainstream investors are being selective in their support of proxy access, the proposals are still a valuable tool for leveraging other governance reforms from companies. Among this year's targets, six companies agreed to declassify their boards, three companies adopted a majority vote or "plurality plus" standard in director elections, and two non-independent board chairmen have stepped down.<sup>1</sup>

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<sup>1</sup> Charles Schwab, CME Group, Nabors Industries, Pioneer Natural Resources, and Western Union proposed board declassification at their 2012 annual meetings, while Chesapeake Energy will seek relief from the Oklahoma statute mandating classified boards by 2013. All of the declassification proposals passed except at Charles Schwab. However, Nabors Industries offset the loss of its classified board by adopting a one-year poison pill with a 10% trigger after its proposal to adopt a supermajority vote requirement failed at the annual meeting. Chesapeake Energy and Pioneer Natural Resources additionally adopted majority voting, while Nabors Industries adopted a director resignation policy. Nabors Chairman Eugene Isenberg retired at the annual meeting and waived his controversial severance package. Chesapeake CEO Aubrey McClendon also

### *Board Declassification and Reincorporation*

Shareholder campaigns to declassify boards were propelled this year by the Harvard Law School Shareholder Rights Project (SRP), a clinical program initiated by Lucian Bebchuk in 2011 whereby faculty and law students assist public pension funds and charitable organizations to improve corporate governance at publicly traded companies. This year, program participation expanded to include four public pension funds (North Carolina State Treasurer, Illinois State Board of Investment, Los Angeles County Employees Retirement Association, and Ohio Public Employees Retirement System) in addition to the Nathan Cummings Foundation.

The SRP's efforts have paid off both behind the scenes and at the ballot box. Participants reportedly reached agreements with 44 of the 87 S&P 500 companies where they submitted declassification proposals. Of their 39 resolutions on ballots (accounting for 75% of the total), only two failed to garner majority support: PACCAR, where the proposal received 49.9% support, and Kellogg, which has significant ownership by the W.K. Kellogg Foundation. More proposals are in the pipeline for the remainder of 2012 and 2013. In late August, the SRP announced that the Massachusetts Pension Reserves Investment Management Board has joined its ranks and has already submitted declassification proposals at 20 companies, four of which have agreed to comply.

Overall, shareholder-sponsored declassification proposals showed a dramatic increase this year in both number (27% more than 2011) and in average support (80.1% versus 71.5% in 2011). Seventeen proposals received over 90% support, though in many cases due to unique circumstances. Eight proposals went unopposed by the targeted companies, three had

received past majority support, and two were associated with proxy fights.<sup>2</sup>

Aside from declassification resolutions, individual investors revisited the prospect of reincorporation in Delaware at companies whose state laws now require classified boards by default. A proposal by Gerald Armstrong at Chesapeake Energy won majority support, though it was effectively preempted four days before the annual meeting when the company announced it would seek relief from Oklahoma's statute in advance of its 2013 annual meeting. John Chevedden also pursued reincorporation at Indiana-based ITT. However, unlike past campaigns by the American Federation of State, County and Municipal Employees (AFSCME), Chevedden's motivation was not board declassification (which ITT already has) but relief from the state's unanimous written consent provision. This argument failed to sway shareholders and proxy advisors and the proposal fell flat with only 3.3% support.

### *Broker Voting and Supermajority Voting*

Corporate efforts to declassify their boards or make other governance reforms were often frustrated this year due to a combination of supermajority approval requirements and changes to broker voting rules. In January, the New York Stock Exchange (NYSE) revised Rule 452 to prohibit brokers from voting without client instructions on certain governance resolutions, thereby eliminating a bloc of votes typically favorable to management.

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<sup>2</sup> Six boards made no recommendation on shareholder declassification proposals this year: ANN, Edwards Lifesciences, Lorillard, People's United Financial, QEP Resources, and Quest Diagnostics. Two others supported the shareholder proposal: Baxter International, where a management declassification proposal failed last year, and Best Buy, whose board initially made no recommendation on the shareholder resolution but switched to supporting it. Declassification resolutions also received over 90% support at CF Industries Holdings, Hospitality Properties Trust, and MEMC Electronic Materials--where the shareholder proposals had received majority support in 2011--as well as at Cognizant Technology Solutions, Healthways, Lexmark International, and Red Hat. Dissidents at Ambassadors Group and ModusLink Global Solutions sponsored declassification resolutions in conjunction with their proxy contests, and these proposals received over 90% support.

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stepped down as chairman. The company is reconstituting the board with four independent directors proposed by its two major shareholders and has discontinued a program that allowed McClendon to invest in new company wells.

Through August, 8 out of 68 management proposals to declassify boards failed.<sup>3</sup> In all cases, the charter amendments carried lofty approval thresholds—75% to 80% of outstanding shares—though one company (Cigna) also made no recommendation on its own proposal.<sup>4</sup> Shareholder proponents, however, have been undeterred in bringing back the issue. A shareholder proposal at Eli Lilly was withdrawn this season after the company agreed to try (and ultimately failed) to destagger its board for a sixth consecutive year. Shareholder declassification resolutions also reappeared on ballots at Baxter International, Hess, and Limited Brands, despite unsuccessful management proposals in recent years.

Supermajority requirements also thwarted company proposals to enhance other shareholder rights, including adopting majority voting in director elections (Boston Scientific, Chesapeake Energy and Medtronic) and reducing shareholder ownership thresholds for calling special meetings (Hercules Offshore) and acting by written consent (AT&T).<sup>5</sup> But what most often alluded companies was repeal of the supermajority voting provisions themselves. To date this year, over one third of the management proposals to eliminate or reduce supermajority vote requirements were defeated (12 out of 32), compared to a mere 9% last year (6 out of 70).

Shareholder requests to rescind supermajority provisions in favor of a simple majority vote were light this year (18 proposals through August), as they were in 2011, reflecting the extent of corporate compliance with past initiatives.<sup>6</sup> However, some companies are

resorting to partial steps to appease proponents. Duke Energy and Piedmont Natural Gas omitted shareholder resolutions this year by offering competing management proposals to simply pare down their supermajority requirements from 80% to 67% or 75%.

### *Majority Voting*

This year's proposals to implement a majority vote standard in director elections have tracked in line with 2011. Through August, 37 shareholder proposals were on ballots, compared to 39 during 2011, and average support stayed consistent at 62%.<sup>7</sup>

Despite widespread acceptance of majority voting, shareholder resolutions have not been a slam-dunk in winning investor approval. Many of the targeted companies had a "plurality plus" standard (plurality voting coupled with a director resignation policy), which some investors regard as comparable to a majority vote standard. So far this year, 23 shareholder proposals have secured majority support, or 62% of the total, which is roughly the same proportion as last year. Although six racked up sizable tallies (over 90% support), in most cases it was because the boards chose not to oppose the shareholder resolution.<sup>8</sup>

One notable change this year has been a shift in proponents and targets. The California State Teachers' Retirement System (CalSTRS) surpassed the United Brotherhood of Carpenters Pension Fund as the most active proponent of majority voting, reportedly filing 61 proposals and accounting for a third of those on ballots. And unlike the Carpenters, who have focused on S&P 500 companies, most of the CalSTRS targets were small and mid-cap firms, signaling that activists

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<sup>3</sup> Management declassification proposals failed at Alcoa, Charles Schwab, Cigna, Eli Lilly, Franklin Street Properties, Planar Systems, PPG Industries, and St. Jude Medical.

<sup>4</sup> Although Boston Private Financial Holdings also made no recommendation on its own declassification proposal, it still passed by the requisite 67% of outstanding shares.

<sup>5</sup> Although Chesapeake Energy's charter amendment to adopt majority voting failed at the 2012 annual meeting, the board decided to adopt the provision in its bylaws and apply it to its 2012 director vote.

<sup>6</sup> Two-thirds of the companies that received majority support last year on shareholder resolutions to drop supermajority voting complied by 2012. In comparison, 75% of the companies that

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received majority support last year on shareholder resolutions to declassify the board complied by 2012.

<sup>7</sup> These include two shareholder proposals from different proponents at Franklin Street Properties.

<sup>8</sup> International Bancshares and PACCAR supported the shareholder proposal, and Middleby, National Health Investors, and THQ made no recommendation on it. Stifel Financial's board reversed its recommendation on the shareholder proposal from "against" to "for." However, because this occurred less than two weeks before the annual meeting after many shareholders had voted, the proposal only won 77.7% support.



are migrating this initiative downstream.<sup>9</sup> This has significant consequences, considering that most companies whose directors receive high levels of dissent are in this universe. Through August of this year, 72 directors at 49 companies received majority opposition votes, but only five of these companies (10 directors) were in the S&P 500 Index. Of the 49 firms, only three had a majority vote standard in place (Chesapeake Energy, Hospitality Properties Trust, and NYSE Euronext) and one had a plurality plus standard (China Biologic).<sup>10</sup> Nevertheless, even companies with pure plurality voting are being mindful of majority opposition votes, with directors at three so far (GameTech International, Jacksonville Bancorp and United Stationers) bowing off their boards.

### *Cumulative Voting*

The expansion of majority voting has had another side effect, namely a dampening of shareholder interest in cumulative voting. The two are regarded as fundamentally incompatible because cumulative voting could result in a director being elected without the support of a majority of shareholders. As in the past, several companies were successful this year in repealing cumulative voting provisions as a trade-off for adopting majority voting. More striking is that shareholder campaigns promoting cumulative voting—largely the purview of Evelyn Davis—received the lowest average support in five years (23.6%). Virtually all of her targets had a majority vote standard. Separately, union pension funds reintroduced proposals that would carve out cumulative voting for contested elections only, which could facilitate the election of dissident nominees either in a traditional board contest

<sup>9</sup> CalSTRS reported in August that it engaged 95 companies on majority voting and reached agreements with 82 of them to adopt the standard.

<sup>10</sup> Chesapeake Energy's board accepted the resignation of Richardson Davidson and is reviewing that of V. Burns Harris. The NYSE Euronext board accepted the resignation of Ricardo Salgado, who had had poor attendance. The Hospitality Properties Trust board rejected Bruce Gans' resignation because shareholder opposition was prompted by the company failing to implement a majority-supported shareholder proposal to declassify the board. China Biologic accepted the resignations of two directors (Chong Yang Li and Sandy Zhang) who received a majority of withhold votes.

or under a proxy access regime. However, average support for limited cumulative voting also dropped significantly from 31.1% in 2011 to 23.9% in 2012.

### *Independent Chairman*

Shareholder proposals calling for an independent board chairman were on the rise this year with 52 voted on through August, compared to 29 for all of 2011. But despite the heightened activity and the backing of proxy advisory firms, proponents of the resolutions—which spanned union and state pension funds, social investment funds, religious orders and individuals—were unable to dial up support levels significantly, which averaged 35.2% through August, compared to 34.1% in 2011.<sup>11</sup> In keeping with past years, relatively few independent chairman resolutions received majority support in 2012, these levels being marginal at best: KeyCorp (53.8%), Kindred Healthcare (52.3%), McKesson (50.9%), and Sempra Energy (55.2%).<sup>12</sup>

Activists' slow progress on this issue is likely attributable to their targeting firms that have lead independent directors, which many investors consider to be a suitable counterbalance to a combined chairman/CEO. Mainstream investors remain unconvinced that a "one-size-fits-all" board leadership structure is in shareholders' best interests. Indeed, a

<sup>11</sup> ISS supported 77% of the independent chairman proposals on ballots through August 2012, compared to 71% of the proposals in 2011. ISS's recommendations are based on whether or not the company has an independent lead director with specific duties, the company's one- and three-year total shareholder returns against peers, and any governance concerns at the company. Glass Lewis supported all of the independent chairman proposals this year except at Whole Foods Market, which already has an independent chairman. Unlike ISS, Glass Lewis has no carve-out in its policy for lead directors. Separately, Glass Lewis will recommend against the chairman of the governance committee if the company has a non-independent board chairman and no independent lead or presiding director. This year, Glass Lewis opposed 496 governance committee chairmen on this basis.

<sup>12</sup> In 2011, independent chairman proposals won majority support at four companies: Aetna (51.4%), Moody's (56.6%), Vornado Realty (50.7%), and Cedar Fair (81.1%), where the proposal was part of a dissident's proxy fight campaign. In response to the vote, Aetna expanded the duties of its presiding director, Cedar Fair appointed an independent chairman, and Moody's will transition to an independent chairman later in 2012.

recent study by Aiyesha Dey of the University of Minnesota found that companies that split the chairman and CEO roles under investor pressure performed worse than companies that made the switch on their own accord or that combined the two positions.<sup>13</sup>

Other independent chairman proposals that were in the pipeline for the remainder of 2012 have been facing no-action challenges. NBIM resubmitted bylaw resolutions for a fourth consecutive year at Cardinal Health, Clorox, and Harris, but all were omitted as vague and indefinite. Although the proposals were unchanged from previous years, they were faulted for referring to, but not disclosing, the NYSE definition of independent director that would apply to the bylaw—a similar argument used to exclude some of this year’s proxy access proposals.

### *CEO Succession Planning*

CEO succession planning has gained greater attention in recent years following numerous CEO departures during the financial crisis and the highly publicized illnesses of iconic leaders Warren Buffett and the late Steve Jobs. Shareholder activism and regulatory changes have also elevated the issue. In late 2009, the SEC reversed its position towards CEO succession planning from being a matter of ordinary business operations to being a significant policy issue regarding the governance of the corporation.

Union pension funds, particularly the Laborers International Union of North America (LIUNA), have pressed companies in recent years to adopt and disclose details of their CEO succession planning strategies, including developing criteria for the CEO position, identifying and grooming internal candidates, annually reviewing an emergency succession plan, and beginning non-emergency succession planning at least three years before an expected transition. While many of the proposals were withdrawn—only four were voted on this year—average support at 22.1% suggests that investors have mixed views regarding the scope of succession plan disclosures. The proxy advisors, for

example, have been split in their recommendations: ISS supports the resolutions, while Glass Lewis opposes them as overly prescriptive.

Recent studies indicate that succession planning warrants more boardroom attention. The National Association of Corporate Directors’ (NACD) 2011 Public Company Governance Survey found that nearly one-third of large public companies have no formal succession plan, and of those that do, 25% do not address the replacement of a CEO in an emergency. Smaller companies may be more at risk. Research by The Conference Board showed that 32% of firms with \$100 million or less in annual revenue only review the CEO succession plan when there is a change in circumstances, such as retirement, death, or illness.<sup>14</sup>

### *Special Meetings and Written Consent*

Parallel campaigns by John Chevedden and his affiliates to enhance shareholders’ special meeting and written consent rights faced more corporate preemptions this year, resulting in fewer proposals making it to ballots.

Issuers successfully omitted 24 resolutions to allow holders of 10% of the outstanding shares to call special meetings, in most cases by offering competing management proposals, albeit at higher ownership thresholds to invoke the right (typically 25%). Additional restrictions on ownership (holding periods and the exclusion of derivatives) and on the frequency and business of special meetings called by shareholders are also becoming more commonplace in company provisions. Although disliked by activist proponents and ISS, shareholders have approved charter and bylaw amendments containing such exclusions.

Variations in Chevedden’s proposals this year also resulted in some omissions as well as some seemingly inconsistent recommendations by ISS. Seven Delaware companies excluded one version of the resolution as vague and indefinite because it sought special meeting

<sup>13</sup> The study is available at: <http://www.sciencedirect.com/science/article/pii/S0929119911001003>.

<sup>14</sup> The Conference Board’s 2011 and 2012 studies are available at <http://www.conference-board.org/retrievefile.cfm?filename=TCB-DN-V4N12-12.pdf&type=subsite> and [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2032229](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2032229).

rights for holders of 10% of the shares *or the lowest percentage of stock permitted by state law*.<sup>15</sup> Because Delaware law doesn't specify a minimum percentage of outstanding shares that would be authorized to call special meetings, the language in the proposal could be subject to multiple interpretations (one share or 1% of the shares). Six other Delaware companies chose not to exclude the proposal, but in only one case (Knight Capital) did ISS recommend against it on the grounds that it could allow a holder of only one share to call a special meeting.<sup>16</sup> On the same basis, ISS rejected a proposal by William Steiner at Waste Management which sought special meeting rights for holders of the lowest ownership percentage allowed by state law. The proponents reworded some of their submissions, thereby avoiding further exclusions, by requesting that holders of 10% of the shares, or the lowest percentage permitted by law *above 10%*, be allowed to call special meetings.<sup>17</sup>

In all, only 15 of the Chevedden group's special meeting proposals went to a vote, down by half from last year, and average support declined from 41.2% in 2011 to 39.6% in 2012. Five of their proposals

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<sup>15</sup> The companies that omitted the proposal as vague and indefinite included Amazon.com, Danaher, Newell Rubbermaid, R.R. Donnelley & Sons, United Continental Holdings, Western Union, and Yahoo!.

<sup>16</sup> In addition to Knight Capital, Celgene, Limited Brands, NASDAQ OMX Group, Netflix, and Time Warner Cable received this version of the proposal. However, unlike Knight Capital, which permits holders of 25% of the shares to call special meetings, the other firms do not grant shareholders any special meeting rights. This may have driven ISS's favorable recommendation, despite the shortcomings ISS identified in the proposal. Merck, which is incorporated in New Jersey, also received this version of the proposal and ISS supported it. Merck allows holders of 25% of its shares to call special meetings, and New Jersey law further permits holders of 10% of the shares to call special meetings upon a showing of good cause. The 10% threshold in the state law provision likely prompted ISS's endorsement of the shareholder resolution. In its post season review, Glass Lewis reported that it endorsed 77.8% of this year's shareholder proposals on special meetings, compared to 62.1% in 2011. It did not disclose its recommendations at specific companies.

<sup>17</sup> Companies receiving the revised version of the proposal included Allergan, Chevron, Fifth & Pacific, Ford Motor, NYSE Euronext, Pfizer, and Verizon Communications. At Verizon, the ownership threshold in the proposal was 15%.

received majority support, but in all cases the companies did not accord shareholders any special meeting rights (Allergan, Celgene, NASDAQ OMX Group, Netflix and NYSE Euronext).<sup>18</sup> The lowest support was registered at Knight Capital (14.5%) and Waste Management (4.5%), the only two special meeting proposals ISS opposed this year.

Shareholder proposals seeking the right to act by written consent have also been down in number this year, with only 20 on ballots through August, compared to 33 during 2011. Although average support increased substantially—from 38.1% in 2011 to 46.6% in 2012—only six proposals received majority support, though only marginally (51%-55%): Eastman Chemical, Express Scripts, Gilead Sciences, International Paper, JPMorgan Chase, and McKesson. ISS and Glass Lewis supported all of this year's written consent resolutions, even though all of the targeted firms, other than McKesson, provided shareholders with the alternative ability to call special meetings.<sup>19</sup>

Corporate adoptions of written consent, either in response to shareholder proposal submissions or past majority votes, were on the rise this year. Most companies are following Home Depot's example from last year and setting a share ownership threshold for initiating a consent (ranging from 10% to 25%) along with other procedural safeguards—limiting the business covered in a consent, prohibiting selective solicitations, and establishing a timeline between the request for a

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<sup>18</sup> Two additional special meeting proposals that were not sponsored by Chevedden and his affiliates received majority support: a bylaw resolution by hedge fund Hillson Partners LP at Orchids Paper Products (84.9% support), and a bylaw resolution by private investor Ronald Chez at Repligen (76% support). The Orchids Paper Products board made no recommendation on the proposal, which did not receive the necessary approval for amending the bylaws. The bylaw proposal at Repligen passed.

<sup>19</sup> ISS typically supports shareholder proposals to adopt written consent unless the company gives holders of 10% of the shares an unabridged right to call special meetings. In 2011, only two recipients of written consent proposals met that condition, Kohl's and Sempra Energy. In 2012, Oshkosh also met that condition, but it faced a proxy fight by Carl Icahn. ISS supported the written consent resolution in conjunction with its support of Icahn's nominees.

record date and the delivery of consents.<sup>20</sup> So far, shareholders have not objected to such provisions, but proponents may file future proxy proposals seeking to remove any exclusionary language. This already occurred this year at Home Depot and was endorsed by ISS (though not Glass Lewis), but only received 25.9% shareholder support.

### *Forum Selection Clauses*

This year, companies faced headwinds from proxy advisors and some investor groups over provisions designating Delaware as the exclusive venue for litigating intra-company disputes, such as shareholder derivative suits. Although primarily put into place in conjunction with IPOs, there was an upswing in companies adopting forum selection provisions after a 2010 Delaware Chancery Court opinion (*In Re Revlon Shareholders Litigation*) implicitly endorsed them as a way to avoid costly multi-forum litigation. However, some investors are now challenging exclusive forum bylaws adopted without shareholder consent, both through class action suits and shareholder resolutions.<sup>21</sup>

In 2012, Amalgamated Bank's Longview Funds submitted first-time proposals asking four companies to repeal their exclusive forum bylaws. Two of the resolutions were withdrawn after the companies acquiesced (Roper Industries and Superior Energy Services), while the two that went to a vote (Chevron and United Rentals) received strong average support (37.6%).

Companies also backed off from proposing exclusive forum charter amendments. Two of the eight management proposals that were scheduled this proxy season were tabled (Calix and Fairchild Semiconductor). Of the six voted on, two failed (Cameron International and Suburban Propane Partners) and one passed by a bare majority (Biogen

Idec). Three others passed by a comfortable margin by virtue of the companies having sizable insider ownership or a significant shareholder (Beasley Broadcast Group, Sally Beauty Holdings and Snap Interactive).

Being a relatively new issue, investor sentiment towards forum selection clauses is still evolving. The proxy advisors, however, have adopted a decidedly tougher stance towards them. This year, ISS amended its policy to oppose exclusive forum provisions unless the company demonstrated that it had been materially harmed by shareholder litigation outside of its state of incorporation and also possessed seemingly unrelated governance practices (annually elected board, majority voting in director elections, and no non-shareholder-approved poison pill). However, in practice, ISS opposed all company proposals to adopt forum selection provisions and supported all shareholder efforts to repeal them, even at companies that met ISS's alternative criteria (Chevron and United Rentals). Glass Lewis made the same recommendations and additionally opposed governance committee chairmen at 15 companies which in the past year had adopted exclusive forum provisions without shareholder approval, including prior to their going public.

### *Compensation-related Proposals*

Mandatory say on pay (SOP) has largely supplanted shareholder resolutions over the past two years as the preferred mechanism for expressing dissatisfaction with executive compensation. Although there has still been a smattering of proposals dealing with specific aspects of pay, such as golden coffins, excise tax gross-ups, and senior executive retirement plans (SERPs), only two compensation proposals have received majority support this year. One at Nabors Industries sought shareholder approval of future executive benefits exceeding 2.99 times base salary and bonus. The high support for the resolution at Nabors, along with two years of failed say-on-pay (SOP) votes, was fueled by shareholder ire over a \$100 million severance package awarded to former CEO Eugene Isenberg. The other proposal at Patriot Scientific requested that directors and officers purchase self-financed company stock valued at a multiple of their total compensation. Patriot Scientific

<sup>20</sup> See Allstate, Altera, Amgen, CVS Caremark, and Northrop Grumman.

<sup>21</sup> Shareholder class action suits have been filed against 12 companies disputing the validity of unilaterally-adopted forum selection bylaws. The complaints were dismissed at 10 companies that repealed the bylaws and are pending at Chevron and FedEx.



has no formal stock ownership guidelines, and the CEO and directors own very little company stock.

Union pension funds, which have historically been the main proponents of compensation proposals, directed their attention this year to tying executive compensation to long-term performance. “Bonus bank” proposals reappeared after a two-year hiatus calling for the deferral of annual bonus payouts for three years after the attainment of performance goals. However, shareholder interest in this concept remained tepid, with only 17.7% average support. Shareholder support also receded on union-sponsored resolutions to restrict the accelerated vesting of equity awards following a change in control or an executive’s termination. The 12 proposals on ballots, a four-fold increase from last year, received average support of 38.2%, compared to 41.5% in 2011.

Labor funds and individual investors also ratcheted up proposals dealing with executive stock retention, with more than double the number on ballots (29) as in 2011 (11). Although the proposals varied widely in their recommended retention ratios (25% to 75% of net after-tax shares received from equity awards) and holding periods (one year after terminating employment or through retirement), all were endorsed by ISS and Glass Lewis and received average support of 24.2%. Two companies (AT&T and Exxon) were able to omit the resolutions by adopting stock retention policies largely mirroring those advocated by the proponents, along with a policy prohibiting hedging transactions (a new feature in this year’s shareholder proposals). However, simply having stock ownership guidelines was not deemed sufficient by the SEC as having substantially implemented the proposal (American Tower).

Because of delays in SEC rulemaking on remaining provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, proxy disclosures on pay for performance, CEO pay ratios, employee and director securities hedging, and clawback policies are unlikely to take effect for the 2013 proxy season. Therefore, issuers could see a resurgence of shareholder proposals next year relating to these topics.

### *Political Spending*

In advance of the fall presidential elections, which is expected to generate a record-breaking \$6 billion in campaign spending, shareholder activists ramped up proposals dealing with corporate political activities. For a second year in a row, this topic outpaced all other categories of shareholder resolutions with 127 reportedly filed and 73 voted on through August.

The most numerous proposals (32) followed a longstanding format developed by the Center for Political Accountability (CPA), which calls for a semi-annual report on companies’ direct and indirect contributions, including to tax-exempt organizations, used to influence elections or referenda. In addition to an itemization of expenditures and recipients, companies are also requested to disclose their policies, procedures and executives responsible for making political spending decisions. Also plentiful were proposals (22) seeking an annual report of companies’ direct and indirect lobbying activities and grassroots lobbying communications, including payments to trade associations used for lobbying. These were first introduced last year by union pension funds in response to the 2010 Supreme Court decision in *Citizens United v. Federal Election Commission* which lifted restrictions on independent political expenditures by corporations and unions.

Despite the heightened attention to campaign finance, support levels for both types of resolutions actually dropped this year. The CPA proposals averaged 28.2% support (versus 32.8% in 2011), and the grassroots lobbying proposals averaged 23.3% support (versus 24.1% in 2011). Only one political contribution proposal received majority support (at WellCare Health Plans), while one at Sprint Nextel, which had garnered majority support last year, only registered 21% support this year.

The decline in shareholder support is likely attributable to several factors. An increasing number of companies have enhanced their political contribution disclosures, and business groups, such as the Business Roundtable, have endorsed board oversight and the adoption of policies governing political donations. In addition,

several large institutional investors changed their policies last year on political spending resolutions so they now oppose them (BlackRock and T. Rowe Price) or abstain on them (TIAA-CREF). Even ISS, which changed its policy this year to largely support disclosure resolutions, ended up supporting fewer this year than it did in 2011, as did Glass Lewis.<sup>22</sup> ISS's recommendations clearly impacted voting outcomes: every proposal that received less than 20% this year was either opposed by ISS or occurred at companies that had significant insider or hedge fund ownership.<sup>23</sup>

Less conventional campaign finance proposals continued to receive single digit support this year. These include proposals to prohibit corporate political spending (Trillium Asset Management), proposals to hold an annual shareholder advisory vote on corporate political contributions (NorthStar Asset Management and James Mackie), and Evelyn Davis's perennial proposals to disclose political donations in major newspapers, affirm political non-partisanship in the workplace, and disclose prior government service of executives.

Transparency aside, it is evident that partisan activists intend to use disclosures to publicly chastise companies for supporting organizations or candidates that hold pro-business or politically conservative views. This year, health insurers Aetna and WellPoint came under fire for donating to organizations that directly or indirectly funded attack ads against the Patient Protection and Affordable Care Act (ObamaCare), including the U.S. Chamber of Commerce, American Action Network, and America's Health Insurance Plans. At WellPoint the activist protest rose to the level

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<sup>22</sup> This year, ISS supported 81% of the CPA proposals and 68% of the grassroots lobbying proposals, compared to 95% and 83%, respectively, in 2011. Glass Lewis supported 48% of the grassroots lobbying and CPA proposals this year, compared to 61% in 2011.

<sup>23</sup> ISS opposed the CPA proposals at Aetna, Allstate, Caterpillar, JPMorgan Chase, Republic Services, and WellPoint. ISS opposed the grassroots lobbying proposals at Citigroup, Goldman Sachs Group, International Business Machines, Kraft Foods, PepsiCo, Southern, and United Parcel Service. Proposals at AutoNation, Geo Group, Royal Caribbean Cruises, Sunrise Senior Living, and Wal-Mart Stores also received less than 20% support, despite a favorable ISS recommendation, most likely because they have high insider or hedge fund ownership.

of a “vote no” campaign against two directors—Susan Bayh, for having political ties that allegedly biased the board's political spending decisions, and Julie Hill, a member of the nominating and governance committee. Ultimately, Change-to-Win's protest vote fell flat, and the WellPoint directors received over 92% support.

Even beyond proxy season, activists have continued to pressure companies to drop their memberships in “controversial” organizations. Heading their list is the American Legislative Exchange Council (ALEC), which was also singled out in this year's grassroots lobbying resolutions. Referred to by detractors as a “corporate bill mill,” ALEC writes and endorses model legislation on state-level public policy issues, which has included voter ID, stand-your-ground, and illegal immigration laws. In July, a coalition of investors led by AFSCME and Walden Asset Management wrote open letters to some 50 companies asking their boards to review the reputational and business risks of their continued involvement with ALEC, as well as with the Heartland Institute, a conservative think tank which promotes free-market environmentalism and skepticism about man-made global warming. Both organizations have faced numerous corporate defections this year.

Drug makers have also been targeted with a recent letter-writing campaign over their membership in the Pharmaceutical Research and Manufacturers of America (PhRMA). During the mid-year elections, PhRMA contributed to two non-profits (the America Future Fund and American Action Network) that backed congressional candidates who want to defund Planned Parenthood. Because the companies in question—Johnson & Johnson, Merck, Pfizer, and Bayer—produce contraceptives, the investor coalition regards their affiliation with PhRMA as inimical to shareholder interests.

### *Looking Ahead*

Looking ahead to 2013, shareholder activists can be expected to press forward on issues where they've made the greatest inroads this proxy season, namely board declassification and majority voting in director elections. They have an abundance of targets. According to data from SharkRepellent, classified

boards still prevail at 18% of S&P 500 firms and 46% of Russell 3000 firms, while plurality voting remains the norm at 21% of S&P 500 firms and 69% of Russell 3000 firms. Proponents will also reload their proposal pipeline with appeals for independent board chairmen and expanded special meeting and written consent rights, though these are areas of governance where issuers have been able to reach middle-ground alternatives with their major shareholders. Campaign finance proposals, on the other hand, are likely to be scaled back in the aftermath of the November presidential elections.

shareholder proposals, failed SOP votes, or directors who received majority dissent this year (see Tables 4, 5, and 6). If they fail to adequately address the underlying shareholder concerns, they may face not only backlash against their directors, but an even more unsettling prospect: proxy access proposals. Indeed, the USPX coalition has already indicated that poor SOP results will be a factor in building their 2013 proxy access focus list. Companies in that unenviable position, and even those that are not, will need to prepare for any contingency. The 2013 proxy season is only six months away.

Based on this year's proxy votes, over 200 boards will be on the hot seat in 2013 over majority-supported

**Table 1: 2012 to 2011 Shareholder Proposal Comparison\***

Governance Proposals	2012 (through August)	Average Support	Majority Votes	2011	Average Support	Majority Votes
Declassify board	52	80.1%	47	41	71.5%	36
Director removal	1	62.6%	1	1	49.4%	
Majority voting	37	62.0%	23	39	61.3%	25
Proxy access	11	30.9%	2			
Expense reimbursement for proxy contests	1	6.1%				
Majority vote shareholder committee	1	16.8%				
Poison pill	5	65.6%	4	1	69.1%	1
Cumulative voting	14	23.7%		27	29.7%	
Supermajority voting	18	68.6%	16	15	57.2%	10
Dual-class stock	4	33.2%	1	6	21.1%	
Special meetings	17	44.4%	7	30	41.2%	5
Written consent	21	45.7%	6	33	48.1%	12
Independent chairman	52	35.2%	4	29	34.1%	4
Director independence and qualifications	3	29.0%	1	1	13.8%	
Outside board seats	1	3.7%				
Succession planning	4	22.1%		3	29.5%	
Reincorporate to Delaware	2	29.4%	1	2	39.0%	
Repeal exclusive venue	2	37.6%				
Maximize value	2	33.0%		2	14.7%	
Miscellaneous**	5	3.5%	1	2	0.8%	
Lead director				2	23.0%	
<b>Total Governance Proposals</b>	<b>253</b>		<b>114</b>	<b>234</b>		<b>93</b>

Compensation Proposals	2012 (through August)	Average Support	Majority Votes	2011	Average Support	Majority Votes
Severance pay	1	66.2%	1	4	45.0%	2
Bonus deferral	3	17.7%				
Accelerated vesting of equity awards	12	38.2%		3	41.5%	
Golden coffins	2	40.2%		3	28.1%	
Tax gross-ups	2	31.3%		2	33.4%	
SERPs	2	30.8%		3	29.8%	
Clawbacks	2	18.2%		3	26.2%	
Retention ratio	29	24.2%		11	23.9%	
Performance-based awards	5	28.0%		4	34.5%	
Director pay	2	4.6%		4	19.8%	
Hedging policy	1	38.2%				
Pay disparity	1	7.2%		3	9.2%	
Link pay to social issues	3	6.1%		4	5.2%	
Compensation disclosure	1	10.6%		2	11.6%	
Miscellaneous compensation	5	25.5%	1	2	42.7%	
Pay-for-superior performance				1	31.5%	
<b>Total Compensation Proposals</b>	<b>71</b>		<b>2</b>	<b>49</b>		<b>2</b>

Environmental & Social (E&S) Proposals	2012 (through August)	Average Support	Majority Votes	2011	Average Support	Majority Votes
Animal welfare	12	4.6%		9	4.5%	
Board diversity	2	28.4%		2	24.7%	
Charitable contributions	1	2.2%				
Environment						
Climate change - conservative view				4	2.2%	
Coal	8	19.3%		8	21.9%	1
Hydraulic fracturing	4	25.5%		5	40.7%	
Environmental impact report	3	13.6%		3	13.4%	
Climate change report	1	21.2%		3	11.8%	
GHG emissions reduction	4	22.3%		10	17.6%	
Energy efficiency	1	29.5%				
Oil sands				2	27.5%	
Nuclear	2	10.0%		1	19.7%	
Worker refinery safety	3	20.2%		4	28.2%	1
Renewable energy	2	6.1%		2	5.6%	
Miscellaneous climate change	1	16.0%				
Paper and forestry	2	17.5%		1	29.4%	
GMOs	1	5.7%		1	6.3%	
Palm oil	1	37.0%		1	5.8%	
Recycling	4	19.8%		3	22.7%	



Environmental & Social (E&S) Proposals	2012 (through August)	Average Support	Majority Votes	2011	Average Support	Majority Votes
Toxic substances - BPA				1	26.0%	
Board environmental risk committee	1	3.8%				
Director with environmental expertise	3	19.2%		3	20.3%	
Miscellaneous environmental				1	30.5%	
Equal employment						
EEO report	3	19.1%		2	13.9%	
Miscellaneous employment				1	1.9%	
Sexual orientation - conservative view	1	2.0%		1	3.2%	
Sexual orientation in EEO policy	8	31.1%		9	33.9%	1
Finance						
Audit foreclosure practices	3	12.1%		3	30.1%	
Mortgage servicing controls	1	4.8%		1	7.0%	
Risk management				1	8.2%	
Collateral in derivatives trading				1	33.7%	
Health						
Miscellaneous health	2	5.3%		1	7.2%	
Drug pricing				4	3.2%	
Human rights						
Country selection and divestiture	3	11.6%		3	12.1%	
Code of conduct	5	19.4%		7	17.5%	
Vendor code of conduct				3	14.3%	
Human right to water	1	9.3%		2	6.0%	
Internet privacy and net neutrality	3	5.8%		1	42.5%	
Board oversight of human rights				1	8.6%	
Miscellaneous human rights	1	18.6%				
Political activities						
Lobbying & political contributions - conservative view	2	3.0%		2	5.2%	
Grassroots lobbying	22	23.3%		6	24.1%	
Political contribution disclosure	32	28.2%	1	38	32.8%	1
Chamber of Commerce board membership	1	9.7%		7	6.1%	
Say on political contributions	8	4.0%		1	6.7%	
Prohibit political contributions	3	5.1%		1	3.8%	
Political non-partisanship	1	5.9%		2	7.2%	
Publish political contributions in newspapers	1	4.1%		2	4.4%	
Government service	3	3.5%		2	8.1%	
Sustainability						
Sustainability report	9	33.4%		7	38.7%	1
Supplier sustainability report	1	6.9%		1	2.0%	
Board sustainability committee	1	4.1%		3	3.5%	
Tobacco	2	2.5%		3	2.4%	
Miscellaneous E&S	1	0.0%				
<b>Total E&amp;S Proposals</b>	<b>174</b>		<b>1</b>	<b>180</b>		<b>5</b>



<b>Total SH proposals (All)</b>	<b>498</b>	<b>117</b>	<b>463</b>	<b>100</b>
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*\*Proposals voted on (where results reported) and floor proposals through August 2012. Votes are calculated as FOR/FOR+AGAINST.  
\*\*In 2012, these included two proposals to require mandatory arbitration of shareholder claims and two floor proposals to eliminate advance notice requirements. In 2011, these included one proposal to eliminate the board size range and one proposal to conduct a feasibility study on converting to non-profit status.*

*Table 2: Proxy Access Proposals on Ballots*

Company	Proponent	Meeting Date	ISS Rec	Glass Lewis Rec	Approval Required	Support Level	FOR/F+A
Wells Fargo	NBIM	Apr 24	FOR	FOR	Binding: majority of shares outstanding	25.0%	32.4%
Ferro	USPX	Apr 27	AGAINST	FOR	Non-binding: majority of votes cast (including abstentions and broker non-votes)	12.1%	13.4%
KSW	Furlong Fund	May 9	AGAINST	AGAINST	Binding: majority of votes cast (excluding abstentions and broker non-votes)	21.0%	21.0%
Charles Schwab	NBIM	May 17	FOR	FOR	Binding: 80% of shares outstanding	26.0%	30.9%
Princeton National Bancorp	USPX	May 17	AGAINST	FOR	Non-binding: majority of votes cast (including abstentions)	31.1%	32.1%
CME Group	NBIM	May 23	FOR	FOR	Binding: 67% of outstanding Class A and B shares	26.6%	38.0%
Western Union	NBIM	May 23	FOR	AGAINST	Binding: majority of shares outstanding	27.6%	33.5%
Nabors Industries	U.S. public pension funds	Jun 5	FOR	FOR	Non-binding: majority of votes cast (including abstentions)	56.0%	56.2%
Chesapeake Energy	NYC pension funds	Jun 8	FOR	FOR	Non-binding: majority of votes (including abstentions)	59.9%	62.3%
Forest Laboratories	USPX	Aug 15	AGAINST	FOR	Non-binding: majority of votes (including abstentions)	9.4%	12.2%
Medtronic	USPX	Aug 23	AGAINST	AGAINST	Non-binding: majority of votes (including abstentions)	7.4%	7.4%
H&R Block	USPX	Sept 13	AGAINST	AGAINST	Non-binding: majority of votes (including abstentions)		
						<b>Average:</b>	<b>30.9%</b>

*Table 3: Proxy Access Proposals Withdrawn or Omitted*

Company	Proponent	Status
Bank of America	USPX	Omitted
Cadus	Furlong Fund	Withdrawn
Chiquita Brands International	USPX	Omitted
Dell	USPX	Omitted
Goldman Sachs Group	USPX	Omitted
Hewlett-Packard	Amalgamated Bank	Withdrawn
MEMC Electronic Materials	USPX	Omitted
Microwave Filter	Furlong Fund	Withdrawn
Pioneer Natural Resources	NBIM	Withdrawn
Sprint Nextel	USPX	Omitted
Staples	NBIM	Omitted
Textron	USPX	Omitted



**Table 4: Shareholder Proposals that Received Majority Support (through August 2012)**

Company	Proposal	Board Rec	Support Level*	Consec. Years of Majority Support (inc. 2012)*	Supported by Maj. of Shares O/S in 2012**	Company Adopted or Will in 2013
Airgas, Inc.	Declassify board	Against	64.1%		Yes	
Ambassadors Group, Inc.	Declassify board	Against	98.9%		Yes	Yes
ANN Inc.	Declassify board	None	96.9%		Yes	
Apache Corp.	Declassify board	Against	89.5%		Yes	
Baxter International, Inc.	Declassify board	For	98.2%		Yes	Yes
Bemis Corp.	Declassify board	Against	75.1%		Yes	
Best Buy Co.	Declassify board	For	98.6%		Yes	Yes
CarMax, Inc.	Declassify board	Against	87.5%		Yes	
Cerner Corp.	Declassify board	Against	65.0%		Yes	
CF Industries Holdings, Inc.	Declassify board	Against	92.8%	2	Yes	
Chipotle Mexican Grill, Inc.	Declassify board	Against	89.5%		Yes	
Cognizant Technology Solutions Corp.	Declassify board	Against	91.2%		Yes	
CSP Inc.	Declassify board	Against	82.3%		Yes	Yes
DENTSPLY International, Inc.	Declassify board	Against	78.6%		Yes	
Edwards Lifesciences Corp.	Declassify board	None	98.8%		Yes	
Emerson Electric Co.	Declassify board	Against	77.2%		Yes	Yes
Energen Corp.	Declassify board	Against	83.1%		Yes	
EQT Corp.	Declassify board	Against	82.2%		Yes	
F5 Networks, Inc.	Declassify board	Against	78.7%		No	
FLIR Systems, Inc.	Declassify board	Against	82.8%		Yes	
FMC Corp.	Declassify board	Against	82.8%		Yes	
Healthways, Inc.	Declassify board	Against	90.9%		Yes	
Hess Corp.	Declassify board	Against	79.8%		Yes	
Hospitality Properties Trust	Declassify board	Against	90.1%	3	Yes	
J.M. Smucker Co.	Declassify board	Against	77.0%		Yes	
Johnson Controls, Inc.	Declassify board	Against	85.2%		Yes	
Lexmark International, Inc.	Declassify board	Against	92.9%		Yes	Yes
Limited Brands, Inc.	Declassify board	Against	64.6%		Yes	
Lorillard, Inc.	Declassify board	None	97.4%		Yes	
Masco Corp.	Declassify board	Against	84.7%		Yes	
MEMC Electronic Materials, Inc.	Declassify board	Against	95.6%	2	Yes	
ModusLink Global Solutions, Inc.	Declassify board	Against	91.1%		Yes	
Moody's Corp.	Declassify board	Against	77.1%		Yes	
NetFlix, Inc.	Declassify board	Against	74.9%		No	
People's United Financial Corp.	Declassify board	None	96.1%		Yes	Yes
QEP Resources, Inc.	Declassify board	None	94.3%		Yes	
Quest Diagnostics Inc.	Declassify board	None	96.1%		Yes	
Red Hat, Inc.	Declassify board	Against	95.4%		Yes	
Ryder System, Inc.	Declassify board	Against	88.2%		Yes	
salesforce.com	Declassify board	Against	80.7%	2	Yes	
SCANA Corp.	Declassify board	Against	61.7%		No	

Company	Proposal	Board Rec	Support Level*	Consec. Years of Majority Support (inc. 2012)*	Supported by Maj. of Shares O/S in 2012**	Company Adopted or Will in 2013
Snap-On Inc.	Declassify board	Against	88.2%		Yes	
United States Steel Corp.	Declassify board	Against	83.3%		No	
Urban Outfitters Inc.	Declassify board	Against	60.1%		Yes	
VF Corp.	Declassify board	Against	63.1%		Yes	
Vornado Realty Trust	Declassify board	Against	85.7%	3	Yes	
Vulcan Materials Co.	Declassify board	Against	74.0%	2	Yes	
Whole Foods Market, Inc.	Allow director removal with or without cause	Against	62.6%	2	No	
American Financial Group Inc.	Adopt majority voting	Against	54.0%		No	Yes
Apple Inc.	Adopt majority voting	Against	80.4%	2	Yes	Yes
Baker Hughes Inc.	Adopt majority voting	Against	56.6%		No	
CF Industries Holdings, Inc.	Adopt majority voting	Against	91.7%		Yes	
FLIR Systems, Inc.	Adopt majority voting	Against	58.3%		No	
GEO Group, Inc.	Adopt majority voting	Against	64.7%		Yes	
Graco Inc.	Adopt majority voting	Against	84.1%	3	Yes	
Healthcare Services Group, Inc.	Adopt majority voting	Against	77.3%		Yes	
International Bancshares Corp.	Adopt majority voting	For	89.9%		Yes	
Middleby Corp.	Adopt majority voting	None	98.0%		Yes	
National Health Investors, Inc.	Adopt majority voting	None	94.4%		No	
New York Community Bancorp, Inc.	Adopt majority voting	Against	53.8%		No	Yes
PACCAR Inc.	Adopt majority voting	For	97.1%		Yes	Yes
Palomar Medical Technologies, Inc.	Adopt majority voting	Against	77.5%	2	Yes	Yes
Penn National Gaming, Inc.	Adopt majority voting	Against	66.0%	2	Yes	
PPL Corp.	Adopt majority voting	Against	54.4%		No	
SolarWinds, Inc.	Adopt majority voting	Against	61.6%		Yes	
Stifel Financial Corp.	Adopt majority voting	For	77.7%		Yes	Yes
THQ Inc.	Adopt majority voting	None	91.4%		No	
Ultimate Software Group, Inc.	Adopt majority voting	Against	64.1%		Yes	
Urban Outfitters, Inc.	Adopt majority voting	Against	52.7%		No	
Vornado Realty Trust	Adopt majority voting	Against	81.7%	2	Yes	
Vulcan Materials Co.	Adopt majority voting	Against	61.9%		Yes	
Nabors Industries Ltd.	Adopt proxy access	Against	56.2%		No	
Chesapeake Energy Corp.	Adopt proxy access	Against	62.3%		No	
Comcast Corp.	Redeem poison pill	Against	52.1%		No	
Ecolab Inc.	Redeem poison pill	Against	68.8%		Yes	
Gaylord Entertainment Co.	Redeem poison pill	None	95.9%		Yes	Yes
Gilead Sciences, Inc.	Redeem poison pill	Against	79.4%		Yes	
Baxter International Inc.	Repeal supermaj. voting	For	98.4%		Yes	Yes
Chesapeake Energy Corp.	Repeal supermaj. voting	Against	87.0%		Yes	
Edwards Lifesciences Corp.	Repeal supermaj. voting	Against	82.5%		Yes	
Boston Private Financial Holdings, Inc.	Repeal supermaj. voting	Against	72.3%		Yes	
Waste Connections, Inc.	Repeal supermaj. voting	Against	71.3%		Yes	
Kansas City Southern	Repeal supermaj. voting	Against	70.1%		Yes	

Company	Proposal	Board Rec	Support Level*	Consec. Years of Majority Support (inc. 2012)*	Supported by Maj. of Shares O/S in 2012**	Company Adopted or Will in 2013
Advance Auto Parts, Inc.	Repeal supermaj. voting	Against	68.7%		Yes	
FirstEnergy Corp.	Repeal supermaj. voting	Against	68.3%		Yes	
NASDAQ OMX Group, Inc.	Repeal supermaj. voting	Against	68.1%		No	
Vulcan Materials Co.	Repeal supermaj. voting	Against	67.4%		Yes	
Medtronic, Inc.	Repeal supermaj. voting	Against	66.3%		No	
OGE Energy Corp.	Repeal supermaj. voting	Against	65.1%		No	
Amphenol Corp.	Repeal supermaj. voting	Against	61.2%		Yes	
Mac-Gray Corp.	Repeal supermaj. voting	Against	58.9%		Yes	N/A***
NetApp, Inc.	Repeal supermaj. voting	None	89.7%		Yes	
Orrstown Financial Services, Inc.	Repeal supermaj. voting	Against	53.8%		No	
Providence and Worcester Railroad Co.	Eliminate dual-class stock	None	57.0%		No	
Orchids Paper Products Co.	Allow special meetings	None	84.9%		No	N/A***
Repligen Corp.	Allow special meetings	Against	76.0%		Yes	N/A***
NYSE Euronext	Allow special meetings	Against	60.0%	2	No	Yes
Celgene Corp.	Allow special meetings	Against	59.9%		No	
Allergan Inc.	Allow special meetings	Against	55.3%		No	
NetFlix, Inc.	Allow special meetings	Against	53.4%		No	
NASDAQ OMX Group, Inc.	Allow special meetings	Against	50.2%		No	
Express Scripts Inc.	Adopt written consent	Against	55.2%		No	
JPMorgan Chase & Co.	Adopt written consent	Against	52.7%	2	No	
Gilead Sciences, Inc.	Adopt written consent	Against	52.5%		No	
Eastman Chemical Co.	Adopt written consent	Against	51.7%		No	
International Paper Co.	Adopt written consent	Against	51.5%	2	No	
McKesson Corp.	Adopt written consent	Against	50.8%		No	
Sempra Energy	Appoint indep. chairman	Against	55.2%		No	
KeyCorp	Appoint indep. chairman	Against	53.8%		No	
Kindred Healthcare, Inc.	Appoint indep. chairman	Against	52.3%		No	
McKesson Corp.	Appoint indep. chairman	Against	50.9%		No	
Fred's Inc.	Nom. gov. expert to board	Against	59.8%		Yes	
Chesapeake Energy Corp.	Reincorporate in DE	Against	55.4%		No	Yes
AMERCO	SH ratification of D&O decisions	For	79.9%		Yes	
Nabors Industries Ltd.	SH approval of severance	Against	66.2%		Yes	
Patriot Scientific Corp.	Require D&O to purchase company stock	Against	73.3%		No	
WellCare Health Plans, Inc.	Disclose political contributions	Against	52.7%		No	

**Number of Majority Votes**
**117**

\*Based on FOR/FOR+AGAINST votes.

\*\*The proxy advisors and many shareholders will oppose directors who fail to implement a shareholder proposal that was supported by a majority of votes cast over multiple years or by a majority of shares outstanding in one year.

\*\*\*The shareholder proposal was a bylaw amendment. The Repligen proposal passed and the Mac-Gray and Orchids Paper Products proposals failed.

*Table 5: Majority Votes Against Directors (through August 2012)*

Company	Number of Directors	Board Has Taken Action*
Aetrium Incorporated	2	
Amerigon Incorporated	1	
Barnes Group Inc.	2	
Boston Beer Company, Inc.	1	
Cablevision Systems Corporation	3	
CF Industries Holdings, Inc.	1	
Cheniere Energy, Inc.	1	
Chesapeake Energy Corp.	2	Yes
China Biologic Products, Inc.	2	Yes
Cobra Electronics Corporation	1	
CoStar Group, Inc.	1	
Computer Programs and Systems, Inc.	1	
Ferro Corp.	1	
First California Financial Group, Inc.	2	
GameTech International, Inc.	2	Yes
Gold Resource Corp.	2	
Graco Inc.	2	
Healthcare Services Group, Inc.	1	
Hospitality Properties Trust	1	
Innospec Inc.	1	
Jacksonville Bancorp, Inc. (FL)	1	Yes
KKR Financial Holdings LLC	1	
Loral Space & Communications Inc.	1	
MakeMusic Inc.	4	
Management Network Group, Inc.	1	Yes
Maxygen, Inc.	1	
Mentor Graphics Corporation	5	
Northwest Pipe Co.	1	
NYSE Euronext	1	Yes
Omega Protein Corp.	1	
OCZ Technology Group, Inc.	1	
Patriot Scientific Corp.	2	
Qualstar Corp.	3	
Rocky Brands, Inc.	1	
Savient Pharmaceuticals, Inc.	1	
Senior Housing Properties Trust	1	
Sequenom, Inc.	1	
Simpson Manufacturing Co., Inc.	1	
Sirius XM Radio Inc.	1	
Soligenix, Inc.	1	
SRI/Surgical Express, Inc.	2	
TASER International, Inc.	1	



Company	Number of Directors	Board Has Taken Action*
Texas Capital Bancshares, Inc.	1	
Texas Rare Earth Resources Corp.	1	
TRW Automotive Holdings Corp.	1	
United Stationers Inc.	1	Yes
Vornado Realty Trust	3	
Westfield Financial, Inc.	1	
ZOLL Medical Corp.	1	

<i>Number of Directors</i>	<i>72</i>	
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<i>Number of Companies</i>	<i>49</i>	
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*\*The board has either accepted the director's resignation or corrected the cause of shareholder dissent.*

*Table 6: Failed SOP Votes (through August 2012)*

Company	Support Level*
Abercrombie & Fitch Co.	24.5%
Actuant Corporation	46.7%
American Eagle Outfitters, Inc.	39.9%
Applied Micro Circuits Corp.	42.0%
Argo Group International Holdings, Ltd.	45.5%
Best Buy Co., Inc.	38.3%
Big Lots, Inc.	31.2%
Cedar Realty Trust, Inc.	38.3%
Genveo, Inc.	40.4%
Charles River Laboratories International, Inc.	36.1%
Chemed Corporation	47.9%
Chesapeake Energy Corp.	20.0%
Chiquita Brands International, Inc.	19.8%
Citigroup Inc.	45.2%
Community Health Systems, Inc.	32.9%
Comstock Resources, Inc.	34.7%
Cooper Industries plc	29.4%
CryoLife, Inc.	38.8%
Digital River, Inc.	19.2%
Epiq Systems, Inc.	30.1%
First California Financial Group, Inc.	49.1%
<b>FirstMerit Corporation</b>	46.6%
Gentiva Health Services, Inc.	36.5%
G-III Apparel Group, Ltd.	35.2%
Healthways, Inc.	33.2%
Hercules Offshore, Inc.	48.0%
Iconix Brand Group, Inc.	29.9%
Infinera Corp.	41.6%
InSite Vision Incorporated	58.7%
International Game Technology	44.4%
<b>KB Home</b>	48.4%
Kforce Inc.	39.8%
Kilroy Realty Corporation	29.9%
Knight Capital Group, Inc.	32.0%
Manitowoc Company, Inc.	48.4%
Masimo Corporation	37.7%
Mylan Inc.	47.9%
Nabors Industries Ltd.	25.2%
NRG Energy, Inc.	44.9%
NuVasive, Inc.	32.7%
OM Group, Inc.	23.6%
Palomar Medical Technologies, Inc.	47.0%
Phoenix Companies, Inc.	46.1%

Company	Support Level*
Pitney Bowes Inc.	35.2%
Rigel Pharmaceuticals, Inc.	44.6%
Ryland Group, Inc.	40.9%
Safety Insurance Group, Inc.	42.9%
Sequenom, Inc.	48.3%
Simon Property Group, Inc.	26.7%
Sterling Bancorp	40.0%
Tower Group, Inc.	30.3%
Tutor Perini Corporation	38.3%
United Online, Inc.	31.9%
VCA Antech, Inc.	40.9%
Viad Corp	21.1%
Yahoo! Inc.	50.1%
<i>Number of Companies</i>	<i>56</i>

*\*Based on FOR/FOR+AGAINST votes. InSite Vision and Yahoo! counted abstentions in determining that the SOP vote failed.*

*For further information or questions, please contact:*  
 973-873-7700  
[www.AllianceAdvisorsLLC.com](http://www.AllianceAdvisorsLLC.com)