

What Else do Shareholders Want?
Shareholder Proposals Contested by Firm Management

Eugene Soltes
Harvard Business School
esoltes@hbs.edu

Suraj Srinivasan
Harvard Business School
ssrinivasan@hbs.edu

Rajesh Vijayaraghavan
Harvard Business School
rvijayaraghavan@hbs.edu

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Shareholder proposals provide investors an opportunity to exercise their decision rights within a firm. However, not all proposals created by shareholders receive consideration. Managers can seek permission from the Securities and Exchange Commission (SEC) to exclude specific proposals from the proxy statement. From 2003-2013, we find that managers seek to exclude 40% of all proposals they receive, but the SEC does not permit exclusion in over a quarter of the cases. Of the proposals that managers seek to exclude but the SEC does not allow, 28% win shareholder support or the firm voluntarily implements prior to a vote. Our analysis of contested shareholder proposals suggests that managers often seek to avoid the implementation of legitimate shareholder interests.

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1. Introduction

Shareholder proposals provide a means for investors to communicate their demands to a firm's management and board of directors. Such proposals, allowed under the Securities Exchange Act of 1934, offer shareholders the opportunity to propose changes that other investors can vote upon. A growing body of research indicates that shareholder proposals provide an effective tool to promote changes in compensation policy, firm strategy, and governance (Yermack 2010, Ferri 2012). Although shareholders are given the opportunity to present proposals to enact changes, this is not an unencumbered right. Management, with permission of the Securities and Exchange Commission (SEC), can exclude shareholder proposals from appearing on the proxy statement.

We examine whether management's desire to exclude shareholder proposals from the proxy potentially encumbers shareholders' rights to influence firm policy. On one hand, managers may seek to only exclude those proposals that represent infeasible ideas or personal interests of minority shareholders. Excluding these proposals can be viewed as increasing the efficiency of the proxy voting process by not presenting frivolous matters to shareholders. On the other hand, managers may seek to exclude proposals that pose threats to their own interests. If so, seeking their exclusion could potentially be an expression of managerial entrenchment and counter to the interests of shareholders.

We hand-collect all proposals that managers seek to exclude from the proxy from 2003-2013.¹ We find that managers often seek to exclude shareholder proposals from the proxy. Over four thousand proposals, or nearly 40%, of all proposals received during our

¹ This window was selected on the basis that 2003 allows us to match the outcome with ISS and 2013 was the most recent proxy season available with complete data when we began the manual data collection effort.

sample period are contested by management. These proposals cover a wide range of issues including executive compensation, antitakeover measures, voting procedures, environmental issues, and social policy. The SEC allows firms to exclude many of the proposals that managers contest. Specifically, 72% of all proposals that managers seek to exclude from the proxy are allowed by the SEC (i.e. SEC provides firm a “no action” opinion letter). This suggests that the SEC’s criteria of allowed exclusions, which varies and changes over time, significantly affects what shareholders are given the opportunity to vote on.

Some firms are more inclined than others to seek exclusion of shareholder proposals. Firms that are larger, have worse performance, and have less institutional shareholders are more likely to contest proposals they receive. There is also the tendency for management to behave similarly over time. If a firm contests a proposal in the prior year, they are more inclined to contest a proposal in the subsequent year.

For the 28%, or 1,177 shareholder proposals, that managers cannot exclude from the proxy, managers have a choice. They can either proceed with placing it on the proxy or they can seek to engage with the submitting shareholder to reach some compromise that would lead to the shareholder withdrawing the proposal before the vote. Our evidence supports the idea that managers often seek to exclude proposals that are not necessarily frivolous and are supported by a significant proportion of shareholders.

Regulation only requires that shareholders hold \$2,000 of stock or 1 percent of the share capital for at least one year to be eligible to create a proposal.² However, we find that the vast majority of shareholders who create proposals have considerably larger holdings. The median shareholdings of submitters whose proposals are contested have

² Division of Corporation Finance: Staff Legal Bulletin No. 14.

\$43,000 in shares and the mean submitter has \$9.6 million in share ownership (1.6% of outstanding shares). This skew reflects the holdings of larger institutional investors (e.g. pension funds, hedge funds, etc.) whose proposals are often contested. Thus, the shareholders whose proposals are contested are typically not marginal holders of the firm's securities.

More importantly, for the proposals that are contested, but the SEC does not offer an exclusion, we find that 18% of all contested proposals that are brought to a shareholder vote are approved by shareholders. By comparison, 25% of non-contested proposals that are placed on the proxy receive majority shareholder support.³ Thus, proposals contested by management that eventually make their way to the proxy often gain broader shareholder support at a level comparable to non-contested proposals. Notably, even those contested proposals that fail to be approved still gain considerable support. Contested proposals that fail, gain on average an additional 21% percent of all shares outstanding in incremental support over the shares held by the submitter. This suggests that even those proposals that fail are not entirely frivolous given this magnitude of shareholder support. Together, this evidence suggests that managers often contest proposals that are supported by their shareholder base.

After contesting a proposal and even after receiving a no-action letter, managers still have an alternative to placing the proposal on the proxy. In particular, managers can negotiate with shareholders prior to a vote. These negotiations can lead to the withdrawal of the proposal by the submitting shareholder after the submitter is satisfied with the firms' actions. 16% of all contested proposals are eventually withdrawn by the submitting

³ As another benchmark, between 1973 and 2004, less than 10% of proposals received majority support (Gillan and Starks 2007).

shareholder or simply implemented by the firm (i.e. in effect withdrawing the proposal). We find that managers are more willing to negotiate with shareholders with larger holdings and with institutional entities like pension funds and hedge funds. Managers are also considerably more likely to conclude a private resolution with the shareholder once the SEC disallows the firm from excluding the proposal from the proxy.

Overall, our evidence is consistent with managers often seeking to exclude proposals that represent the interests of their shareholders. In 28% of proposals that managers sought to exclude but were not permitted to do so by the SEC, shareholders approve the proposal through a vote or the submitter withdraws due to implementation. Given that shareholder interests regularly seem to differ from that of management, this analysis suggests that which proposals are excluded plays an important role in determining governance outcomes. The SEC's selection process plays an important role in either facilitating or encumbering shareholder interests.

Our paper contributes to the corporate governance literature in several ways. An extensive literature has examined shareholder activism through the proxy (for reviews, see Karpoff 2001, Yermack 2010, and Ferri 2012). While the earlier literature reviewed in Karpoff (2001) suggested that shareholder proposals have limited impact, their effectiveness has become more significant in recent times (Ferri 2012). Extant research on shareholder proposals ignores a significant portion of submitted proposals since they are excluded by companies from inclusion in the proxy. To our knowledge, our analysis is the first to examine contested proposals where management actively seeks to exclude shareholder proposals from the proxy. By understanding which proposals management

seeks to exclude, we are able to better understand managers' desire to be receptive to shareholder interests.

Our analysis also contributes to understanding the changing nature of shareholder interests and the implementation of regulation around the proxy voting process. In an interpretive release issued by the SEC in 2009, staff from the Division of Corporate Finance noted that “over the past decade, we have received numerous no-action requests from companies seeking to exclude proposals relating to environmental, financial, or health risks...based on our experience reviewing these requests, we are concerned that our application of the analytical framework...may have resulted in the unwarranted exclusion of proposals” (SEC Staff Legal Bulletin No. 14E). This suggests that while some proposals appeared at one point as “fringe” proposals that could be rejected as simply being an individual grievance, regulators are now beginning to pay attention to these concerns. By showing that many of the proposals that are contested, and later excluded by the SEC, are made by large engaged shareholders, we illuminate the effect of regulators' decisions to potentially exclude certain types of proposals.

The rest of the paper proceeds as follows. Section 2 discusses the shareholder proposal process and offers examples of the shareholder contestation process. Section 3 examines the firms and proposals that are contested and investigates the determinants of the process. Section 4 discusses the implications of our analysis within the broader governance context. Section 5 concludes.

2. Institutional Background

2.1. Shareholder Proposal Process

Shareholders have a variety of mechanisms to mitigate agency conflicts created by the separation of ownership and control. Two options available to investors are to sell their shares thereby exiting the firm or initiating a takeover to gain complete control (Admati and Pfleiderer 2009, Parrino et al. 2003). Along the spectrum of alternative options lies shareholder engagement of various types through which investors can participate in the company's strategic direction. For instance, individual shareholders can press for corporate reforms by negotiating with the management privately (Carleton et al. 1998, Strickland et al. 1996, Becht et al. 2008).⁴ Management may not be receptive to these ideas which can hinder the success of such a dialogue. Consequently, the shareholder may be unable to reach a satisfactory private resolution.

An alternative mechanism arises under Rule 14a-8 of the Securities Exchange Act of 1934 (Prevost and Rao 2000, Brown 2016). Shareholders can create proposals that are placed on a firm's proxy statement which is distributed to shareholders before its annual meeting. Shareholders then vote on the individual proposals. Under Rule 14a-8 of the Securities Exchange Act of 1934, a shareholder that has held \$2,000 worth of shares or 1% of market value of equity continuously for at least a year is allowed to include a proposal in the company's proxy for a vote at the annual meeting.

⁴ Such activism differs from shareholder campaigns which are focused on the shareholder proxy (e.g. Cai et al. 2009, Fischer et al. 2009).

Shareholder proposals placed on a firm's proxy under Rule 14a-8 offer shareholders a direct opportunity to influence a firm's corporate policies (Thomas 2007).⁵ Allowing proposals by shareholders helps alleviate the agenda setting problem where there is no alternative but to support the management (Pozen 1999, Ryan 1988). Shareholders offer proposals covering a wide range of corporate governance (e.g., compensation, anti-takeover provisions, declassifying boards, and supermajority requirements) and social issues (e.g., environmental policy, employment equality, and ethical conduct).

While shareholder proposals can advance policies that are aligned with the interests of all shareholders, some shareholders may seek to co-opt this process as a means to further their own specific economic or personal agendas. For example, the animal-rights organization People for the Ethical Treatment of Animals (PETA) commonly utilized shareholder proposals in the 1980's to advocate against animal testing practices by household and cosmetic manufacturers. Advocacy groups, like PETA, often gain ownership of shares of companies they want to target from benefactors. These shares are then sold after the resolution of the proposal or retained for the purpose of bringing later resolutions to public attention. As this example suggests, some shareholders may invest in the firm for objectives other than long-term profit maximization.

Such advocacy can represent a view held only by a minority of shareholders and therefore may not be in the firm's interest to enact. One solution is to allow managers to exclude proposals that, in their opinion, would not be in the best interests of all shareholders. However, allowing such managerial discretion permits management to not

⁵ A large empirical literature discusses different areas of the voting of directors and executive compensation. This work includes Shivdasani and Yermack (1999), Gompers et al. (2003), Bebchuk and Cohen (2005), Faleye (2007), Subramanian and Wang (2009), and Ferri and Sandino (2009).

only exclude proposals that are disadvantageous for the firm, but also bona fide proposals that most shareholders would support but which hinder managements' own interests. Such exclusions can create barriers that restrict shareholder influence on the firm.

In order to define manager's ability to restrict shareholder's access to the proxy, Congress stipulated the specific conditions that managers could exclude proposals from the proxy in Rule 14a-8 of the Securities Exchange Act of 1934. Managers seeking to exclude a proposal from their firm's proxy apply to the SEC to gain an exception to exclude a proposal.

The SEC provides a set of criteria (discussed in the next section) to decide which proposals firms may exclude. These criteria, however, allow attorneys at the SEC considerable discretion in whether to allow a proposal to be excluded (Steel 2016). For instance, firms were historically allowed to exclude proposals regarding CEO succession because such decisions were perceived as being part of ordinary business matters. However, attorneys at the SEC changed their position on such matters in 2009. After this point in time, attorneys at the SEC decided to view CEO succession as a governance matter which should not be excluded from the proxy.⁶

If the SEC deems the proposal as one that fits the exclusion criteria, it issues the firm a "no action letter" saying that SEC staff would not recommend the Commission take enforcement action against the firm if it excludes the proposal from its proxy. While the no-action letter is not technically legally binding and could be challenged in federal

⁶ "We now recognize that CEO succession planning raises a significant policy issue regarding the governance of the corporation that transcends the day-to-day business matter of managing the workforce. As such, we have reviewed our position on CEO succession planning proposals and have determined to modify our treatment of such proposals. Going forward, we will take the view that a company generally may not rely on Rule 14a-8(i)(7) to exclude a proposal that focuses on CEO succession planning." (Staff Legal Bulletin No. 14E; October 27, 2009)

court or by review of the full SEC Commission, in practice the no-action letter settles the dispute. By looking at all the determinations by the SEC in 2015, for instance, Steel (2016) finds no additional actions brought in federal court and notes that the no-action letter normally is “the end of the matter” due to the high costs of litigating in court and relatively limited upside from the perspective of the filer.

With some rare exceptions, shareholder proposals do not bind a firm’s board to actually implement the proposal irrespective of the extent of shareholder support they generate in the proxy vote (Levit and Malenko 2011). Binding proposals can be excluded by the company as they impinge on the boards’ prerogative to conduct the business of the company and are considered as interfering with ordinary business matters.

2.2 Lifecycle of a Shareholder Proposal

Once a shareholder submits a proposal, managers have the choice of including it in their next proxy statement for a vote or seeking exclusion with the SEC. If the firm seeks to exclude the proposal, it must file the reason(s) for its exclusion with the Division of Corporate Finance at the SEC. Firms request permission to exclude proposals by asking the SEC for its assessment of whether it would take any action if the firm excluded a particular proposal. If attorneys at the SEC believe that managers’ reason to exclude to the proposal falls within the acceptable exclusions, the SEC will issue a “no action” letter stating it will not take any action if the firm excludes the proposal.

Managers can seek to have shareholder proposals excluded from the proxy for a variety of eligibility and/or procedural reasons. Rule 14a-8 of the Securities Exchange Act of 1934 offers management reasons under which they can request to exclude a

shareholder proposal from the proxy. Acceptable exceptions include violating a state or federal law, being part of the company's ordinary business operations, containing a special interest, duplicating another previously submitted proposal, or being substantially implemented. Table 2 provides a complete list of reasons that firms can seek exclusion under Rule 14a-8 of the Securities Exchange Act of 1934.

If the SEC attorneys disagree with firm management that the proposal does not sufficiently meet the conditions for exception, the SEC issues a letter noting that the SEC is unable to concur with the firm's desire to exclude the proposal. Without concurrence by the SEC, managers have two additional options at their disposal prior to placing the proposal on the proxy for a shareholder vote. First, management can submit further supporting statements to convince the SEC to reconsider its original decision. In this case, the SEC can either maintain or change its original decision. Alternatively, management can negotiate with the shareholder. If the shareholder is satisfied with their negotiations with management, the shareholder can withdraw the proposal. In doing so, the proposal is omitted from the proxy and hence not voted.

Appendix 1 provides a timeline describing the process of submitting, contesting, and voting on shareholder proposals. Figure 1 provides an illustration of the complete shareholder proposal process.

2.3 Examples of Contested Shareholder Proposals

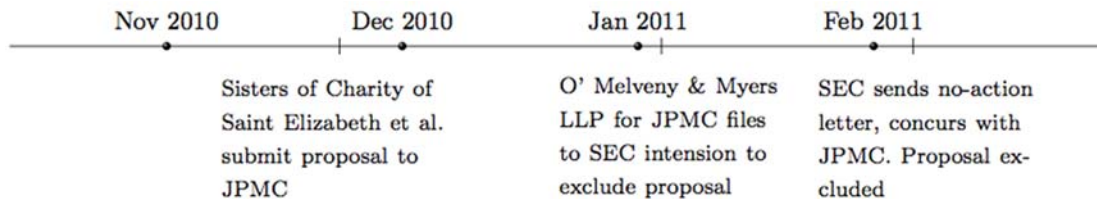
We provide two examples to illustrate the process of resolving contested shareholder proposals. In the first example, the SEC allows the firm to exclude the

proposal from the proxy. In the second example, the SEC does not permit the firm to exclude the proposal, but management implements the proposal prior to the proxy vote.

2.3.1 JP Morgan Chase- Risk Management Shareholder Proposal

In the final week of November 2010 the Sisters of Charity of Saint Elizabeth (hereafter *Sisters*), a faith based socially responsible investing group, submitted a proposal to JP Morgan Chase. They sought JP Morgan Chase to report to its shareholders “the risk management structure, staffing, and reporting lines of the institution and how it is integrated into their business model and across all the operations of the company’s business lines.” In addition, the *Sisters* also provided proof that the group held the required number of shares in JP Morgan Chase and their intention to hold these through until at least the annual meeting. The shareholder proposal letter described their interest in submitting the proposal as part of an attempt to help “restore confidence in the financial system.”

JP Morgan Chase retained the law firm of O’ Melveny and Myers LLP which sent a no-action request on the company’s behalf to the SEC on January 10, 2011. JP Morgan Chase requested that it omit the shareholder proposal from its proxy materials by Rule 14a-8(i)(7) which allowed shareholder proposals that deal with a company's ordinary business operations and 14a-8(i)(10) which allowed exclusion if a firm had substantially implemented the proposal. The SEC responded on February 11, 2011, stating that it concurs with JPMorgan's view that it may exclude the proposal under Rule 14a-8(i)(7). Following this, JP Morgan Chase omitted the proposal from its proxy materials for its shareholder meeting in May 2011.



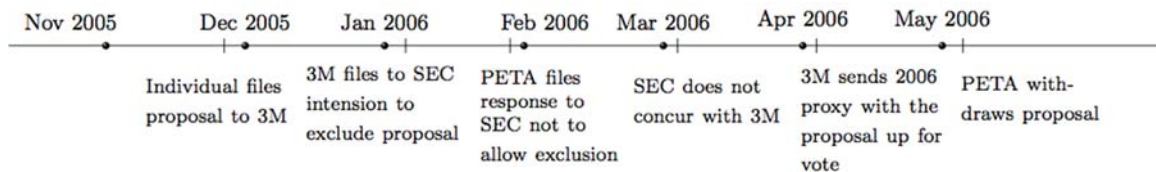
2.3.2 3M- Animal Testing Shareholder Proposal

On November 21, 2005, two shareholders of 3M filed a proposal that sought for 3M to create an animal welfare policy that would reduce and replace the use of animals in testing and also provide better care for animals when used by the company and its contractors. The shareholders also designated the animal right group, People for the Ethical Treatment of Animals (PETA), as their legal representative. On January 6, 2006, 3M filed with the SEC their intention to omit the shareholder proposal from its proxy. 3M argued in its letter that the proposal was already substantially implemented, that the proposal was vague and indefinite, and that it was beyond 3M's power to implement more fully. It requested that the SEC staff concur with them and not recommend enforcement action if 3M excluded the proposal from its 2006 proxy.

On January 27, 2006, PETA filed a response with the SEC to 3M's arguments to omit the proposal rejecting all three of 3M's reasons for exclusion of the proposal. On March 10, 2006, the SEC responded, agreeing with PETA, and rejecting 3M's reasons to omit the proposal. Subsequently, in March 2006, 3M sent out its proxy statement for its annual meeting and included PETA's shareholder proposal regarding the animal welfare

policy. The board recommended shareholders vote against the proposal. Management of 3M argued that the proposal was unnecessary since, in their opinion, they had already sufficiently implemented the animal welfare policy supported by PETA.

On May 8, 2006, the day before 3M’s annual meeting, PETA issued a press release that stated that PETA had successfully negotiated with 3M and that 3M had implemented the desired animal welfare policy. 3M posted its animal welfare policy online and included measures to issue an annual report in compliance with animal welfare policy. The director of PETA’s regulatory testing said: “we are delighted with 3M’s response to our proposal.” Despite the fact that it was never voted on, from PETA’s standpoint, its proposal was successfully adopted and implemented by 3M.



3. Examination of Contested Shareholder Proposals

In Figure 1, we graphically describe the process of contesting and voting on shareholder proposals. Within the figure, we show the relevant section within Section 3 that examines the specific portion of the decision process.

3.1 Contested Shareholder Proposal Sample

We examine contested proposals issued under Exchange Act Rule 14a from 2003-2013. To find contested shareholder proposals prior to October 2007, we utilize the legal

database IntelliConnect by Wolters Kluwer to manually collect the proposals and the related no-action letters. After October 1, 2007, we collect these letters online at the Division of Corporation Finance at the SEC.

For each contested proposal, we acquire the original shareholder proposal, correspondence between the shareholder, firm, and SEC, and the final opinion letter drafted by the SEC attorney. We manually code each proposal along the following dimensions: the firm name to which the proposal was submitted, the proponent, the type of proposal, the proposed reason(s) for exclusion by the firm, and the final decision of the SEC. We classify proposals by topic matter along the lines of prior research (Gillan and Starks 2000, Gordon and Pound 1993, Renneboog and Szilagyi 2011, Thomas and Cotter 2007). For the proposals that the SEC does not allow exclusion of, we track the proposal to determine whether it was voted on or withdrawn. We utilize the ISS Voting Analytics database to find proposals voted on at shareholder meetings and the results of those votes. To find proposals that were withdrawn, we read company proxies, search the Factiva news database, and review firm websites to ascertain each proposal's outcome.

For each proposal that is contested, we manually collect the number of shares held by the proponent from documents submitted to the firm by the shareholder along the proposal. For 77% (3,242) of the shareholder proposals contested by management we are able to acquire the amount of ownership. Missing observations arise for three reasons. First, some proposals (2.2% of the sample) say that the letter is attached, but the letter is not available (presumably due to errors in the scan of the document by the SEC). Second, some proposals (10.4% of the sample) simply assert that the shareholder has the minimum \$2,000 in shareholdings, but it does not quantify the exact number of shares.

Finally, for some other proposals (10.4% of the sample) the information is simply omitted from the original proposal sent by the shareholder.⁷

To supplement the contested proposals data, we utilize CRSP and Compustat for accounting and market pricing data. We find institutional ownership from the Thomson Reuters institutional database and board data from BoardEx. The table descriptions provide details on the particular definitions for each variable utilized in the analysis.

3.2 Frequency of Contested Proposals

We present in Table 1 statistics on the set of 14a-8 shareholder proposals that shareholders sought to include in the proxy in our same period 2003-2013 (i.e. including those not contested by the firm). Of the 10,568 proposals submitted in this time, 4,226 (or 40 percent) were contested by firms, suggesting that contesting shareholder proposals is not an unusual phenomenon. Firms are generally successful in this effort, with the SEC allowing exclusion of over 72 percent (3,049) of the proposals. But in a significant number (1,177) of cases, firms are forced to include the shareholder proposals that they initially sought to exclude. Our analysis focuses on these proposals. The proportion of shareholder proposals contested by firms has remained relatively stable over the sample period from 2003-2013. In this time, approximately 350-450 proposals per year were contested by firms. The likelihood of exclusion during this time ranges from a high of 35% in 2005 to a low of 26% in 2013.

As discussed in Section 2, firms that seek to exclude proposals must provide reasons for the basis of seeking exclusion. Firms may seek exclusion of a particular

⁷ Data on the shareholdings is less frequently available for proposals that are not contested by the firm and appear on the proxy statement. Out of a 100 randomly sample proxy proposals, data on shareholdings is only available for 59 of the shareholder proposals.

proposal for multiple reasons. In responding to a firm's appeal to exclude a proposal, the SEC cites whether it agrees or disagrees with each reason cited by the firm. Managers have the ability to contest individual proposals for more than one reason, although the SEC only requires one accepted reason to permit a proposal's exclusion.

Table 2 details the reasons provided by firms, the frequency that reason is cited, and the likelihood that the SEC permits an exclusion. The three most frequently cited reasons are when the proposal violates procedural requirements, includes false or misleading statements, or deals with ordinary business operations. Firms succeed in excluding proposals on the basis that the proposal violates procedural requirements or relates to ordinary business matters in over 70% of cases. However, firms are considerably less successful in arguing that proposals include false or misleading statements as the SEC only grants an exclusion in 20% of these instances.

Shareholders submit a variety of different proposals. Table 3 describes the frequency of the different types of proposals and the likelihood that they are contested by firms. Social responsibility and environmental proposals are most commonly submitted by shareholders with 26% (2,738 out of 10,568) of all proposals submitted by shareholders being of this type. Social/Environmental proposals also consist of the largest proportion of proposals that are contested by firms. Firms contest 42% (1,137 of 2,738) of all social/environmental proposals they receive and the SEC offers the firm the opportunity to exclude in 68% (769 of 1,137) of these cases. This is only slightly lower than the 72% (3,049 of 4,226) likelihood that the SEC provides for exclusion of all contested shareholder proposals.

Table 4 displays descriptive statistics of firms that contest at least one proposal that they receive. Firms that contest proposals receive 3 proposals on average per year and contest nearly 2 on average per year. In comparison to firms that receive but do not contest any proposals, several differences emerge. In particular, firms that contest proposals tend to be larger (33.8 billion vs. 13.8 billion in market capitalization, t:stat: 14.2) and receive more proposals on average (3.1 vs. 1.7 proposals, t:stat: 16.9).

3.3 Who Receives and Contests Proposals?

We first examine the characteristics of firms that receive proposals. We do so by examining the probit model in Table 5, model (1):

$$\Pr(\text{Receive Proposal})_i = \alpha_i + \beta_1 \text{Mkt Cap}_i + \beta_2 \text{Return}_i + \beta_3 \text{ROA}_i + \beta_4 \text{Leverage}_i + \beta_5 \% \text{ Inst. Holdings}_i + \beta_6 \text{Board Size}_i + \beta_7 \text{CEO is Chair}_i + \epsilon_i$$

The dependent variable *Receive Proposal* is an indicator variable that takes the value one when the firm receives at least one shareholder proposal in a given year and zero otherwise. Following the prior literature on shareholder proposals we include a variety of explanatory variables including size, firm performance, and governance (John and Klein 1995, Karpoff et al. 1996). Prior work has suggested that firms with larger boards and where the CEO is also the chairperson indicates lower quality governance (Yermack 1996, Hallock 1997). Therefore, we include variables measuring these two features in the regression to capture the quality of governance in the target firms.

Results are presented in Table 5. Model 1 presents the baseline estimates. We find that firms that are larger, more leveraged, have greater institutional holdings, have larger board size, and where the CEO is also chairperson are all more likely to receive proposals from shareholders. Firms with worse market performance, as captured by stock returns,

and worse accounting performance, as measured by ROA, are also more likely to receive proposals in a given year. This result is consistent with shareholders being more interested at seeking changes at underperforming firms. In model (2) of Table 5, we include a variable that identifies firms that receive a proposal in the prior year. The positive and significant coefficient on *Previously Received Proposal* suggests that firms are substantially more likely to receive a shareholder proposal in the current year if they received one in the year before suggesting that shareholders target the same firm for several years in a row. In particular, the coefficient values suggest that if a firm received a proposal in the prior year, it is 35% more likely to receive at least one in the current year. This variable is also economically significant in the sense that it contributes to a 15 percent increase in the adjusted-R2 from 31% in model (1) to 46% in model (2).

The set of contested proposals is a subset of the total set of submitted proposals. We examine the type of firms that contest proposals in more depth, and present the results from a probit model in columns (3) and (4) of Table 5. In these regressions, the dependent variable equals one if the firm contests any of the proposals it receives and zero otherwise. Column (4) includes all variables that are included in column (3) and in addition identifies firms that have previously contested shareholder proposals (*Previously Contested Proposals*). Results from columns (3) and (4) suggest that larger firms are more likely to contest proposals. Firms with worse performance - as measured by market returns or accounting measures are less likely to contest shareholder proposal (results on performance variables have weaker statistical significance in column (4)).

On the governance side, firms with larger boards and those with CEO-Chair duality are more likely to contest proposals. Following prior work that suggests that firms

with larger boards and CEO-Chair duality have less effective governance mechanisms, this suggests that firms with less effective governance mechanisms are more likely to contest proposals. We also find that firms with greater institutional holdings are less likely to contest a proposal. Column (3) results suggest that a one standard deviation increase in institutional ownership around the mean is associated with a 5% decrease in the likelihood of contesting a proposal. When seen in combination with results in columns (1) and (2), it suggests that firms with a greater institutional shareholder base are more likely to receive, and less likely to contest those proposals.

Firms that receive more proposals are also more likely to contest at least one of the proposals they receive. In particular, economic magnitudes of the estimates suggest that firms that receive 3 proposals are 10% more likely to contest a proposal than firms that receive only 1 proposal (i.e. the likelihood of contesting a proposal rises from .42 to .52). As with firms that receive proposals, firms that contest proposals in the prior year also are more likely to contest a proposal in a current year. Interpreting the magnitude of the coefficient on *Previously Contested Proposals*, if managers contest a proposal in the prior year, they are 26% more likely to contest a proposal in the current year. This suggests some stickiness in how managers at individual firms decide to address the proposals that they receive.

In models (5) and (6), we exclude firms that always contest proposals from our analysis. There is a subsample of firms that contest all proposals they receive (N=364) and therefore it may be firm policy to simply contest all proposals regardless of content or circumstances. When these firms are removed from the analysis, we continue to find

similar results with the number of proposals the firm receives and whether they contested a proposal in the prior year being positively correlated with the choice to contest.

Overall, the results in Table 5 indicate both similarities and differences in the types of firms that receive proposals and those that seek exclusion of proposals. Larger firms are more likely to both receive proposals and contest proposals. In addition, firms that had previously received or contested a proposal in the prior year are also more likely to do so in the following year. On the other hand, poorly performing firms are more likely to receive proposals and less likely to contest them. Similarly, firms with greater institutional holdings are more likely to receive shareholder proposals, and they are also significantly less likely to contest the proposals they receive. This could arise from institutional holders using the proxy process as a medium for shareholder engagement.

3.4 Shareholding Levels of Proposal Submitters

We provide descriptive evidence on the extent of shares held by investors that submit proposals. As discussed earlier, shareholders have to own only \$2,000 worth of shares or 1 percent of the share capital for one year to be able to file proposals. The low \$2,000 requirement had led to calls for increasing the ownership levels required for shareholders to be able to file proposals.⁸

Table 6 provides descriptive statistics of the shareholdings data for proposals that are contested. The mean shareholding by investors that file contested proposals is \$9.6

⁸ For instance, SEC Commissioner Daniel Gallagher argued that “activist investors and corporate gadflies have used these loose rules to hijack the shareholder proposal system,” adding that “the stock ownership threshold for submitting shareholder proposals should increase from an “absurdly low” \$2,000 to as high as \$2 million.” (Remarks at the 26th Annual Corporate Law Institute, Tulane University Law School: Federal Preemption of State Corporate Governance Commissioner Daniel M. Gallagher New Orleans, LA March 27, 2014)

million and the median is \$43,000. Univariate evidence suggests that larger shareholders have a greater success in seeing their proposals included in the proxy. The average shareholder whose proposal is contested and later settled has 18.7 million dollars in shareholdings on average as compared with 6.8 million on average for those that are contested and later excluded. This difference is statistically significant at the 1% level (t:stat 4.5).

3.5 Contested Proposals that are Withdrawn

Among the 4,226 proposals that firms contest from 2003-2013, some of these proposals will be placed on the proxy and voted on whereas others will be excluded from the proxy. The exclusion from the proxy can arise in several ways. The SEC could rule favorably for the firm and allows the proposal to be excluded from the proxy. Alternatively, the firm can seek a dialogue with the shareholder to seek withdrawal of the proposal (i.e. the shareholder can then voluntarily remove the proposal from the proxy after it is satisfied with the firm's implementation of its suggestions). The firm can also simply decide to implement the proposal, thereby eliminating the need to place the proposal on the proxy.

We consider proposals as withdrawn when the shareholder formally withdraws the proposal in a written letter or the firm contacts the SEC to acknowledge that they substantially implemented the proposal (i.e. implicitly withdrawing the proposal since it is no longer a proposal for discussion). Out of the 3,187 contested proposals which are never subject to a shareholder vote, 21% (i.e. 668 proposals) are withdrawn and never formally voted upon by shareholders.

In Table 7, we examine factors that contribute to the withdrawal of shareholder proposals. In column (1), we find that firms with better stock-return and accounting performance are more likely to have proposals withdrawn. Further, firms with a greater proportion of institutional shareholders are more likely to have a proposal withdrawn. A one standard deviation increase in institutional ownership around the mean is associated with a 5% increase in the likelihood of withdrawing a proposal.

We look at how variation in the amount of shares held by submitters influences the likelihood of a proposal being withdrawn. We hypothesize that shareholders with greater holdings are more influential and are more likely to have dialogue with managers that would facilitate implementation of their proposal prior to a shareholder vote. We found preliminary evidence of this in the descriptive statistics in Table 6. When included in the regression on Table 7, we find that the level of ownership is also significant. A one standard deviation increase in shareholder's stock holdings over the mean (i.e. from 9.3 million to 60 million) is associated with a 7% increase in the likelihood of withdrawing a proposal (i.e. from .35 to .42).

Managers can begin a dialogue with shareholders after contesting a proposal which could lead to a negotiated settlement prior to voting. The decision to withdraw can occur before or after the SEC reaches its decision of whether the proposal is allowed to be excluded from the proxy. In column (2) of Table 7, we examine how the SEC's rejection of managers' attempt to exclude the proposal (measured by indicator variable *SEC Rejects Exclusion*) influences the likelihood of its withdrawal. We find that once the SEC rejects the managers' attempt to exclude the proposal, the likelihood of having the proposal settled and withdrawn increases significantly. Specifically, when the SEC

rejects managers' request to exclude the proposal, the likelihood of the proposal being settled increases by 49%. This suggests that the management becomes more willing to negotiate with shareholders once the SEC forces managers to include the proposal on their proxy (notwithstanding an alternative resolution with the shareholder).

Different types of shareholders and proposal types also potentially lead to variation in the likelihood of the proposal being settled and withdrawn. We classify shareholders who submit proposals into seven groups: hedge funds, socially responsible funds, pension funds, non-profits, individuals, groups (i.e. a mixture of different types of shareholders), and others.⁹ We classify proposal types along eight different categories as described in Table 3. In Table 7, model 3 we add additional indicator variables for each of these submitter and proposal types. As compared with individuals (i.e. our base submitter category), proposals submitted by non-profits, socially responsible funds, and pensions are all more likely to be withdrawn (for the sake of parsimony we do not tabulate the submitter and proposal types). This is consistent with the impression that these groups are more willing to negotiate an amicable compromise with managers. As compared with the type of submitter, we do not find any particular category of proposals being more likely to be withdrawn. Although there is likely to be some selection on the types of proposals certain groups will submit, this suggests that the propensity of a proposal being withdrawn is related more highly to the type of shareholder submitting the proposal than the type of proposal itself. Including the submitter and proposal type

⁹ "Others" designates submitters that do not fall into any other easily distinguishable category with a significant number of shareholders. These include, for instance Loyola University (an educational institutional) and Marco Consulting Group (an investment consulting firm). Recent work that investigates activism by different constituencies includes pension funds (Gillian and Starks 2000, Karpoff 2001), hedge funds (Brav et al. 2008, Klein and Zur 2009), and social motivated groups (Agrawal 2011).

improves the R2 of the regression from 9 percent to 19 percent suggesting that these factors play an important role in the likelihood of a proposal being settled.

3.6 Contested Proposals that are Placed on the Proxy and Voted

Shareholder proposals that a firm contests, but the SEC does not grant the right to exclude (or the firm does not reach some private resolution with the shareholder leading to its withdrawal) are placed on the proxy for a shareholder vote. Between 2003-2013, 1,028 or 24% of all proposals that are contested by management appear on the proxy and are voted on by shareholders. In Tables 8 and 9, we examine the factors that contribute towards their approval by shareholders.

Out of the 1,028 proposals that are voted on by shareholders, 18% (184 proposals) ultimately gain shareholder approval. In Table 8, we investigate the characteristics of those proposals that are approved by shareholders. Column (1) in Table 8 presents results from a probit regression where the dependent variable is one if the vote of the contested proposal is approved by shareholders and zero otherwise. We include controls for firm characteristics as in the prior regression analysis as well as an additional indicator regarding support by Institutional Shareholder Services (ISS) of the proposal. ISS is an influential proxy advisory firm that provides recommendations to clients about how to vote in regards to shareholder proposals.¹⁰ The *ISS Support* variable is equal to one when

¹⁰ A larger literature finds that ISS has a significant impact on voting (Cai et al. 2009, Bethel and Gillan 2002, Choi et al. 2008, Alexander et al. 2009, Daines et al. 2009, and Larcker, McCall, and Ormazabal 2014).

ISS recommends supporting the proposal and management recommends voting against and zero otherwise.¹¹

We find that proposals submitted by investors with fewer shareholdings and at smaller firms are statistically less likely to receive approval from shareholders. However, neither of the coefficients implies a significant economic impact. Proposals at firms with greater extent of institutional investment are more likely to gain majority support. When a proposal has ISS support, it is substantially more likely to receive majority support of shareholders. Specifically, the likelihood of the contested proposing passing is 20% higher if the proposal has ISS support and management rejects it. It should be noted that the decision for ISS to support a proposal endogenously reflects its opinion as well as those of its institutional clients.

In model (2) of Table 8, we include additional indicator variables for different submitter and proposal types. We find that the type of submitter has no impact on the likelihood that the contested proposal that is later voted upon gets approved. Notably, this differs from the results in Table 7 where the submitter type influenced the likelihood of withdrawal. We do find that social/environmental proposals and board proposals are significant less likely to receive shareholder approval.¹²

Most shareholder proposals require 50% approval by shareholders for passage (Cunat, Gine, and Guadalupe 2012, Ertimur, Ferri, and Oesch 2013).¹³ In our sample, contested proposals that gain shareholder support win on average 64.8% of the vote,

¹¹ If we simply examine the propensity for a proposal to pass if ISS supports the proposal (i.e. unconditional on management's view), it perfectly predicts whether a proposal passes. That is, when ISS does not support a proposal, it never passes during the sample period.

¹² This result differs from some prior research that suggests that proposals sponsored by institutional groups receive greater support (Gillan and Starks 2000, Gordon and Pound 1993, Thomas and Kenneth 1998).

¹³ In our sample, 1019 of the 1025 proposals that are contested and voted require 50% approval for passage. This is similar to the rate of all proposals that were not contested and voted in which 99% of these proposals required 50% approval to pass.

while those that do not pass receive an average approval rate of 21.4%. The average approval rate for all contested proposals is 29.2%. To put this number in comparison, the average approval rate for all shareholder proposals that are voted on is 35.7% suggesting that contested proposals that are voted on are only marginally less popular than shareholders proposals that are voted on in general.

In Table 9, we explore characteristics associated with explaining this variation in shareholder approval. The dependent variable is a continuous variable measuring the percentage of shareholder votes supporting the proposal. As suggested by Table 8, proposals that gain ISS support receive far higher shareholder approval. Also consistent with prior work (e.g. Gillan and Starks 2000), shareholder approval is higher when there are greater levels of institutional ownership. The level of shareholders held by the submitter is not significantly associated with the percent approval by shareholders overall (i.e. weakly statistically significant in regression (1), but not in (2)). All types of proposals, as compared to the base proposal type of antitakeover related device proposals, are less likely to gain as much approval.

4. Discussion

Proposals that are contested by management and not allowed to be excluded from the proxy eventually reach a resolution by being placed on the proxy for a vote, implemented by the firm, or withdrawn by the shareholder (which is typically akin to being implemented by the firm). Successful shareholder proposals from the standpoint of the submitter can arise from either approval by shareholders or implementation by the firm.

Interestingly, we find a discrepancy in the types of contested proposals that are substantially implemented during negotiations and those that win as a result of shareholder votes. For example, over our sample period, 257 social and environmental proposals that were originally contested by firms are withdrawn by the shareholder or substantially implemented by the firm. However, none of the 270 contested social/environmental proposals that are placed on the proxy for a shareholder vote win approval by shareholders. Managers may decide to implement the proposal to the submitter's satisfaction as a second best solution to avoid potential damage to a firm's public image in a visible corporate publicity battle. For instance, the activist group, the People for the Ethical Treatment of Animals (PETA), sent a shareholder proposal to Chipotle, a Mexican restaurant chain, calling on the firm to purchase chicken from suppliers that used certain less cruel slaughter methods. The management of Chipotle contested the proposal, but were not allowed to exclude the proposal. Rather than placing it on the proxy and potentially damaging the reputation of the brand, management substantially implemented PETA's proposal. According to PETA, "we purchase small amounts of stock; just enough to be able to submit shareholder resolutions...Our resolution called upon Chipotle to buy chicken from suppliers that used less cruel methods. They agreed to do just that in exchange for us withdrawing the resolution."¹⁴

We find that 19% of contested proposals win shareholder approval. Although this magnitude might appear low at first, it ought to be compared with the average level of support for non-contested proposals that are voted upon. Only 25% of non-contested

¹⁴ "PETA's Shareholder Influence," *QSR*, Mark DeSorbo.
(<http://www2.qsrmagazine.com/articles/exclusives/0308/peta-1.phtml>)

proposals win shareholder support. While this is relatively higher, it suggests that contested proposals are not entirely frivolous claims by marginal shareholders.

The type of proposals that gain acceptance by shareholders is dynamic and changing over time. We classify the SEC's decision to exclude a proposal based on the exclusion criteria outlined in Table 2. However, over time the SEC has evolved in how it has interpreted these criteria. For example, in late 2002, the SEC decided to reinterpret equity compensation plans for senior executive directors as no longer ordinary business, but as matters of governance going forward.¹⁵ This change in interpretation created a significant change in the number of proposals that would previously have been excluded. From 2003, the first year after the change in the SEC's interpretation, to 2013, 1,495 shareholder proposals were submitted and allowed to be placed on the proxy. Of these, 192, or 13%, won approval by shareholders. Without the change in the stance by the SEC, these proposals would have continued to have been excluded.

5. Conclusion

Proposals by shareholders offer a direct means for investors to seek changes at firms. However, not all proposals suggested by shareholders appear on the proxy. Following a set of criteria outlined in the Securities Exchange Act of 1934, managers can seek permission from the SEC to exclude certain types of proposals. In this paper we examine both the impetus for and consequences of contesting shareholder proposals. By investigating each stage in the process, we seek to understand how these proposals eventually come to a resolution by being dismissed by the SEC, implemented by the firm, or rejected by shareholders

¹⁵ See "Division of Corporation Finance: Staff Legal Bulletin No. 14A" (July 12, 2002)

We show that managers often contest the proposals that they receive. From 2003-2013, 40% of all proposals suggested by shareholders are contested by management. However, in over a quarter of these cases, the SEC does not permit the firm to exclude the proposal. More significantly, the proposals that are contested by management represent more than the narrow interests of a minority shareholder. We find that 19% of proposals originally contested by managers, but placed to a vote, win shareholder approval.

Our analysis provides several opportunities for future inquiry. One important question is how the SEC decides to classify different matters and how this changes over time. While attorneys at the SEC may see a matter as part of ordinary business operations one year, the next they may see it as a governance matter. Such distinctions critically influence the type of matters that are potentially excluded from the proxy. Elucidating the process by which the SEC's interpretation evolves over time would provide insight into the types of matters that appear on the shareholder proxy statement.

We also find numerous proposals that are withdrawn by submitters after negotiations with the firm. The likelihood that managers appear willing to negotiate with the shareholder appears to rise after the SEC concludes that the firm cannot exclude the proposal from its proxy. Understanding how managers and shareholders undertake these private negotiations would provide deeper insights into how changes are made outside the proxy process.

Although we find that 19% of proposals that are contested by management are approved by shareholders, this does not mean they were necessarily implemented in full.

Shareholder proposals are typically only advisory in nature.¹⁶ By initially contesting the proposal, management conveyed their disinclination to implement the proposal. Consequently, it would be worthwhile to investigate whether proposals that are contested, but later approved by shareholders are more or less likely to be fully implemented by the firm.

A better understanding of contested shareholder proposals contributes to building a more complete empirical picture of the governance process that occurs between shareholders and investors. The shareholder proposal process seeks to mediate conflict between the owners and managers of firms. To this extent that this process is influenced by managerial or regulatory (i.e. SEC) discretion, it can either improve the quality of the process or impede the resolution of shareholder-manager differences.

¹⁶ In some states (e.g. Delaware), proposals can only be advisory in nature. As described by the SEC Division of Corporate Finance: “we have found that proposals that are binding on the company face a much greater likelihood of being improper under state law and, therefore, excludable under rule 14a-8(i)(1).” (Division of Corporation Finance, Staff Legal Bulletin No. 14).

References

- Agrawal, A.K., 2011. Corporate governance objectives of labor union shareholders: evidence from Proxy Voting. *Review of Financial Studies*, 25(1), pp.187–226.
- Alexander, C. R., Chen, M. A., Seppi, D. J., & Spatt, C. S. (2010). Interim news and the role of proxy voting advice. *Review of Financial Studies*, pp. 4419-4454.
- Becht, M., Bolton, P. & Ailsa, R., 2007. Corporate law and governance. *Handbook of Law and Economics*, 2(07).
- Berle, A.A. & Means, G.C., 1932. *The Modern corporation and private property* Adolph A Berle et al., eds., Transaction Publishers.
- Bethel, J. E., & Gillan, S. L. 2002. The impact of the institutional and regulatory environment on shareholder voting. *Financial Management*, pp. 29-54.
- Black, B. S. (1998). Shareholder activism and corporate governance in the United States. *As published in The New Palgrave Dictionary of Economics and the Law*, 3, 459-465.
- Brav, A., Jiang, W., Partnoy, F., & Thomas, R. 2008. Hedge fund activism, corporate governance, and firm performance. *The Journal of Finance*, 63(4), pp.1729-1775.
- Brown, J. Robert. 2016. Protecting Shareholders From Themselves: The SEC and Restrictions on Shareholder Voting Rights, Working Paper.
- Cai, J., Garner, J.L. & Walkling, R.A., 2009. Electing directors. *The Journal of Finance*, 64(5), pp. 2389–2421.
- Carleton, W.T., Nelson, J.M. & Weisbach, M.S., 1998. The influence of institutions on corporate governance through private negotiations : Evidence from TIAA-CREF. *Journal of Finance*.
- Chidambaran, N.K. & Woidtke, T., 1999. The role of negotiations in corporate governance : evidence from withdrawn shareholder-initiated proposals. *New York University Working Paper*, (December).
- Choi, S.J. & Fisch, J.E., 2003. How to fix Wall Street : A Voucher financing proposal for Securities Intermediaries. *The Yale Law Journal*.
- Choi, S.J., Fisch, J.E. & Kahan, M., 2008. Director elections and the influence of proxy Advisors. *SSRN Electronic Journal*.
- Cotter, J., Palmiter, A., & Thomas, R. 2010. ISS recommendations and mutual Fund Voting on Proxy Proposals. *Villanova Law Review*, 55, 1.

- Cuñat, V., Gine, M., & Guadalupe, M. 2012. The vote is cast: the effect of corporate governance on shareholder value. *The Journal of Finance*, 67(5), pp. 1943-1977.
- Daines, R. M., Gow, I. D., & Larcker, D. F. (2010). Rating the ratings: How good are commercial governance ratings?. *Journal of Financial Economics*, 98(3), pp.439-461.
- Ertimur, Y., Ferri, F. & Muslu, V., 2010. Shareholder activism and CEO pay. *Review of Financial Studies*, 24(2), pp. 535–592.
- Ertimur, Y., Ferri, F. & Oesch, D., 2011. Shareholder votes and proxy advisors: Evidence from Say on Pay. *Working Paper*, (212).
- Fama, E.F. & Jensen, M.C., 1983. Separation of ownership and control. *The Journal of Law and Economics*, 26.
- Ferri, F. 2012. 11. ‘Low-cost’ shareholder activism: A review of the evidence. *Research Handbook on the Economics of Corporate Law*, 192.
- Gillan, S.L. & Starks, L.T., 2000. Corporate governance proposals and shareholder activism : the role of institutional investors. *Journal of Financial Economics*, 57, pp.275–305.
- Gordon, L. & Pound, J., 1993. Information, ownership structure, and shareholder voting: evidence from shareholder sponsored corporate governance proposals. *The Journal of Finance*.
- Gox, R.F., Imhof, F. & Kunz, A., 2011. Say on pay design and its repercussion on CEO investment incentives , compensation and firm profit . *Working Paper*, pp. 1–31.
- Grossman, S.J. & Hart, O.D., 1980. Takeover bids , the free-rider problem , and the theory of the corporation , *The Bell Journal of Economics*, 42-64. 11(1), pp. 42–64.
- Guercio, D. Del & Hawkins, J., 1999. The motivation and impact of pension fund activism. *Journal of Financial Economics*, 52, pp. 293–340.
- Hallock, K. F. 1997. Reciprocally interlocking boards of directors and executive compensation. *Journal of financial and Quantitative Analysis*, 32(03), pp. 331-344.
- John, K. & Klein, A., 1995. Shareholder proposals and corporate governance. *NYU Stern Working Paper*.
- Karpoff, M.J., 2001. The impact of shareholder activism on target companies: A survey of empirical findings. *Unpublished manuscript, University of Washington*.

- Karpoff, M.J., Malatesta, H.P. & Walkling, A.R., 1996. Corporate governance and shareholder initiatives: Empirical evidence. *Journal of Financial Economics*, 42, pp. 365-395
- Klein, A., & Zur, E. 2009. Entrepreneurial shareholder activism: Hedge funds and other private investors. *The Journal of Finance*, 64(1), pp. 187-229.
- Larcker, D.F., McCall, A.L. & Ormazabal, G., 2012. Proxy advisory firms and stock option repricing. *Rock Center for Corporate Governance Working Paper*, (100).
- Larcker, D. F., McCall, A. L., & Ormazabal, G. (2014). Outsourcing shareholder voting to proxy advisory firms. *Rock Center for Corporate Governance at Stanford University Working Paper*, (119).
- Levit, D. & Malenko, N., 2011. Non-binding voting for shareholder proposals. *Journal of Finance*, pp. 1–69.
- Opler, T.C. & Sokobin, J., 1995. Does coordinated institutional activism work? An analysis of the activity of Council of Institutional Investors. *Ohio State University and Southern Methodist Working Paper*.
- La Porta, R., Lopez-de-silanes, F. & Shleifer, A., 1999. Corporate ownership around the world. *The Journal of Finance*, 54(2), 471-517.
- Pound, J. 1991. Proxy voting and the SEC: Investor protection versus market efficiency. *Journal of Financial Economics*, 29(2), 241-285.
- Pozen, R. C. 1994. Institutional investors: The reluctant activists. *Harvard Business Review*, 72(1), 140-149.
- Prevost, A.K. & Rao, R.P., 2000. Of what value are shareholder proposals sponsored by public pension funds?. *The Journal of Business*, 73(2), pp. 177–204.
- Prevost, A.K., Rao, R.P. & Williams, M.A., 2009. Labor Unions as Shareholder Activists: Champions or Detractors? Andrew K. Prevost. *Working Paper*, pp. 1–31.
- Regulation, C. on C.M., 2009. *Regulatory Principles*, May, pp. 27–32.
- Romano, R., 2001. Less is More : Making institutional investor activism a valuable mechanism of corporate governance less is more . *Yale Journal on Regulation*, 18, 174.
- Schwartz, D.E. & Weiss, E.J., 1977. An assessment of the SEC shareholder proposal rule. *The Georgetown Law Journal*, 65, pp.635–690.

- SEC Staff Legal Bulletin No. 14E, Publication of CF staff legal bulletin, October 27, 2009.
- Shleifer, A. & Vishny, R.W., 1986. Large shareholders and corporate control. *Journal of Political Economy*, 94(3), pp. 461–488.
- Strickland, D., Wilesb, K.W. & Zenner, M., 1996. A requiem for the USA is small shareholder monitoring effective ? *Journal of Financial Economics*, 40, pp. 319–338.
- Steel, R. 2016. The Underground Rulification of the Ordinary Business Operations Exclusion: A Return to Cracker Barrel? *Columbia Law Review*, Forthcoming.
- Thomas, R. S., & Martin, K. J. 1998. Should labor be allowed to make shareholder proposals. *Washington Law Review*, 73, 41.
- Thomas, R.S. & Cotter, J.F., 2007. Shareholder proposals in the new millennium: Shareholder support, board response, and market reaction. *Journal of Corporate Finance*, 13(2-3), pp. 368–391.
- Thomas, R.S., Palmiter, A.R. & Cotter, J.F., 2012. Dodd-Frank’s Say on Pay: Will it Lead to a Greater Role for Shareholders in Corporate Governance? *Cornell Law Review*, 97.
- Wahal, S., 1996. Pension fund activism and firm performance *The Journal of Financial and Quantitative Analysis*, 31(1), pp.1–23.
- Yermack, D., 2010. Shareholder Voting and corporate Governance. *Annual Review of Financier Economics*, 2(1), pp. 103-125.
- Zingales, L., 2009. The future of securities regulation. *Journal of Accounting Research*, 47(2), pp. 391–425.

Figure 1: Shareholder Proposal Process

This figure shows the life cycle of proposals that are submitted by shareholders to firms. Sections describe the part of the paper with the associated analysis for the point of the decision process.

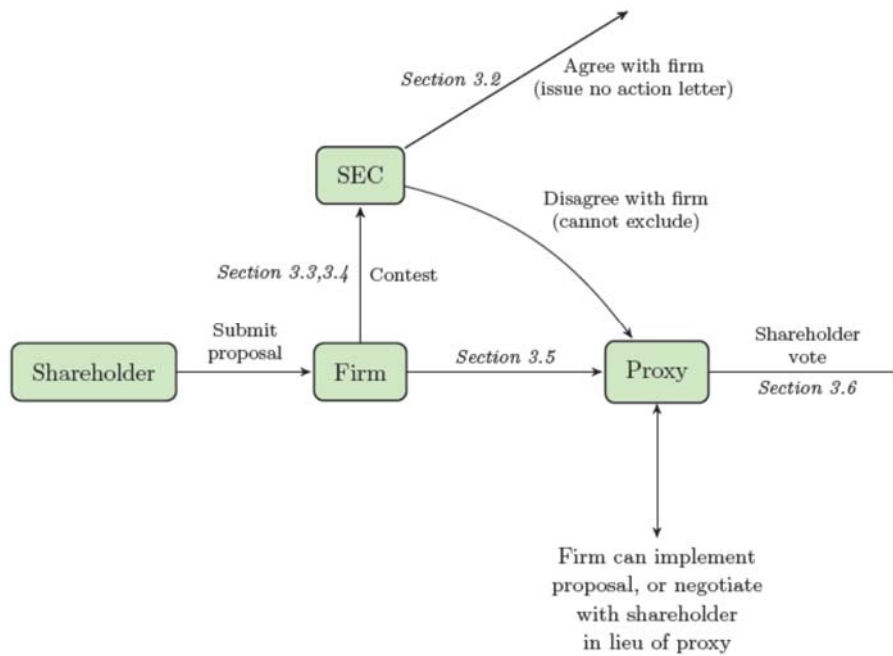


Table 1: Shareholder Proposals Received, Contested, and Excluded by Meeting year

This table shows the total number of shareholder proposals received by firms, the number of proposals contested by firms under Exchange Act Rule 14a-8, and the number that the SEC allows firms to exclude from their proxy by meeting year.

Meeting year	# Shareholder Proposals	# Proposals Contested by Firms	# Proposals that SEC Allows Exclusion
2003	878	400	276
2004	956	430	282
2005	922	444	323
2006	905	378	270
2007	964	369	273
2008	1,138	433	350
2009	1,112	400	247
2010	1,014	377	284
2011	790	315	229
2012	897	334	259
2013	992	346	256
Total	10,568	4,226	3,049

Table 2: Frequency of Reasons for Exclusion of Shareholder Proposals

This table provides the reasons that firms seek to exclude shareholder proposals under the Exchange Act Rule 14a-8 and the reasons the SEC allows the firm to exclude the proposal. The tables provides all reasons for all contested shareholder proposals from 2003 – 2013. Firms can contest individual proposals for multiple reasons which explains why the overall total number of reasons (N=5,189) exceeds the number of contested shareholder proposals (N=4,226).

Reason to Exclude Shareholder Proposal	Overall	SEC Does Not Allow Exclusion	% Overall	SEC Allows Exclusion	% Overall
Eligibility/Procedural requirements	1,242	339	27%	903	73%
Includes materially false or misleading statements in proposal	1,021	817	80%	204	20%
Ordinary business operations	1,021	306	30%	715	70%
Already substantially implemented	620	338	55%	282	45%
Violates state, federal, or foreign law	283	170	60%	113	40%
Company lacks power to implement proposal	244	189	77%	55	23%
Not subject for action by shareholders under the by-laws of the firm	104	82	79%	22	21%
Related to Director Elections	122	55	45%	67	55%
Duplicative of another shareholder proposal	162	43	27%	119	73%
Conflicts with company's own proposal submitted at the same meeting	154	27	18%	127	82%
Resubmission of a proposal	67	4	6%	63	94%
Personal grievance	50	33	66%	17	34%
Relates to operations which account for < 5% of total assets	37	30	81%	7	19%
Dividends	26	5	19%	21	81%
Others	36	19	53%	17	47%
Total	5,189	2,457	47%	2,732	53%

Table 3: Types of Shareholder Proposals Received, Contested, and Excluded

This table describes the number of shareholder proposals received by firms, the number of proposals contested by firms under Exchange Act Rule 14a-8, and the number that the SEC allows firms to exclude from their proxy by proposal submitter type.

Proposal Type	# Shareholder Proposals	# Proposals Contested by Firms	# Proposals that SEC Allows Exclusion
Social/Environmental	2,738	1,137	769
Compensation Related	2,141	828	538
Board and Committee Proposals	1,986	551	411
Antitakeover Devices	1,836	560	384
Other Miscellaneous Issues	793	608	562
Issues Related to Annual Meeting	602	357	241
Voting Proposals	336	91	54
Auditor Related	136	94	90
Total	10,568	4,226	3,049

Table 4: Summary Statistics of Firms Contesting Proposals

This table shows the summary statistics of firms with contested and non-contested proposals from the CRSP/COMPUSTAT population. The analysis is at a unique firm-year level in the period 2003 – 2013. Market Cap is share price times the number of shares outstanding as of reporting date and expressed in millions of dollars. Excess Returns is prior year’s firm return minus the value weighted CRSP portfolio return. Leverage is the ratio of a firm’s long term debt plus its current liabilities divided by assets. Accounting related variables are winsorized at 1%. ROA is defined as Income before Extra Items divided by the prior year’s total assets. Pay Dividend is an indicator which equals one if the firm pays a dividend and zero otherwise. % Inst. Holdings is the percentage of shareholders held by institutional shareholders. CEO/Chair is an indicator which is equal to one if the CEO is also the Chairman of the board and zero otherwise. Number proposals is the total number of shareholder proposals that a firm receives in a year. Number contested is the number of shareholder proposals that a firm contests in a year.

	Contested firms			Non-contested firms		
	N	Mean	Median	N	Mean	Median
Market Cap	2,080	33,775	11,985	2,190	13,825	4,799
Return	2,060	0.02	-0.00	2,173	0.05	-0.00
ROA	2,036	0.12	0.12	2,112	0.13	0.12
Leverage	2,071	0.27	0.24	2,190	0.28	0.25
% Inst. Holdings	2,054	0.68	0.72	2,155	0.73	0.77
Board Size	1,953	11.2	11.0	2,118	10.3	10.0
CEO is Chair	1,953	0.7	1.0	2,118	0.6	1.0
Number Proposals	2,080	3.1	2.0	2,191	1.7	1.0
Number Contested	2,080	2.0	1.0	2,191	0.0	0.0

Table 5: Analysis of Firms that Receive and Contest Shareholder Proposals

This table presents results from probit regressions from the population of CRSP/Compustat firms that are merged with ISS Voting Analysis database. Regressions (1) and (2) have dependent variable equal to one if the firm receives at least one shareholder proposal that year and zero otherwise. Regressions (3) and (4) have a dependent variable equal to one if the firm (conditional on receiving a proposal) contests one of them and zero otherwise. Regression (1) includes all firm/year observations from 2003–2013 with available control variables. Regression (2), which includes a lagged variable, includes all firm/year observations with available control variables. Regressions (5) and (6) include firms that use discretion when contesting proposals (i.e. do not contest all proposals). See Table 4 for variable definitions. Standard errors (in parentheses) are double-clustered by firm and year. ***, **, * Indicate statistical significance at the 1%, 5% and 10% level respectively.

Panel A

	(1) Receive Proposal	(2) Receive Proposal
Mkt Cap(ln)	0.353*** (0.000)	0.220*** (0.000)
Return	-0.222*** (0.000)	-0.155** (0.003)
ROA	-0.184*** (0.000)	-0.111*** (0.001)
Leverage	0.373*** (0.000)	0.268*** (0.000)
% Inst. Holdings	0.712*** (0.000)	0.524*** (0.000)
Board Size(ln)	0.676*** (0.000)	0.484*** (0.000)
CEO is Chair	0.245*** (0.000)	0.151*** (0.000)
Previously Received Proposal		1.725*** (0.000)
Constant	-6.055*** (0.000)	-4.810*** (0.000)
Observations	42,199	40,083
R ²	0.31	0.46

Panel B

	(3)	(4)	(5)	(6)
	Contest Proposal	Contest Proposal	Contest Proposal	Contest Proposal
Mkt Cap(ln)	0.106*** (0.000)	0.0598*** (0.000)	0.219*** (0.000)	0.173*** (0.000)
Return	-0.124* (0.039)	-0.127 (0.074)	-0.174*** (0.000)	-0.184*** (0.000)
ROA	-0.511** (0.002)	-0.353* (0.014)	-0.683*** (0.000)	-0.502** (0.002)
Leverage	-0.0532 (0.706)	-0.0631 (0.625)	0.0775 (0.600)	0.0742 (0.599)
% Inst. Holdings	-0.526*** (0.000)	-0.504*** (0.000)	0.0109 (0.949)	0.0680 (0.666)
Board Size(ln)	0.426*** (0.000)	0.272** (0.002)	0.644*** (0.000)	0.504*** (0.000)
CEO is Chair	0.143* (0.041)	0.136* (0.044)	0.158* (0.038)	0.138 (0.071)
Number Proposals	0.119*** (0.000)	0.0904*** (0.000)	0.135*** (0.000)	0.107*** (0.000)
Previously Contested Proposal		0.671*** (0.000)		0.663*** (0.000)
Constant	-1.877*** (0.000)	-1.297*** (0.000)	-4.002*** (0.000)	-3.487*** (0.000)
Observations	3,877	3,556	3,585	3,283
R^2	0.09	0.12	0.16	0.20

Table 6: Share Holdings

This table presents the dollar shareholdings of shareholder submitting proposals to firms that are contested by management. The data is manually collected from the sample of all proposals received and contested by management (N=4,215). All shareholdings are in thousands of dollars.

	N	Mean	Median	SD
All Contested	3,242	9,664	43	62,085
Contested and Voted	848	10,724	48	82,955
⇒ Pass	132	1,006	28	4,590
⇒ Fail	716	12,515	59	90,152
Mean diff.		-11,509	t-stat: -1.5	
Contested and Not Voted	2,394	9,288	42	52,766
⇒ Withdrawn	491	18,742	133	79,692
⇒ Excluded	1,903	6,849	32	42,869
Mean diff.		11,892	t-stat: 4.5	

Table 7: Analysis of Contested Proposals that Are Withdrawn

This table presents results from regressions of sample proposals that are contested under Rule 14a-8 and later withdrawn. The probit model has a dependent variable equal to one if the proposal is withdrawn by the shareholder or substantially implemented and zero otherwise. Shareholdings describes the dollar value of shares held by the submitter of the proposal. SEC Rejects Exclusion is an indicator variable that takes on a value of one when the SEC does not allow the firm to exclude the proposal from its proxy. See Table 4 for other variable definitions. Proposal Type is an indicator variable for the subject matter of the proposal. Submitter type designates the type of shareholder submitting the proposal. Standard errors (in parentheses) are double-clustered by firm and year. ***,**,* indicate statistical significance at the 1%, 5% and 10% level respectively.

	(1) Withdrawn Proposal	(2) Withdrawn Proposal	(3) Withdrawn Proposal
Mkt Cap(ln)	0.001 (0.955)	0.013 (0.564)	0.005 (0.865)
Return	0.249* (0.034)	0.181 (0.215)	0.083 (0.520)
ROA	0.627* (0.044)	0.790** (0.008)	0.710*** (0.001)
Leverage	0.077 (0.468)	0.130 (0.146)	0.196 (0.096)
% Inst. Holdings	0.655*** (0.000)	0.676*** (0.000)	0.296* (0.037)
Board Size(ln)	-0.091 (0.613)	-0.094 (0.568)	-0.162 (0.365)
CEO is Chair	-0.045 (0.612)	-0.038 (0.686)	-0.016 (0.864)
Shareholdings(ln)	0.089*** (0.000)	0.087*** (0.000)	0.034*** (0.000)
SEC Rejects Exclusion		1.369** (0.002)	1.369** (0.003)
Constant	-2.087*** (0.000)	-2.302*** (0.000)	-1.467*** (0.000)
Submitter Type	No	No	Yes
Proposal Type	No	No	Yes
Observations	2,008	2,008	2,008
R ²	0.05	0.09	0.19

Table 8: Likelihood of Contested Proposals Receiving Shareholder Approval

This table shows the likelihood of the passage of shareholder proposals that were contested but later voted on. The probit model has a dependent variable equal to one if the proposal is passed by the shareholder vote and zero otherwise. ISS Support is an indicator equal to one when ISS supports the proposal and managers recommend voting against it. Shareholdings describes the dollar value of shares held by the submitter of the proposal. See Table 4 for other variable definitions. All standard errors are double-clustered by firm and year. ***, **, * indicate statistical significance at the 1%, 5% and 10% level respectively.

	(1) Pass Proposal	(2) Pass Proposal
Mkt Cap(ln)	-0.161*** (0.001)	-0.185** (0.002)
Return	0.384 (0.129)	0.116 (0.674)
ROA	0.747 (0.340)	0.963 (0.418)
Leverage	-0.604 (0.176)	-0.398 (0.471)
% Inst. Holdings	1.354* (0.022)	1.847* (0.047)
Board Size(ln)	0.009 (0.981)	-0.087 (0.819)
CEO is Chair	0.151 (0.266)	-0.142 (0.284)
ISS Support	1.671*** (0.000)	1.675*** (0.000)
Shareholdings(ln)	-0.127*** (0.000)	-0.066 (0.084)
Constant	-0.410 (0.718)	0.474 (0.763)
Submitter Type	No	Yes
Proposal Type	No	Yes
Observations	726	702
R^2	0.28	0.51

Table 9: Level of Shareholder Approval for Contested Proposals

This table shows the percentage of shareholder approval for proposals that were contested and later voted on. Percent approval is the percentage of shareholder votes supporting the proposal as designated in the firm's proxy statement. ISS Support is equal to one when ISS supports the proposal and managers recommend voting against it. Shareholdings describes the dollar value of shares held by the submitter of the proposal. See Table 4 for other variable definitions. All standard errors are double-clustered by firm and year. ***, **, * indicate statistical significance at the 1%, 5% and 10% level respectively.

	(1) Percent Approval	(2) Percent Approval
Mkt Cap(ln)	-0.011*** (0.000)	-0.004 (0.056)
Return	0.059*** (0.000)	0.025 (0.081)
ROA	-0.009 (0.914)	-0.007 (0.915)
Leverage	-0.073* (0.040)	-0.041 (0.175)
% Inst. Holdings	0.161*** (0.001)	0.143*** (0.000)
Board Size(ln)	0.042 (0.294)	0.023 (0.402)
CEO is Chair	0.056*** (0.000)	0.037*** (0.000)
ISS Support	0.314*** (0.000)	0.253*** (0.000)
Shareholdings(ln)	-0.006** (0.009)	0.000 (0.951)
Constant	0.054 (0.647)	0.229* (0.013)
Submitter Type	No	Yes
Proposal Type	No	Yes
Observations	724	724
R ²	0.60	0.75

Appendix 1: Timeline for Shareholder Proposal

This appendix displays the timeline for filing and responding to shareholder proposals under Rule 14a-8 of the Securities Exchange Act of 1934. EPR is the “eligibility and procedural requirements” which requires the shareholder to hold \$2,000 worth of shares or 1% of market value of equity continuously for at least a year

Figure A1: For Shareholder

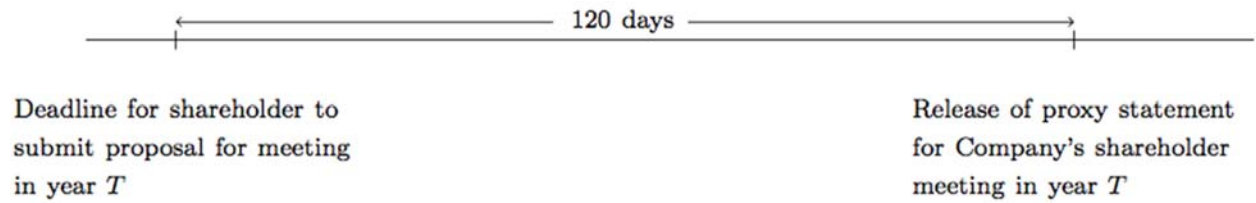


Figure A2: For Firm

