

Trends in Shareholder Activism

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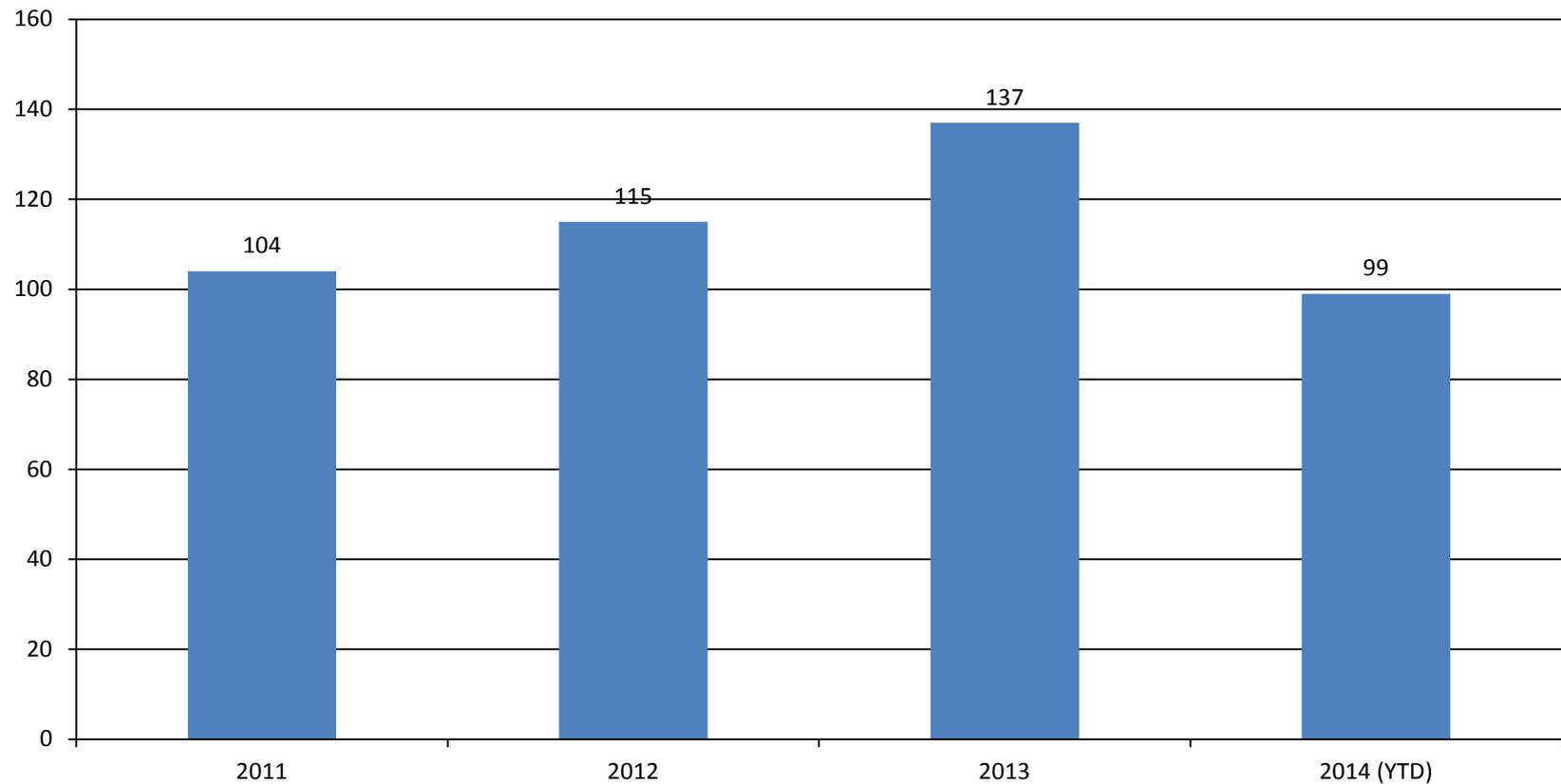
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Outline

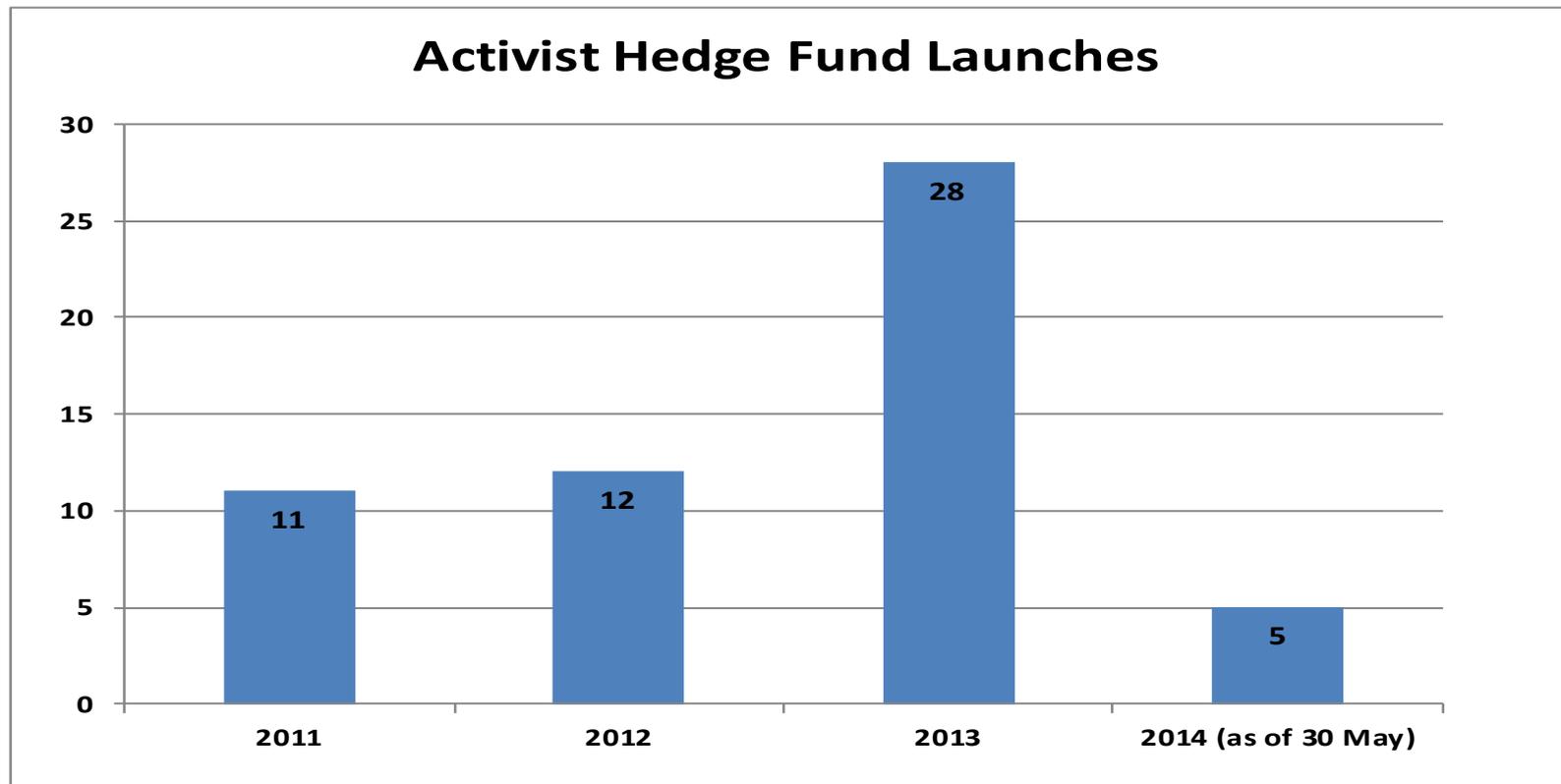
- Growth in Activism
- Trends of Fights That Go The Distance
- Proxy Fights By Market Cap
- Prevalence of Poison Pills in Proxy Fight Situations
- Top 10 Activists by Volume
- Typical Proxy Fight Timeline
- Social Media and Universal Ballot
- Top 10 Do's and Don'ts
- Key Takeaways

Increasing Frequency of Overall Activism Against Companies

Proxy Fights and Financial Activism

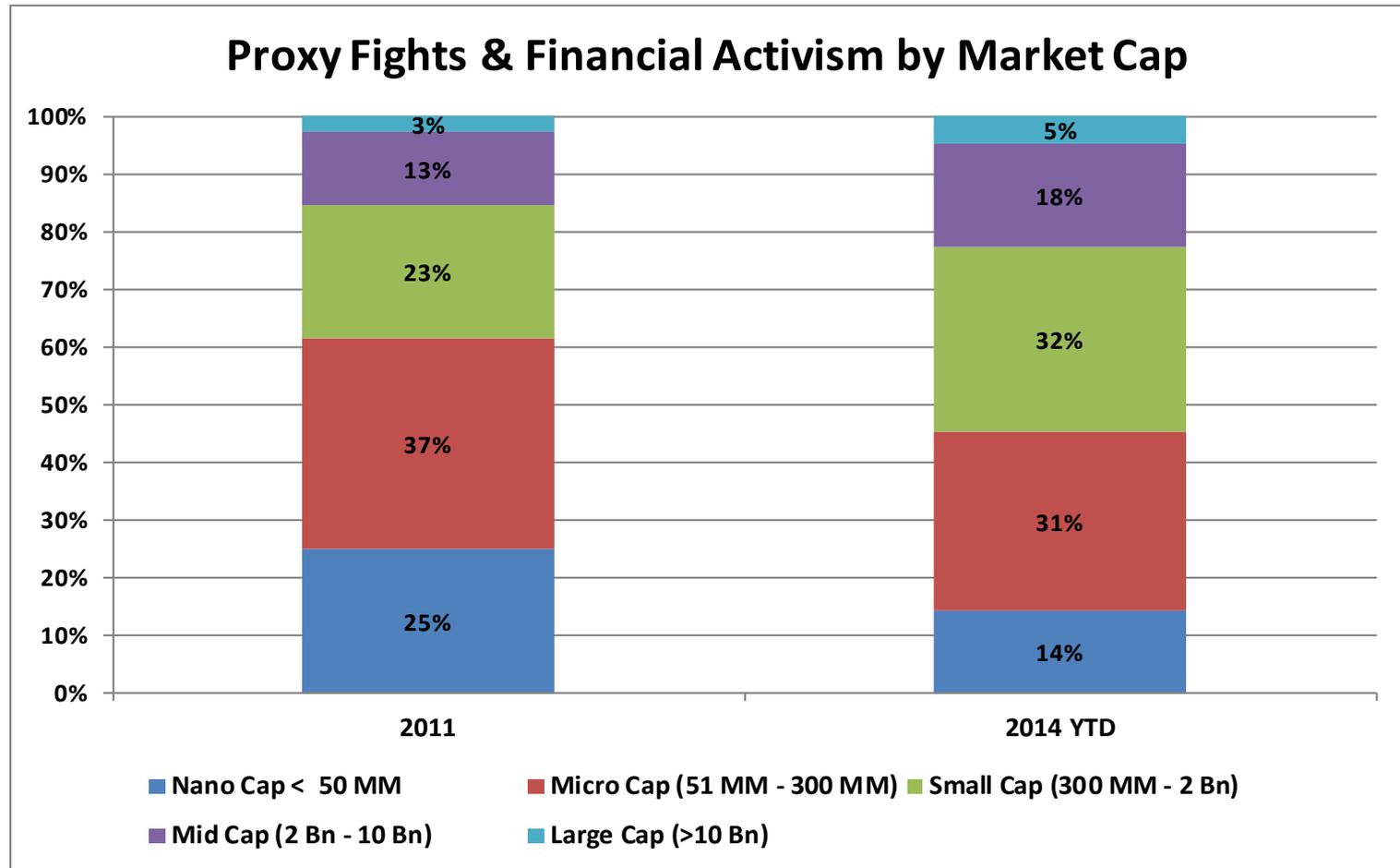


Growing Prominence of Activist Hedge Funds

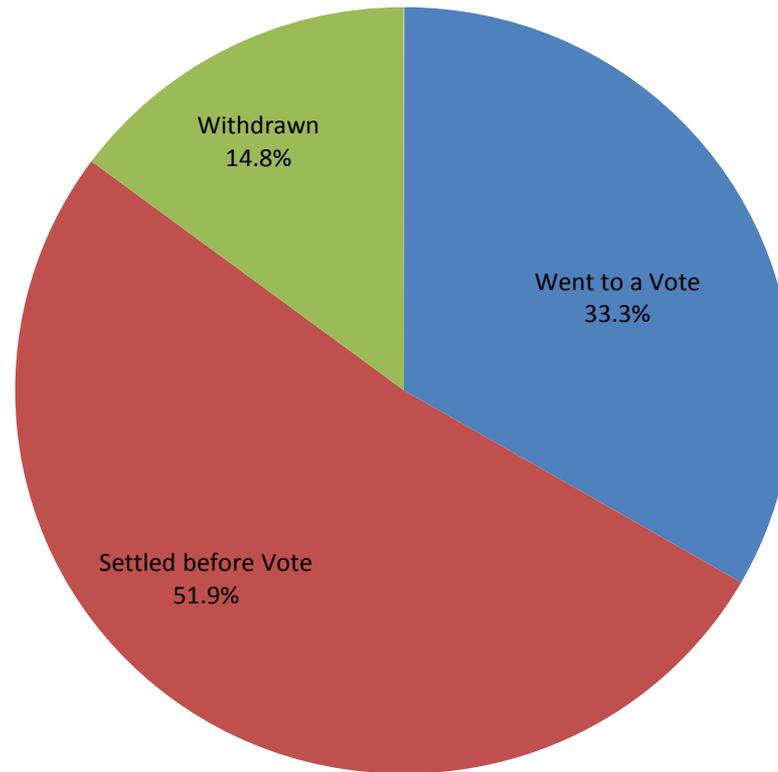


Larger-Cap Companies Increasingly Being Targeted

More than half of the companies targeted in 2014 are with market cap greater than \$300 MM



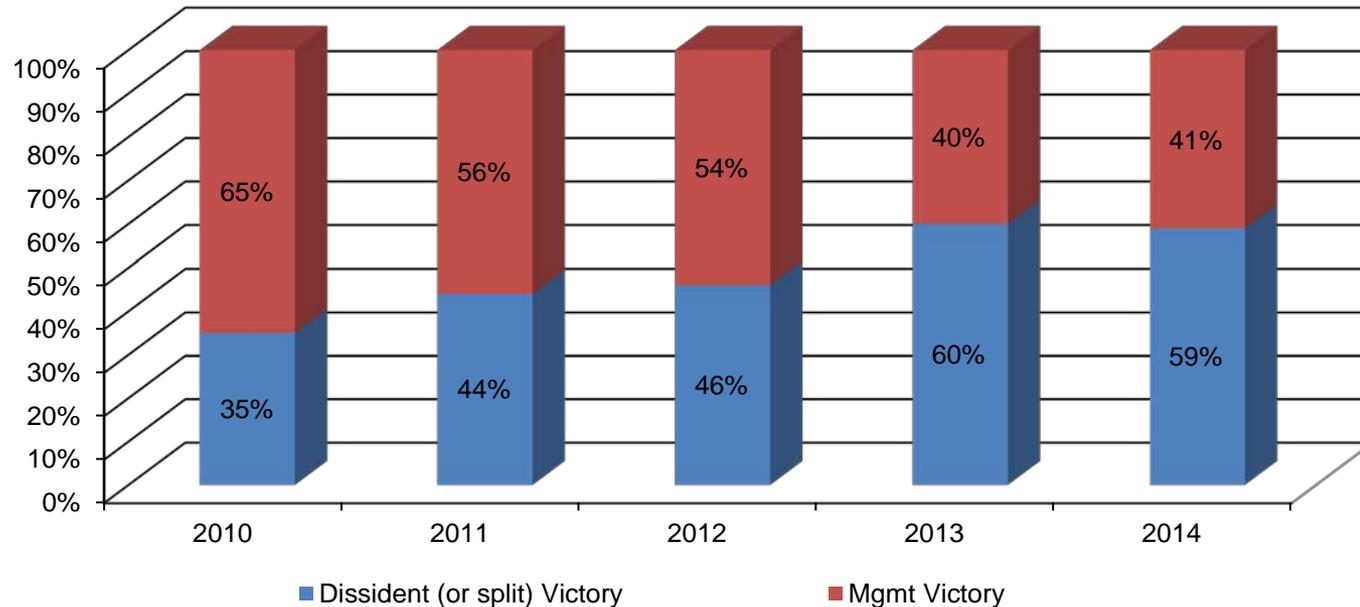
Many Potential Contests “Settle” Before a Proxy Fight



Dissidents Becoming More Successful

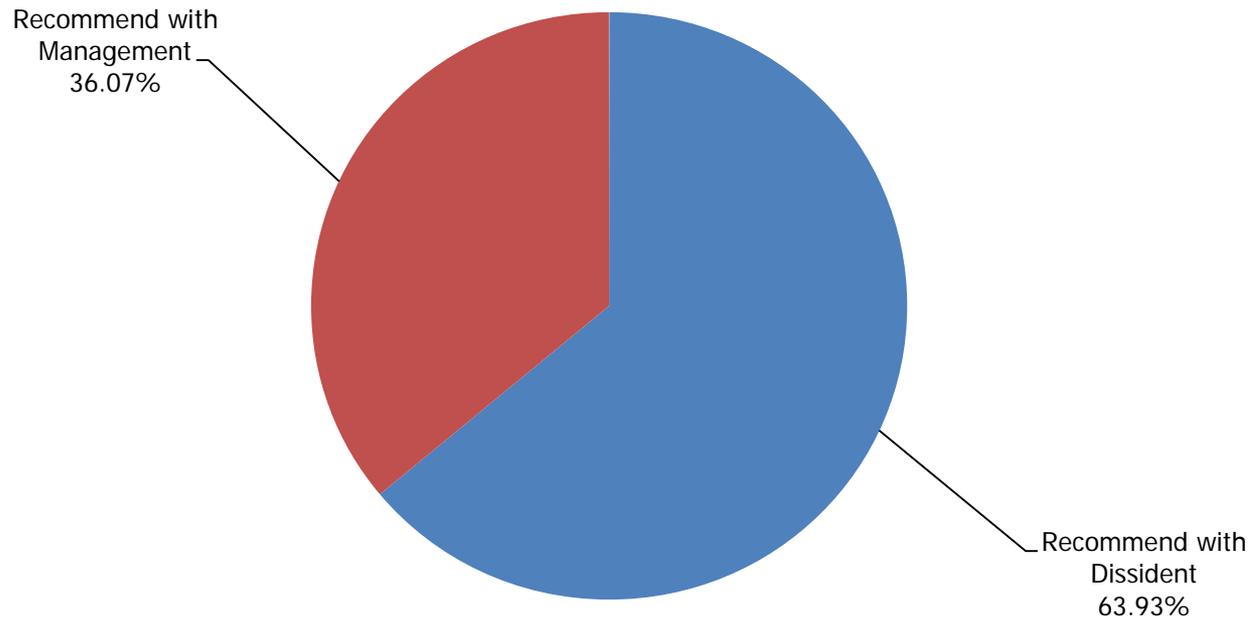
In fights that “go the distance,” dissidents are more likely to win

Fights That Went The Distance



Dissidents Receiving Support from Proxy Advisory Firms

**ISS Recommendations in Proxy Contests
2013 - 2014**



ISS Policy in Proxy Contests

- 1) Have the dissidents made a compelling case that change is warranted?
- 2) If so, are the dissident nominees more likely to effect that change than the incumbent directors?
 - For Control: ISS looks for a well-reasoned and detailed business plan (including the dissidents' strategic initiatives), a transition plan that describes how the change in control of the company will be effected, and where management continuity may be an issue, the identification of a qualified and credible new management team.
 - For Minority Position: ISS will require that dissidents prove that change is preferable to the status quo and that the dissident slate will add value to board deliberations of the issues at hand
 - ISS does not require a detailed plan of action, nor that the dissidents prove their plan is preferable to the incumbent plan.

Other Influences

- Traditional long-term institutional investors increasingly willing to support an activist if dissatisfied
 - Some even encourage activists to initiate campaigns within portfolio (Request for Activism or “RFA”)
- Sympathetic media attention on activists

Top 10 Activists by Volume and Their Notable Campaigns

| | Activist | Principal | Notable Campaigns |
|----|----------------------------|-----------------|-------------------|
| 1 | GAMCO Asset Management | Mario Gabelli | |
| 2 | Starboard Value LP | Jeff Smith | |
| 3 | Icahn Enterprises | Carl Icahn | |
| 4 | Lone Star Value | Jeff Eberwein | |
| 5 | Clinton Group | Greg Taxin | |
| 6 | Corvex Capital | Keith Meister | |
| 7 | Relational Investors | Ralph Whitworth | |
| 8 | Elliott Management | Paul Singer | |
| 9 | Engaged Capital | Glen Welling | |
| 10 | Marcato Capital Management | Richard McGuire | |

Proxy Fight Timeline

Three Clearly Defined Stages

Before Proxy is filed

- 13D filed
- Engage with dissident
- Ramp up with investor outreach program with major investors
- Initiate reconnaissance for dissident activities (investor feedback, additional SEC filings, inquiries regarding mailings, etc.)

Preliminary Filing – Definitive Filing

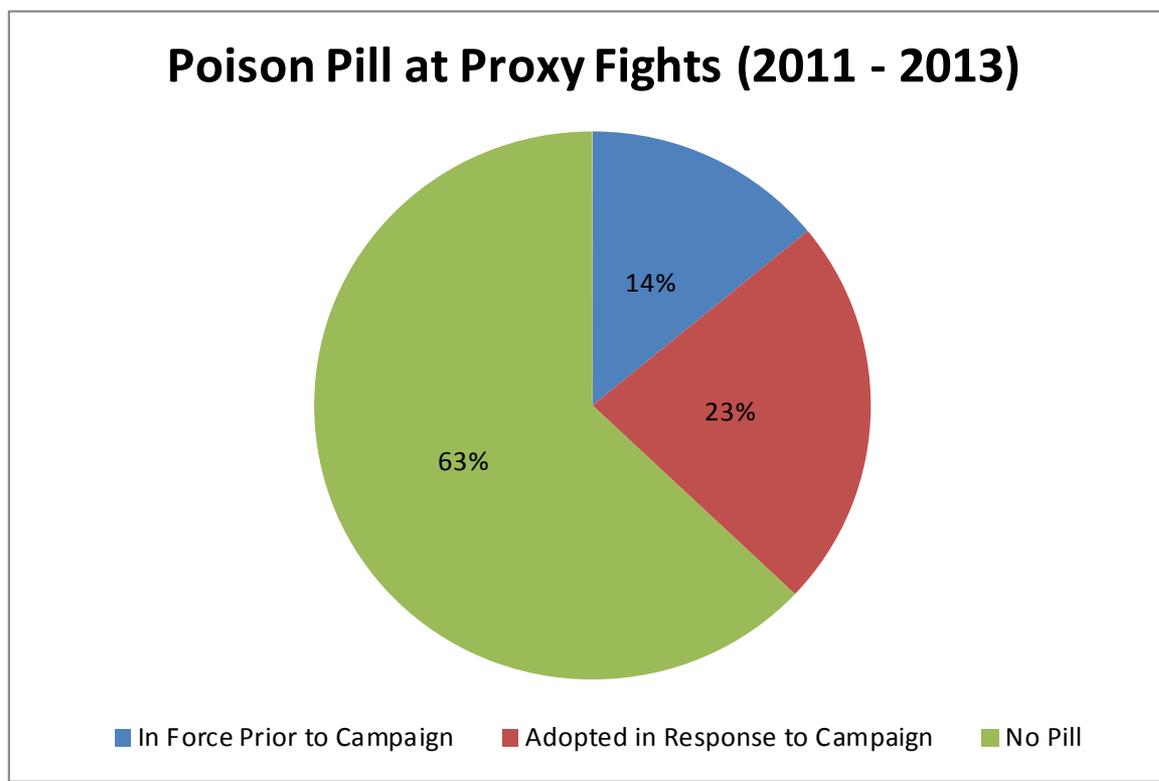
- Preliminary proxy is filed by management
- Draft / refine deck and coordinate investor roadshow
- Create talking points
- Strategize media engagement plan
- Re-engage with dissident
- Enhance investor deck with an eye towards engaging with ISS / GL
- Continue and follow up with investor outreach
- Continued reconnaissance on dissident activities

Definitive Filing – Meeting Date

- DEF14a is filed
- Refine investor deck and talking points
- Initiate retail solicitation strategy
- Begin institutional proxy solicitation (as compared to pre-proxy outreach)
- Engage ISS & GL
- Monitor and identify beneficial voting
- Implement fight letter mailing strategies
- After release of ISS/GL recommendations, issue press release responses
- Continue retail and institutional solicitation / vote ID
- MEETING DATE
- Consider review and challenge period in advance of final tabulation certification

Prevalence of Poison Pills at Companies with Proxy Fights

Almost one in four companies adopted a poison pill in response to a proxy fight campaign



Use of Social Media

- Twitter, Facebook and other social media have played an important and high profile role in the past few proxy seasons.
 - Activist shareholders have used social media in highly publicized campaigns that have impacted companies' share prices.
- Companies need to think about how best to use social media as a communication tool, but also how it can be used against them and how best to defend against such attacks.
 - Must keep in mind that communications via social media may be subject to the proxy rules if they are deemed to be a "solicitation".
- Recent guidance from SEC's Division of Corporation Finance makes it easier for companies to use social media platforms with technical limits on number of character/amount of text in connection with proxy solicitations.
 - Can satisfy legend and informational requirements under federal securities laws by including an active hyperlink that takes reader to full text of required statements and prominently conveying that important or required information is provided through the hyperlink.

Universal Proxy Ballot

- The universal ballot campaign has garnered increasing support recently, and the SEC is reviewing the prospect of a universal proxy ballot that would include nominees from both sides in a short-slate proxy fight.
- A universal proxy ballot would allow shareholders to vote for their preferred combination of shareholder and management nominees on a single proxy card.
- The SEC will host a roundtable on universal proxy ballots and other proxy matters in early 2015.

Top 10 Do's

Everything should be looked at through the lens of “What will win or lose votes?”

1. Assemble your team early
2. Look at your company through the eyes of an activist
3. Conduct a critical review of your board
4. Identify and address potential vulnerabilities
5. Know your shareholders
6. Define your core messages / positioning
7. Engage early and often
8. If an activist surfaces and requests a meeting – TAKE IT!
9. Take the high road – focus on your company's strengths
10. Be nimble and ready to jump into action upon dissident escalation

Top 10 Don'ts

Everything should be looked at through the lens of “What will win or lose votes - when it becomes public?”

1. Become complacent because you have discussed activism with the Board
2. Underestimate the sophistication, diligence or perseverance of the activist
3. Assume that good financial performance/market price trends make you exempt
4. Fail to research the activist and determine likely paths of action
5. Fail to periodically review legal developments with the Board
6. Rely on annual budget versus a long-term business plan
7. Ignore existing capital structure and opportunities to return capital to shareholders
8. Fail to consider strategic alternatives likely to be proposed by an activist
9. Fail to create a record of consideration of alternatives
10. Engage in dialogue with an activist by yourself

Shareholder Activism - Key Takeaways

- Recognize that no company is immune from the possibility of shareholder activism
- Identify and address potential vulnerabilities – both financial and corporate governance-related
- Stay in touch with investors frequently throughout the year for better engagement – including corporate governance contacts

Questions?