

# 2015 Proxy Season Review and Outlook for 2016 Proxy Season

October 20, 2015





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# Speakers



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# Agenda

- Review of 2015 Season
- Key Shareholder Proposals in 2015
- Proxy Access
- Say on Pay
- Issues of Increasing Concern for Investors
- ISS 2015-2016 Global Survey Results
- DGCL Amendments
- SEC Rulemaking and Other Developments
- Shareholder Activism and Engagement



## Key Shareholder Proposals in 2015

**Proxy Access** – 54.4% average of votes cast FOR (50 passed so far in 2015, 6 in 2014)

**Require Independent Board Chairman** – 28.9% average of votes cast voting FOR (two passed this year, four last year)

**Report on Lobbying Activity** – 22.7% average of votes cast voting FOR (none passed this year or last)

**Report on Political Contributions** – 25.2% average of votes cast FOR (none passed this year or last)

**Provide Right to Act by Written Consent** – 39.2% average of votes cast voting FOR (two passed this year, none last year)

**Provide Right to Call Special Meetings** – 42.3% average of votes cast voting FOR (four passed this year and last)

**Require Majority Voting in Director Elections** – 63.2% of votes cast voting FOR (eight passed this year, 16 last year)

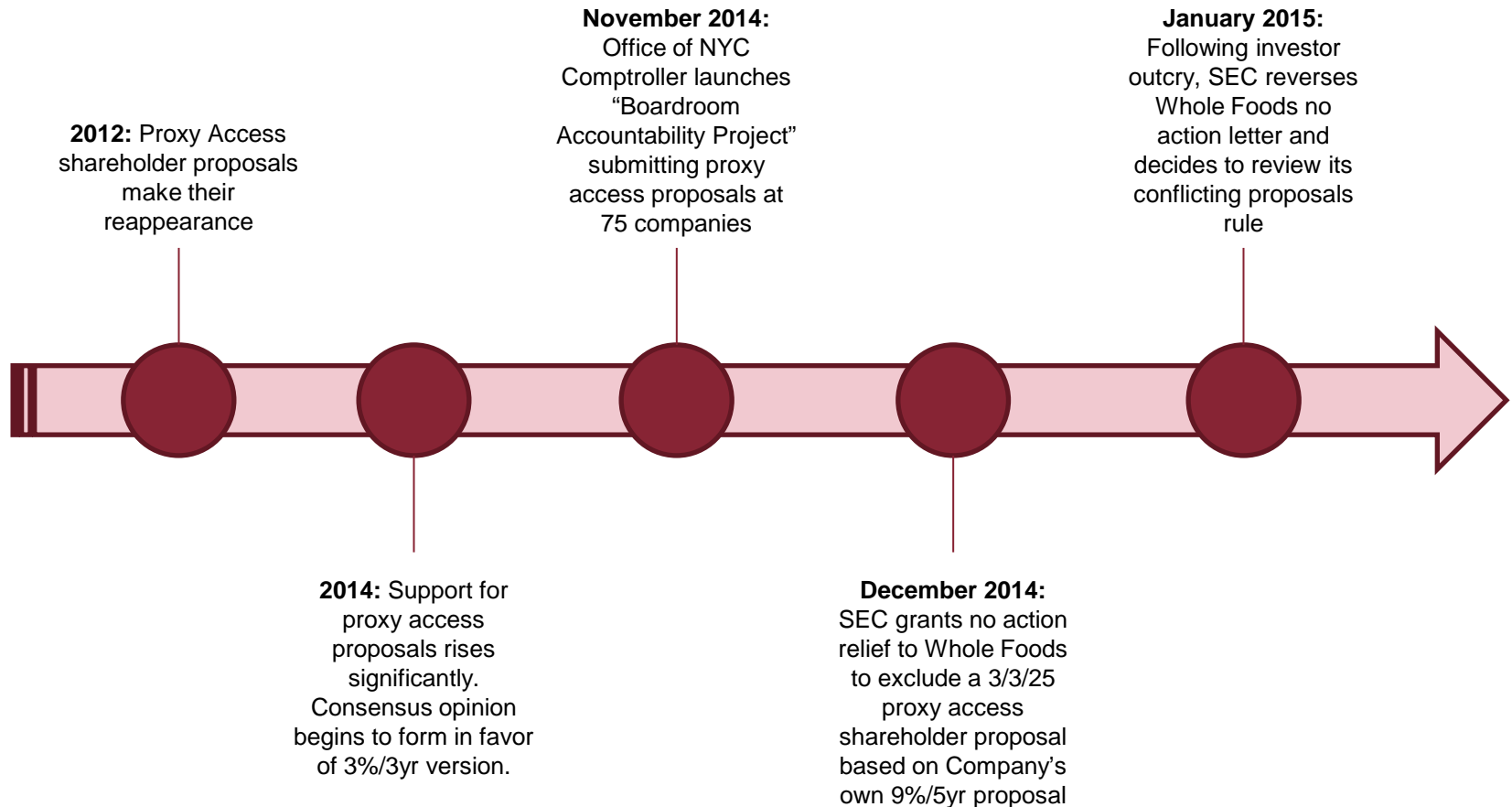


## What Is Proxy Access?

- Proxy Access facilitates shareholders' ability to nominate directors by enabling shareholders to have their:
  - nominees included in the Company's proxy statement
  - nominees included on the Company's proxy card and
  - materials mailed to shareholders at the Company's expense
- Proxy Access does not provide the underlying right to nominate directors. That right is provided under state law.



# Proxy Access: The Lead-Up to the 2015 Proxy Season





## Boardroom Accountability Project

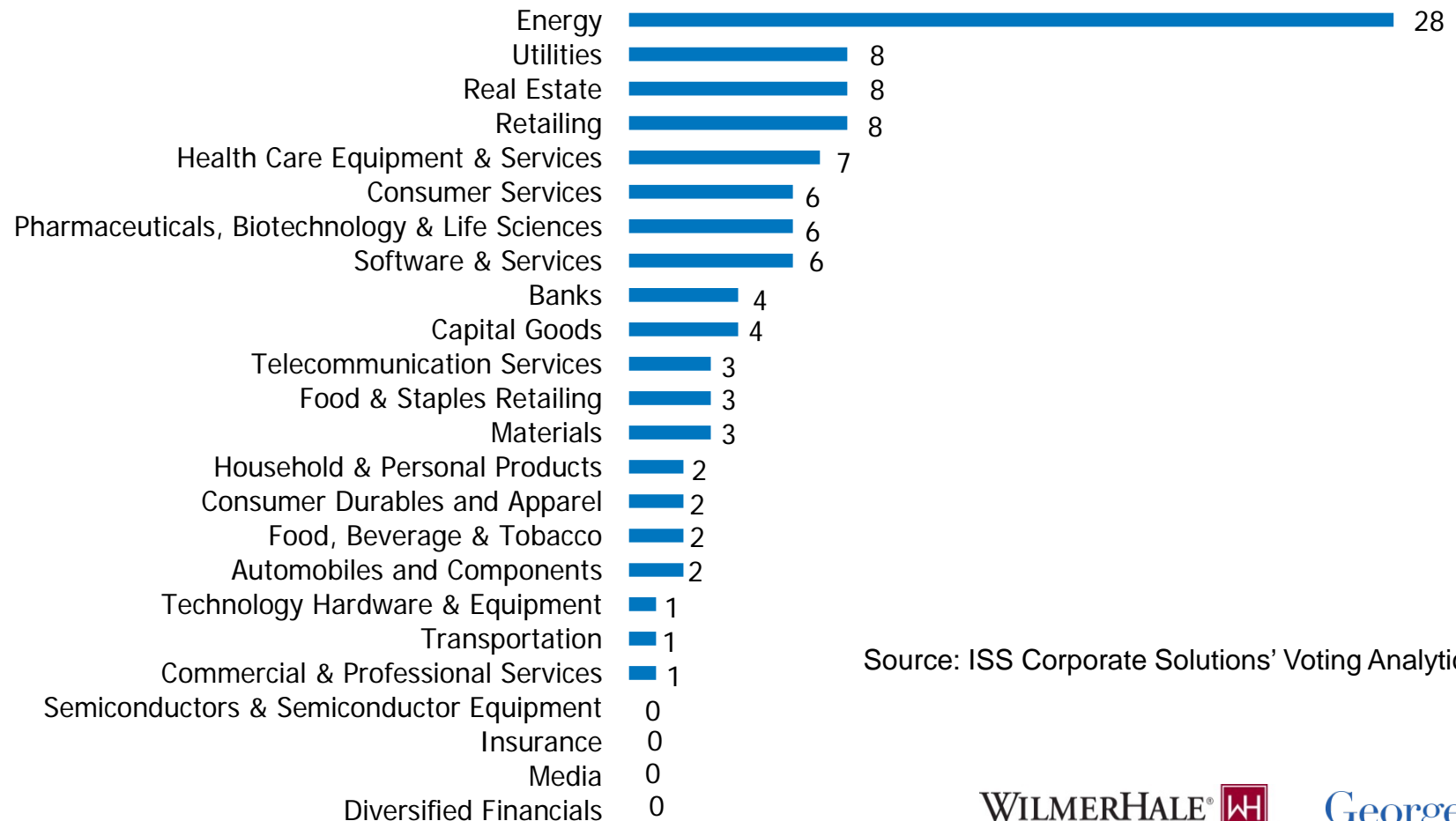
- National campaign by NYC Comptroller's office in 2015 to promote board accountability by giving shareholders the right to nominate directors
- Submitted 75 proxy access shareholder proposals
  - Model would allow proxy access for shareholders holding at least 3% of a company's shares for at least three years for up to 25% of board seats
  - Companies were targeted based on 3 perceived issues:
    - Environmental - 33 carbon-intensive coal, oil and gas, and utility companies
    - Diversity – 24 companies with few or no women directors, and little or no racial or ethnic diversity
    - Compensation – 25 companies that received significant opposition to their 2014 “say-on-pay” vote
- Reminiscent of efforts a number of years ago to replace plurality voting with majority voting in uncontested director elections – shareholders want continued influence over the composition of boards
- Of the 84 Russell 3000 companies that had a proxy access shareholder proposal in 2015 (through Sept 3, 2015) 50 have passed
- Average level of vote support so far is 54.4%
- ISS has supported every proxy access proposal



# Over 100 Proxy Access Shareholder Proposals Submitted In 2015 - NYC Selection Criteria

## Reflected in the Industries Targeted

### Proxy Access Shareholder Proposals by Industry

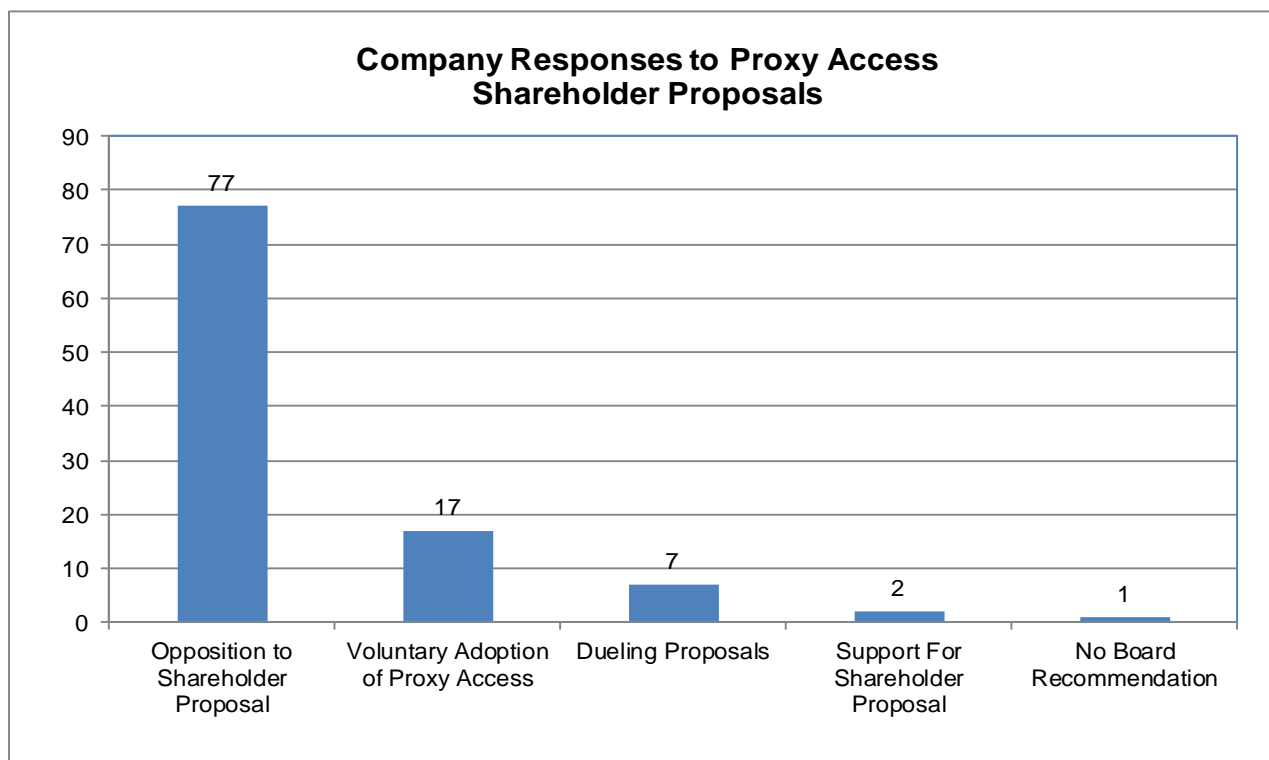


Source: ISS Corporate Solutions' Voting Analytics

# Company Responses Have Varied



- Opposed the shareholder proposal
- Proactively adopted, announced or proposed for shareholder vote 3%/3 year provision
- Included a conflicting company proposal along with the shareholder proposal
- Supported the proposal or made no recommendation



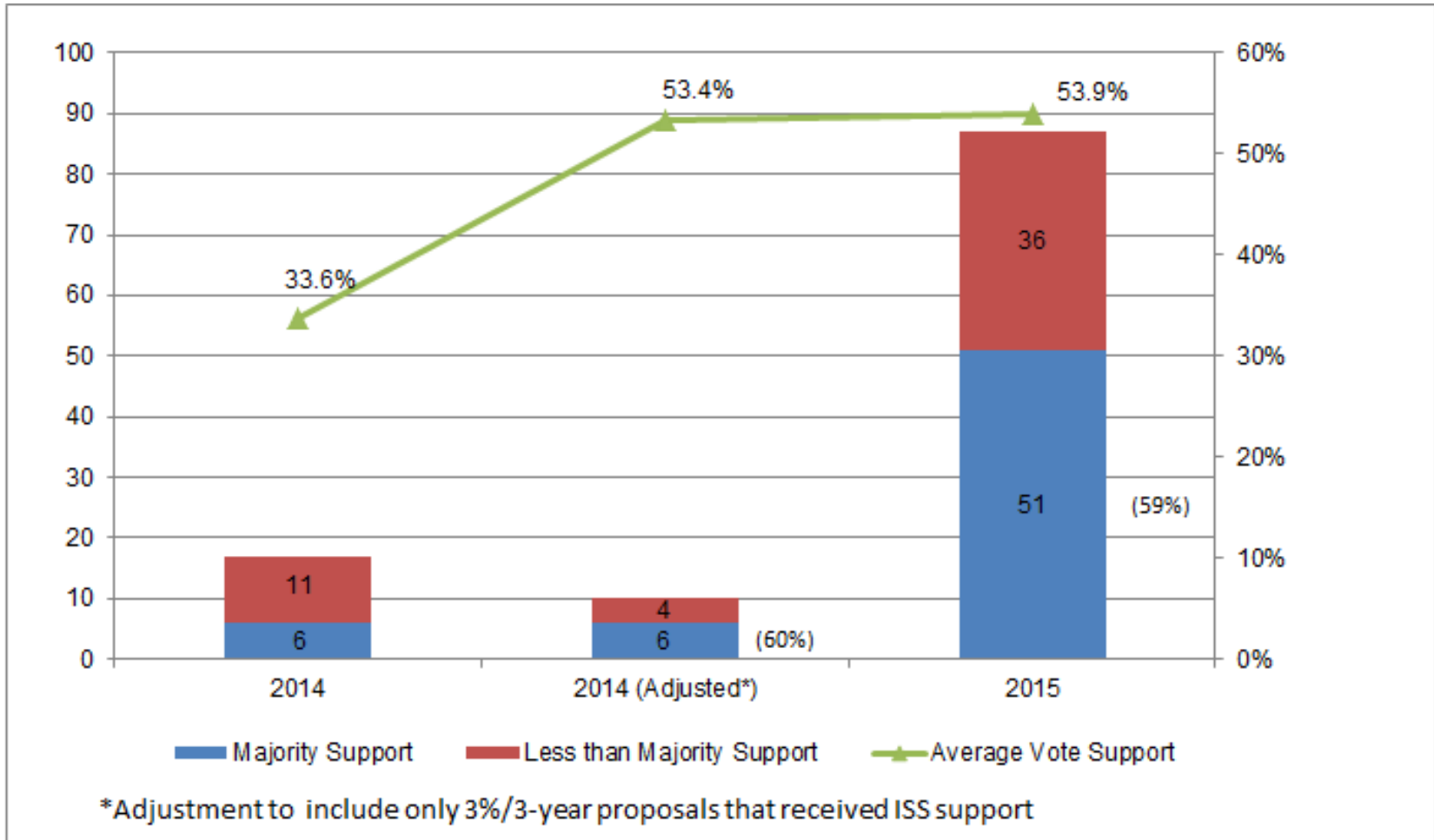


## 2015 Voting Results

	No. of Shareholder Proposals with Majority Vote	No. of Shareholder Proposals without Majority Support	% Receiving Majority Support	Average Vote Support
<b>Total Number of Proxy Access Proposals (87)</b>	<b>51</b>	<b>36</b>	<b>59%</b>	<b>53.9%</b>
<b>Received an Exempt Solicitation (71)</b>	<b>45</b>	<b>26</b>	<b>63%</b>	<b>55.7%</b>
<b>Without an Exempt Solicitation (16)</b>	<b>6</b>	<b>10</b>	<b>38%</b>	<b>45.9%</b>

Proxy Access voting results updated through October 9, 2015.

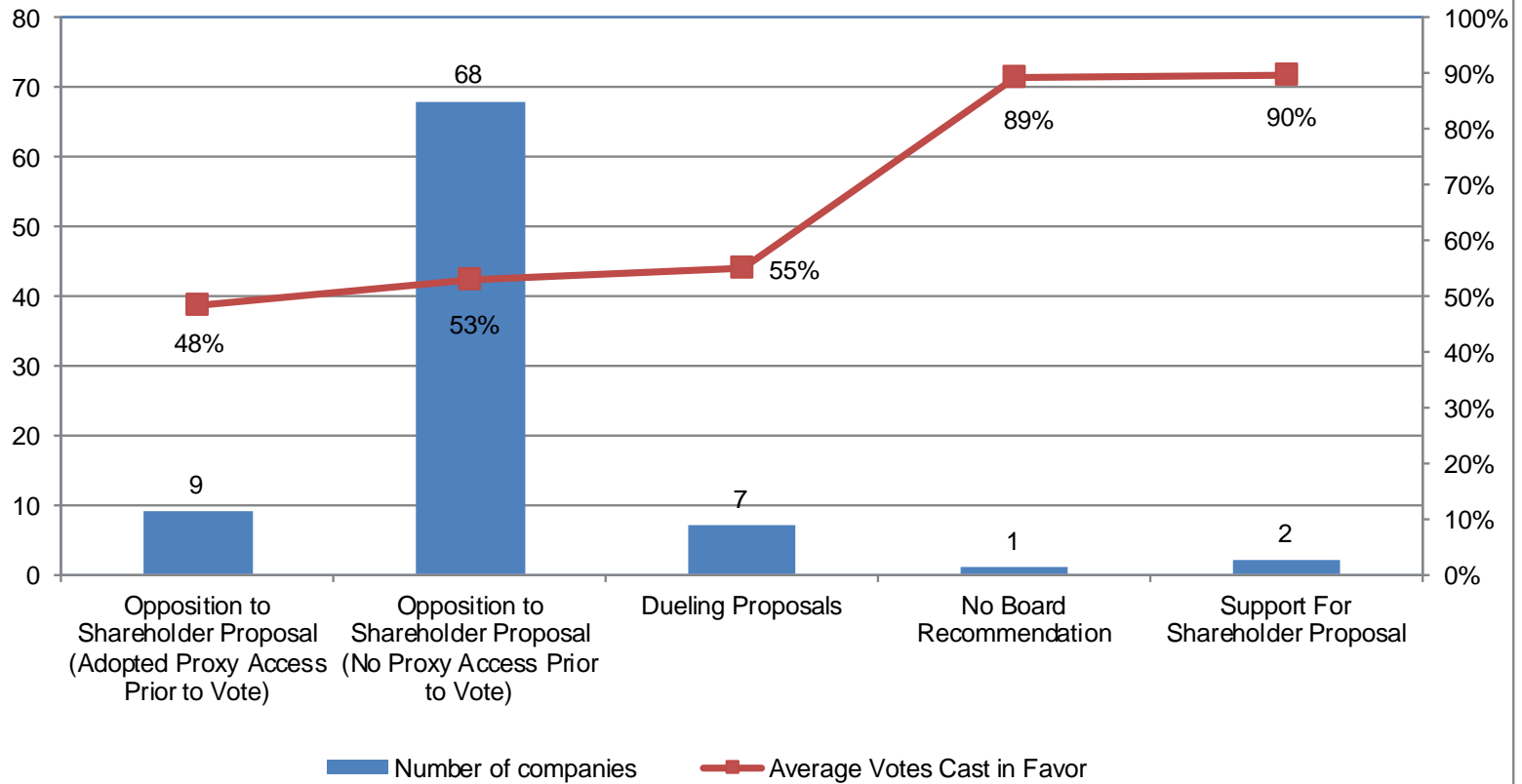
# Comparison of 2014 and 2015 Voting Results



# Comparison of Voting Results Based on Companies' Responses



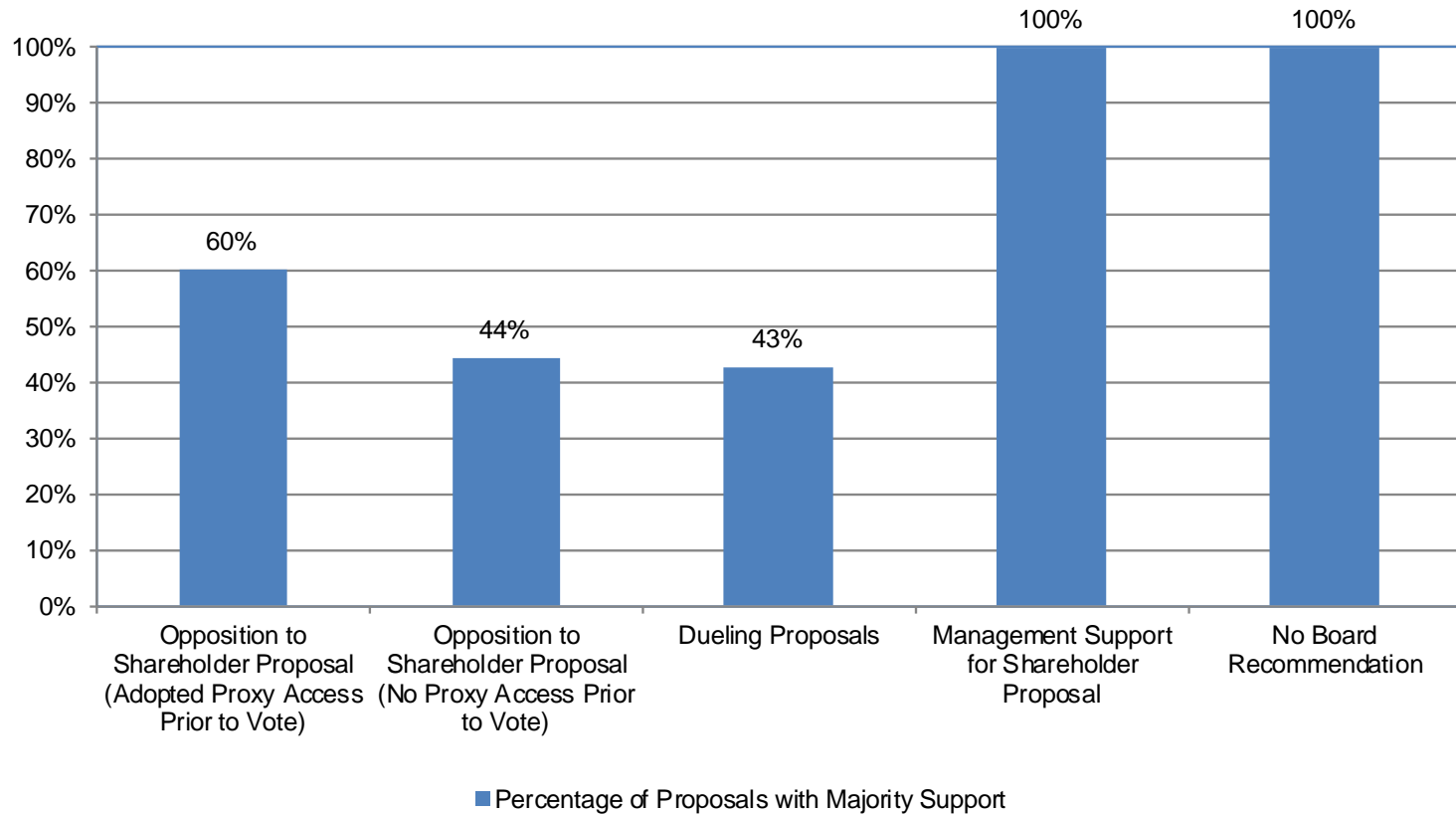
Average Vote Support Based on Companies Responses



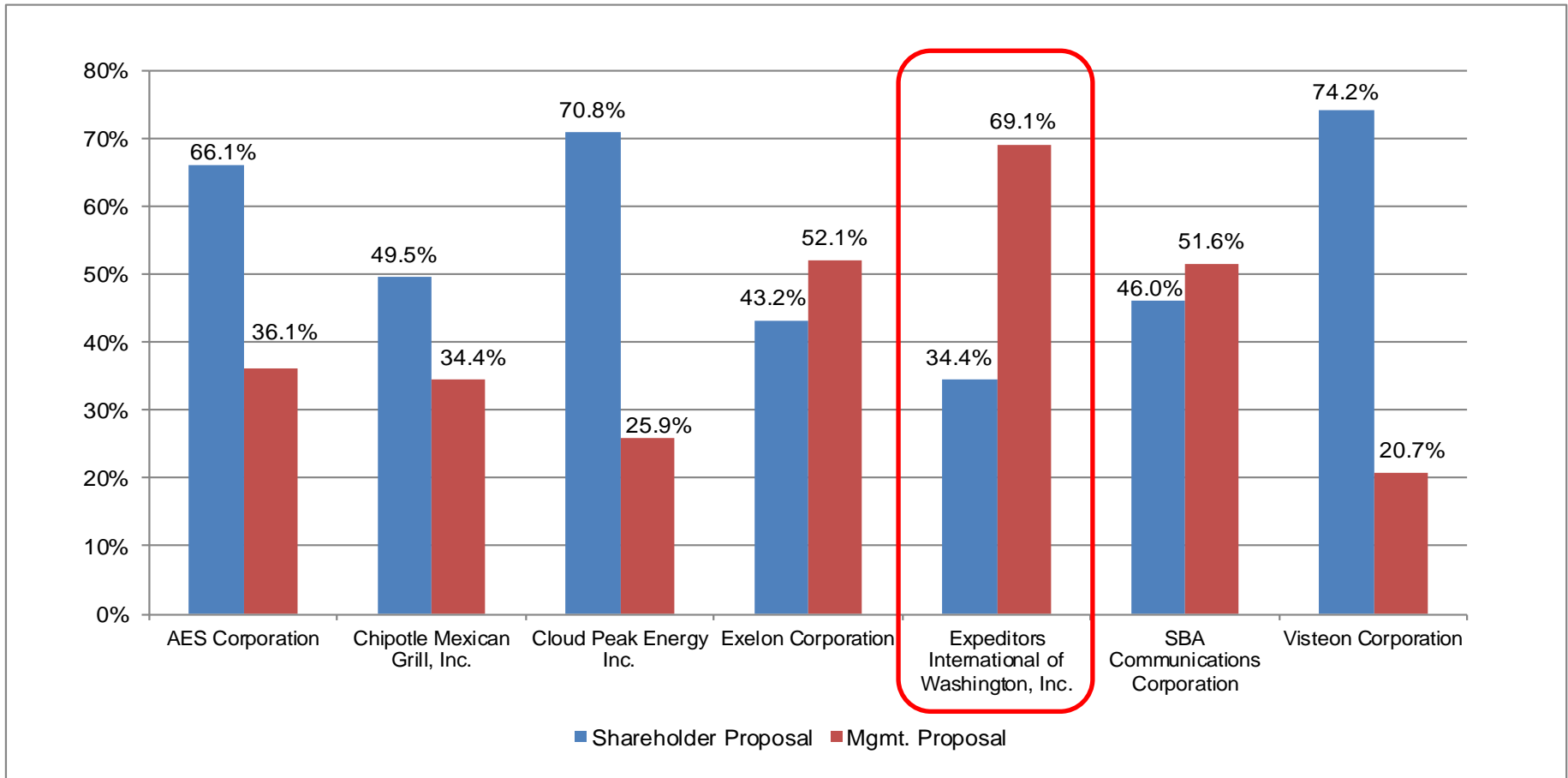
# Comparison of Voting Results based on Companies' Responses (cont'd)



### Majority Support Based on Companies Responses



# Companies with Conflicting Management and Shareholder Proxy Access Proposals





# Voluntary Adoptions Prior to Shareholder Proposal and Shareholder Proposal Outcome

Company	Thresholds Adopted	SH Proposal Outcome
Arch Coal	5% / 3-Year / 20% of board / group cap of 20	Proposal Failed: 36.3% Cast
Boston Properties	3% / 3-Year / 25% of board / group cap of 5	Proposal Failed: 46.2% Cast
Cabot Oil & Gas	5% / 3-Year / 20% of board / group cap of 10	Proposal Failed: 45.1% Cast
CF Industries	5% / 3-Year / 20% of board / group cap of 20	Proposal PASS: 56.9% Cast
HCP, Inc.	5% / 3-Year / 20% of board / group cap of 10	Proposal PASS: 55.5% Cast
NY Community Bancorp	5% / 3-Year / 20% of board / group cap of 10	Proposal Failed: 44.4% Cast
Priceline, Inc.	5% / 3-Year / 20% of board / group cap of 20	Proposal PASS: 53.6% Cast
Rite Aid	3% / 3-Year / 20% of board / group cap of 20	Proposal Failed: 37.3% Cast





# Notable Company Wins vs. Shareholder Proposal

## Rite Aid Corporation (RAD)

### *Proxy Access Provision:*

- ✓ 3%/ 3-Year Holding Requirement
- ✓ Limited to 20% of Board
- ✓ No more than 20 holders in formation of a “group”
- ✓ Holders must have full economic interest and voting power
- ✓ Shareholder(s) required to hold shares through the meeting
- ✓ Two-Year “Freeze-Out” Provision for nominees who do not receive greater than 25% support

**SHP Failed: 37.3% of votes cast**

## Expeditors Int'l of Washington (EXPD)

### *Proxy Access Provision:*

- ✓ 3%/ 3-Year Holding Requirement
- ✓ Limited to 20% of Board
- ✓ No more than 20 holders in formation of a “group”
- ✓ Holders required to have “net long” position

**SHP Failed: 34.4% of votes cast**

# Public Positions of Institutional Investors

Investor / Group	Position on Proxy Access
<b>BlackRock</b>	<ul style="list-style-type: none"> <li>• Reviews proposals on case by case basis</li> <li>• Proxy access should provide a reasonable opportunity to use this right without overly restrictive provisions and should not be subject to abuse by short-term investors, investors without a substantial investment in the company, or investors seeking to take control of the board</li> </ul>
<b>CalPERS</b>	<ul style="list-style-type: none"> <li>• Supports proxy access as a strategic priority</li> <li>• Joint communication NYC Public Pension Funds to companies with passing votes at annual meeting supports CII's positions</li> </ul>
<b>CalSTRS</b>	<ul style="list-style-type: none"> <li>• Opposes any proxy access proposal with a structure more onerous than 3%/3-years ownership by a group of shareholders</li> <li>• Opposes "deliberate preemption" of shareholder proposal with company proposal with more excessive thresholds</li> </ul>
<b>Council of Institutional Investors (CII)</b>	<ul style="list-style-type: none"> <li>• Supports 3% ownership threshold (without limiting the aggregation of shareholders) for 2 years to nominate at least 2 candidates</li> <li>• Position on other provisions: loaned securities should be included in reaching ownership threshold, shareholders should not be required to own shares after meeting, there should be no restrictions on re-nominations, eligible candidates should not be limited based on compensation arrangements</li> </ul>
<b>Fidelity</b>	<ul style="list-style-type: none"> <li>• Does not support proxy access (even if management-supported)</li> </ul>
<b>TIAA-CREF</b>	<ul style="list-style-type: none"> <li>• Supports proxy access upon satisfaction of "reasonable conditions"</li> <li>• Sent a letter to its 100 largest holdings, stating its support for the 3 percent ownership threshold</li> </ul>
<b>T. Rowe Price</b>	<ul style="list-style-type: none"> <li>• Supports balanced set of limitations and requirements for proxy access: 3% ownerships for 2-3 year holding period proposals</li> <li>• Opposes significant impediments to a proponent's ability to aggregate holdings with other shareholders in order to qualify for proxy access</li> </ul>
<b>Vanguard</b>	<ul style="list-style-type: none"> <li>• Supports proxy access proposals with 5% ownership for 3 years; ability to nominate up to 20% of seats on the board</li> <li>• Provisions should be appropriately limited to avoid abuse by investors that lack a meaningful long-term interest in the company</li> </ul>



# Institutional Investor Voting Records

## Notable Institutions AGAINST Proxy Access Shareholder Proposals

Institution	Voting Record
The Vanguard Group	Supports 5% / 3-Year Holding Requirements
Fidelity Management & Research	AGAINST
Wellington Management Company	AGAINST
Northern Trust Corporation	AGAINST
J.P. Morgan Asset Management (NY)	Supports 5% / 3-Year Holding Requirements
Geode Capital Management	AGAINST
Waddell & Reed	AGAINST



# Institutional Investor Voting Records (cont'd)

Notable Institutions In Favor of Proxy Access Shareholder Proposals

Institution	Voting Record
Blackrock (collective entities)	Mostly FOR
State Street Global Advisors	Mostly FOR
Capital Research and Capital World	Mostly FOR
T. Rowe Price & Associates	Mostly FOR
BNY Mellon Corp.	Mostly FOR
TIAA-CREF Investment Management	Mostly FOR
AllianceBernstein	Mostly FOR
Putnam Investments	Mostly FOR
Franklin Resources	Mostly FOR
Invesco	Mostly FOR
Columbia Threadneedle	Mostly FOR



# Institutional Investor Voting Records (cont'd)

...But With Room For Negotiation?

Institution	RAD and EXPD SHP
Blackrock (collective entities)	AGAINST BOTH
State Street Global Advisors	FOR
BNY Mellon Corp.	FOR
Capital Research and Capital World	-
T. Rowe Price & Associates	Split- FOR EXPD; AGAINST RAD
TIAA-CREF Investment Management	Split- FOR RAD; AGAINST EXPD
AllianceBernstein	Split- FOR EXPD; AGAINST RAD
Putnam Investments	AGAINST EXPD
Franklin Resources	AGAINST EXPD
Invesco	Split- FOR EXPD; AGAINST RAD
Columbia Threadneedle	AGAINST BOTH



## What to Expect Going Forward

- Continued focus on proxy access
- Another wave of shareholder proposals next year
  - Entrance of new proponents submitting proposals
  - Variations on the proposals received in 2015
  - Proposals requesting less restrictive terms for companies with existing proxy access bylaws
- Shift in focus from ownership percentage to other terms (3%/3 years seems to be becoming standard)
- Company approaches to proxy access likely to vary depending on a number of factors, including whether receive a proposal and how that proposal fares with shareholders
- Staff review of Rule 14a-8(i)(9) anticipated to be completed in near future

# What to Be Doing Now



- Monitor proxy access developments
  - Companies implementing bylaws
  - Investor and proxy advisory firm statements and policies
- Educate board members
- Evaluate shareholder base
- Evaluate strategic options with regard to implementing a proxy access bylaw
  - Wait to receive a shareholder proposal
  - Wait to lose a shareholder proposal
  - Implement proactively to take the issue off the table
- Consider bylaw terms that might be palatable to your company

# Elements of a Proxy Access Bylaw



## Key Terms

- Ownership threshold
- Holding period
- Aggregation (whether to allow, whether to cap, treatment of funds)
- Percent or number of board members that may be elected

## Other Terms

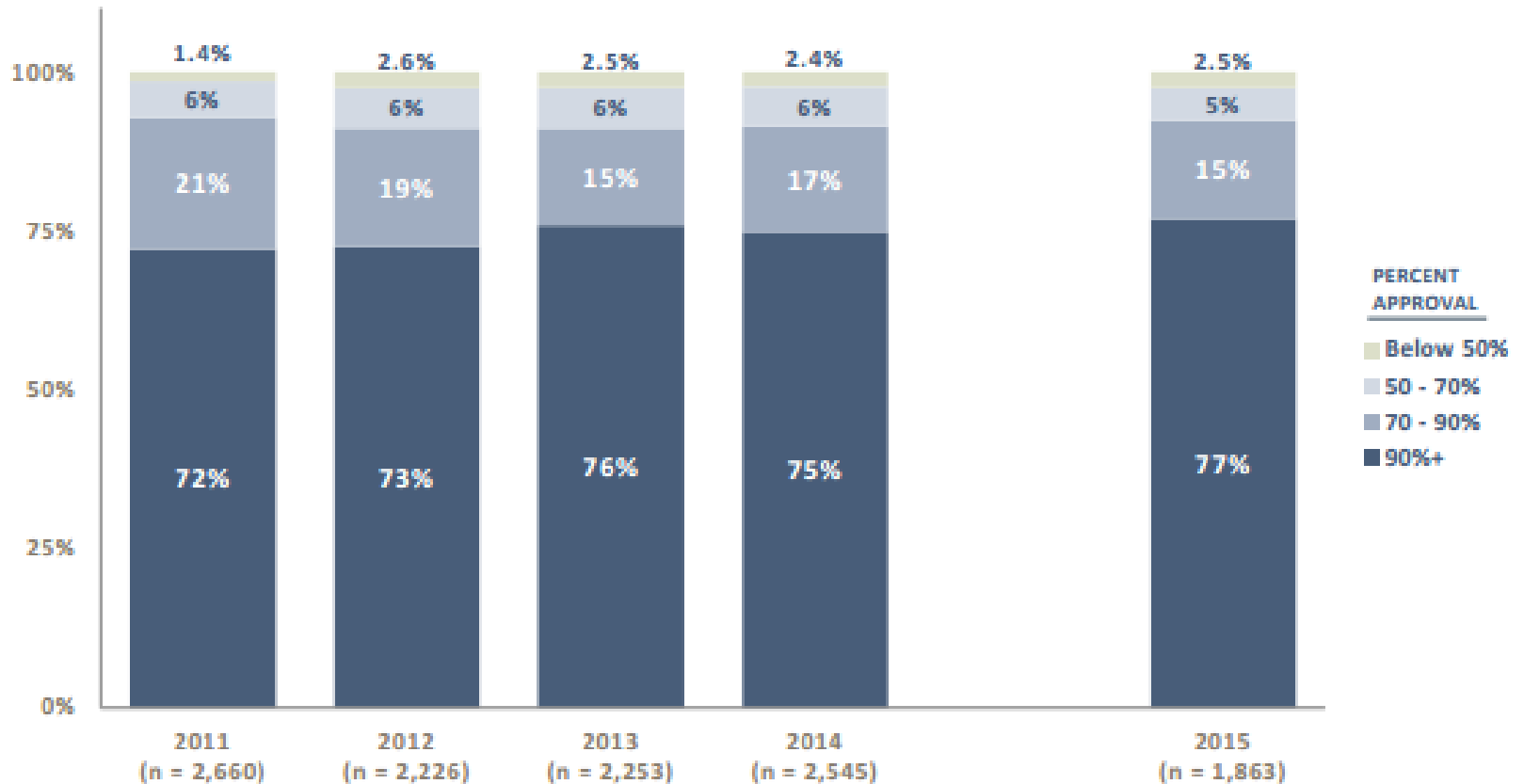
- Advance notice deadline
- What constitutes ownership (full voting and investment power, full economic interest, treatment of loaned shares)
- Nominating shareholder requirements and representations (e.g., no control intent, no participation in other solicitations, liability for all information)
- Nominee requirements and representations (e.g., independent, no criminal background, not a “bad actor”, no competitors, no undisclosed voting or financial agreements, compliance with all company guidelines and policies)
- Information requirements (regarding nominating shareholder and nominee)
- Nominee resubmission disqualifications (withdrawal or low shareholder support)





# Say on Pay Vote Results

## SAY ON PAY VOTE RESULTS (2011-2015)





# Issues of Increasing Concern For Investors

- Unresponsiveness to Majority-Supported Shareholder Proposals
- Director Attendance
- Director “Overboarding”
  - ISS Policy: Six public boards for non-CEOs; three for CEOs
  - Others believe three should be highest for all directors (See: Blackrock)
- Director Tenure
  - Investors looking for mix of long/medium/short term directors
- Director Qualifications
- Director “Interlocks”
- Enterprise Risk Management Oversight
  - Cybersecurity
  - Oversight committees for key risk areas of company

# ISS 2015-2016 Global Survey Results



On September 28, ISS published the results of its annual global survey

- ISS received 421 responses to the survey, with 114 of those responding identifying as institutional investors

Topics addressed for U.S. companies included:

- **Proxy access** – “material restrictions” in proxy access provisions adopted by companies in response to majority shareholder votes on proxy access shareholder proposal
- **Overboarding** – the number of other board seats for directors that would be considered “overboarding”
- **Unilateral bylaw amendments** –bylaw amendments unilaterally adopted by boards that “diminish shareholder rights”
- **Director independence** – cooling-off periods for former executives and professional service providers before being viewed as independent directors
- **Executive compensation** – use of adjusted or non-GAAP metrics in incentive compensation programs

Survey results will be reflected in changes to ISS policies for annual meetings held after February 1, 2016

- Draft updated policy to be issued October 26
- Final policies to be issued in November

# SEC Rulemaking and Other Developments

## Dodd-Frank Compensation Rulemaking

### ▪ Finalized

- Pay Ratio rules **adopted** August 5, but disclosures not required for this season

- **Proposed** – do not expect to apply for 2016 proxy season, though some companies may begin adding disclosures on certain topics

- Hedging disclosure rules proposed February 9

- Pay-for-Performance disclosure rules proposed April 29

- Clawbacks rules proposed July 1



## SEC Rulemaking and Other Developments (cont'd)

- Disclosure Effectiveness
- Political Spending
- Cybersecurity
- Universal Ballot
- Corp Fin administration of Shareholder Proposals
  - Staff has indicated should be issuing guidance soon in connection with its review of Rule 14a-8(i)(9) (conflicting shareholder proposals) – what should we expect?
  - Will Rule 14a-8(i)(10) (substantially implemented) be the next area of focus?
  - Will we see more reversals mid-season along the lines of the Pfizer Rule 14a-8(i)(3) (vague and indefinite) letter?

# DGCL Amendments



**Forum Selection** – allows for provisions providing that internal corporate claims may be brought only in Delaware but invalidates provisions providing that such claims may be brought only in a state other than Delaware, (*i.e.* provisions designating another state as the exclusive forum)

- Certificate of incorporation or the bylaws may designate both a Delaware and non-Delaware forum for internal corporate claims arising under the DGCL

**Fee-Shifting:** prohibit provisions shifting the corporation's or any other party's attorney's fees or expenses to the shareholder for internal corporate claims

- “Internal corporate claims” may not cover certain securities law claims

## **Other Amendments:**

- Board approval of future capital stock issuances permitted
- Expanded scope of defective corporate acts that may be ratified
- Waiver of unique corporate name permitted in limited circumstances
- Reduced approval requirement for mergers between a corporation and a public benefit corporation (now 2/3 of outstanding shares entitled to vote)
- Secretary of State may issue public records in the form of photocopies or electronic image copies without providing records in another medium



# Takeaway Advice for Solicitations

Early prep is key.

- Were results in-line with expectations?
- Identify problematic issues

Run N-PX vote research to see how your top mutual funds actually voted on the key proposals (N-PX data is available starting Aug. 31)

As the end of the year approaches:

- Update shareholder composition and institutional contact list
- As results of modeling analyses (e.g., ISS PFP or Comp Consultant) become available, consider running early vote projections based on anticipated advisory firm recommendations and institutional shareholder reaction
- As shareholder proposal deadlines approach, run vote projections on each to determine levels of anticipated support and plan of action



## Takeaway Advice for Solicitations

Always discuss and determine the scope and timing of each solicitation

- How many institutions should be solicited in light of the proposals being presented and the anticipated challenges?
- Who should participate in the process?
- When should advisory firms be reached out to?
- Should supplemental filings be used?
- Should you reach out to retail shareholders?

Ultimate goal: minimize the element of surprise, meet or exceed expectations and achieve favorable vote results



# Overview of Current Environment



Debate continued about whether activists improve long-term company performance

- BlackRock's Larry Fink questions short termism (paying dividends, buying back stock, etc.)
- DuPont exemplified this debate

Activist Investor AUM Continues to Grow – 2015 Record Year with \$140 billion

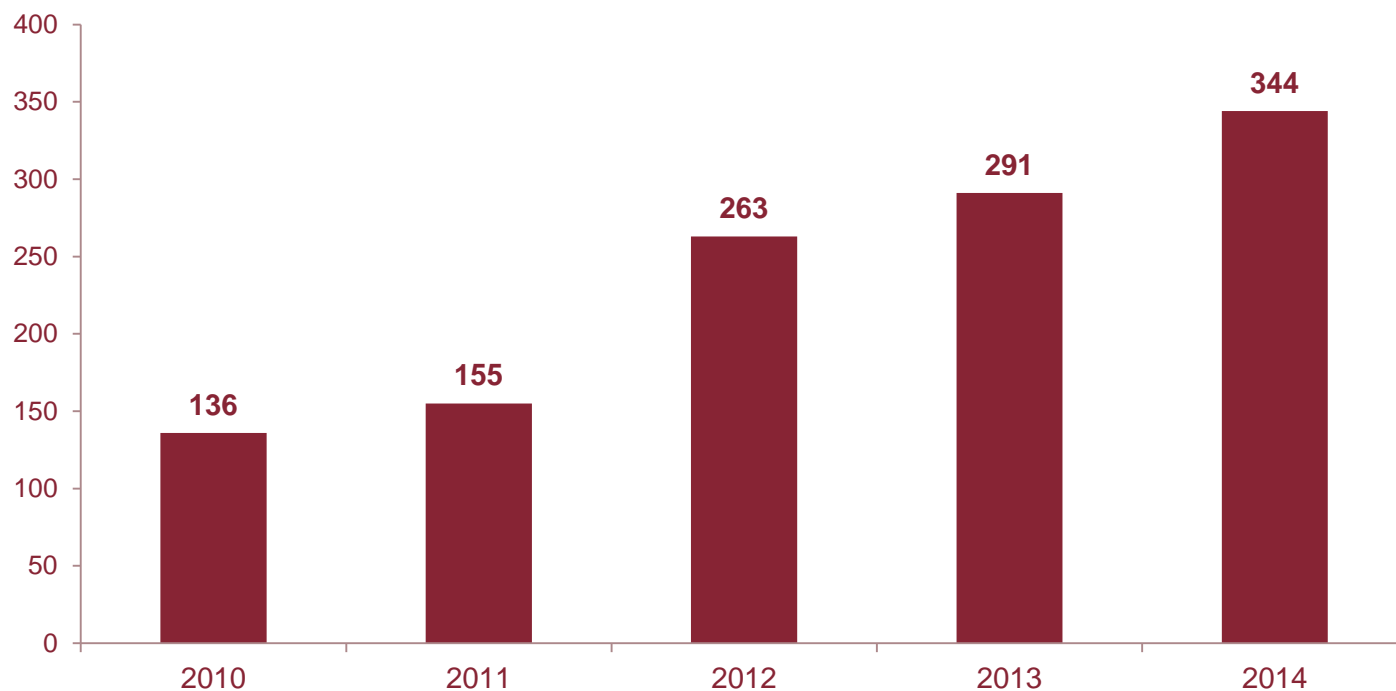
Institutional Investors Supporting Activist Agendas

To Capitulate or to Fight,  
That is the Question



# Growth of Shareholder Activism

## Companies Publicly Subjected to Activist Demands

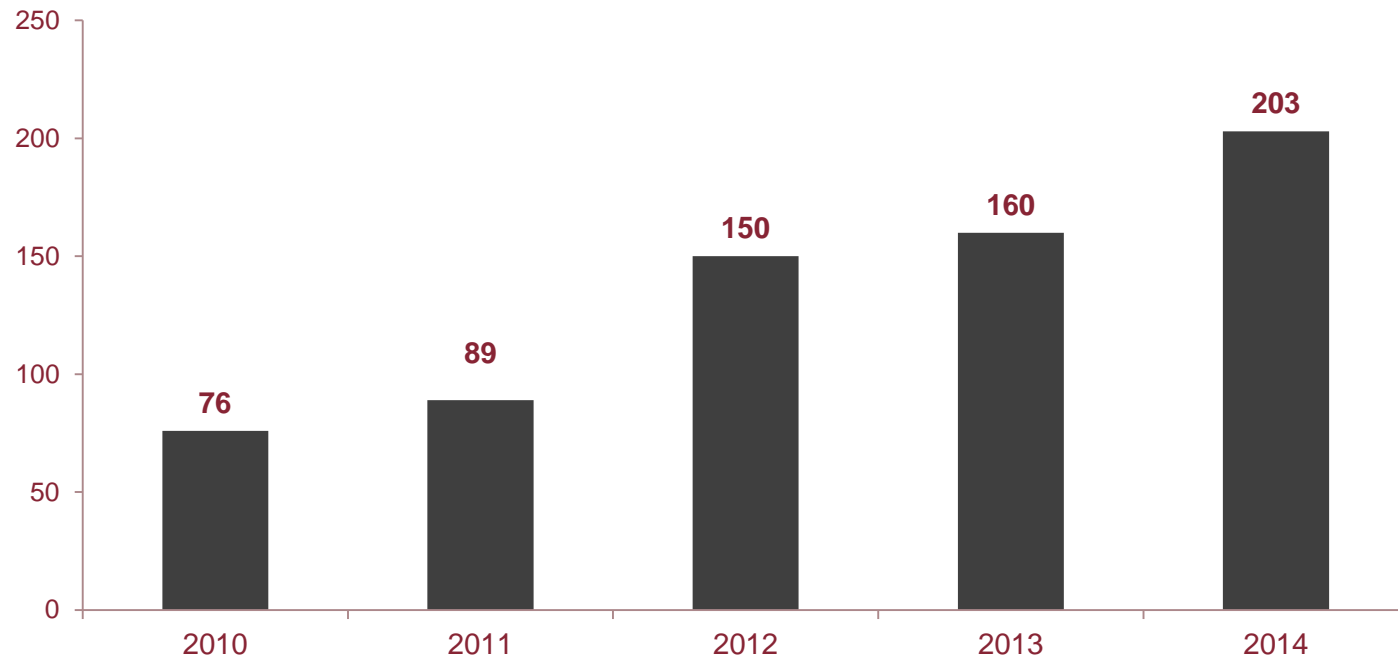


Source: 2015 *Activist Investing - An annual review of trends in shareholder activism*, Activist Insight



# Growth of Shareholder Activism

Number of Public Activists

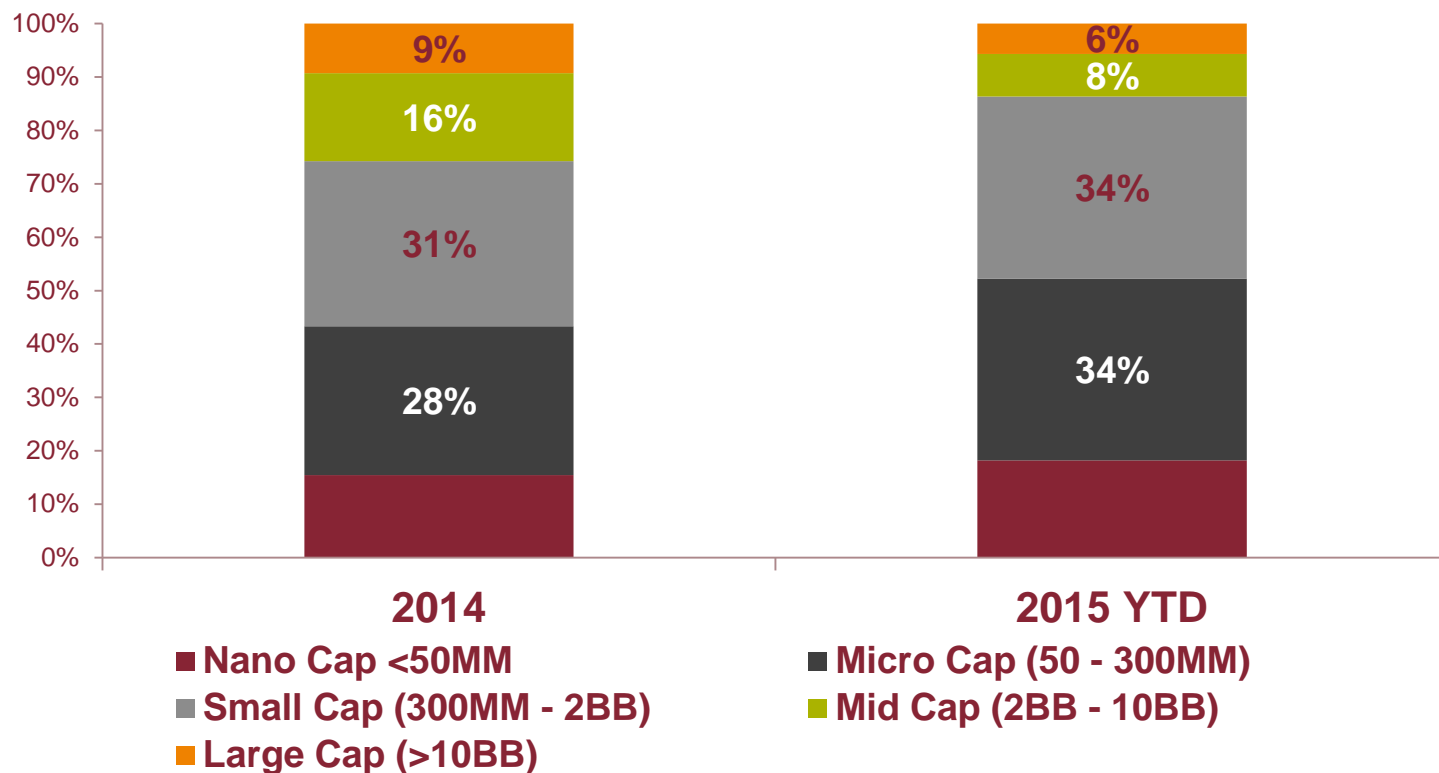


Source: 2015 *Activist Investing - An annual review of trends in shareholder activism*, Activist Insight



## Proxy Fights by Market Cap

Nearly half of the companies targeted in 2015 are with market cap greater than \$300 MM

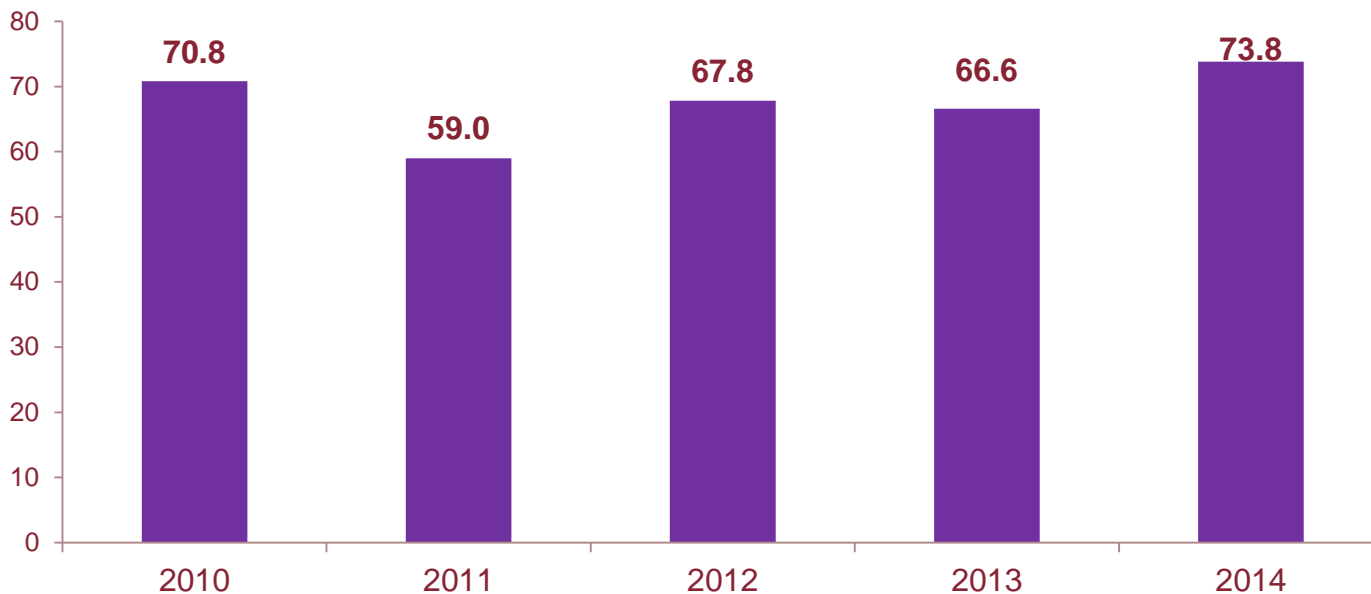


Source: SharkRepellent.net



# Growth of Shareholder Activism

Percent of Activist Demands  
That Were Partially Successful

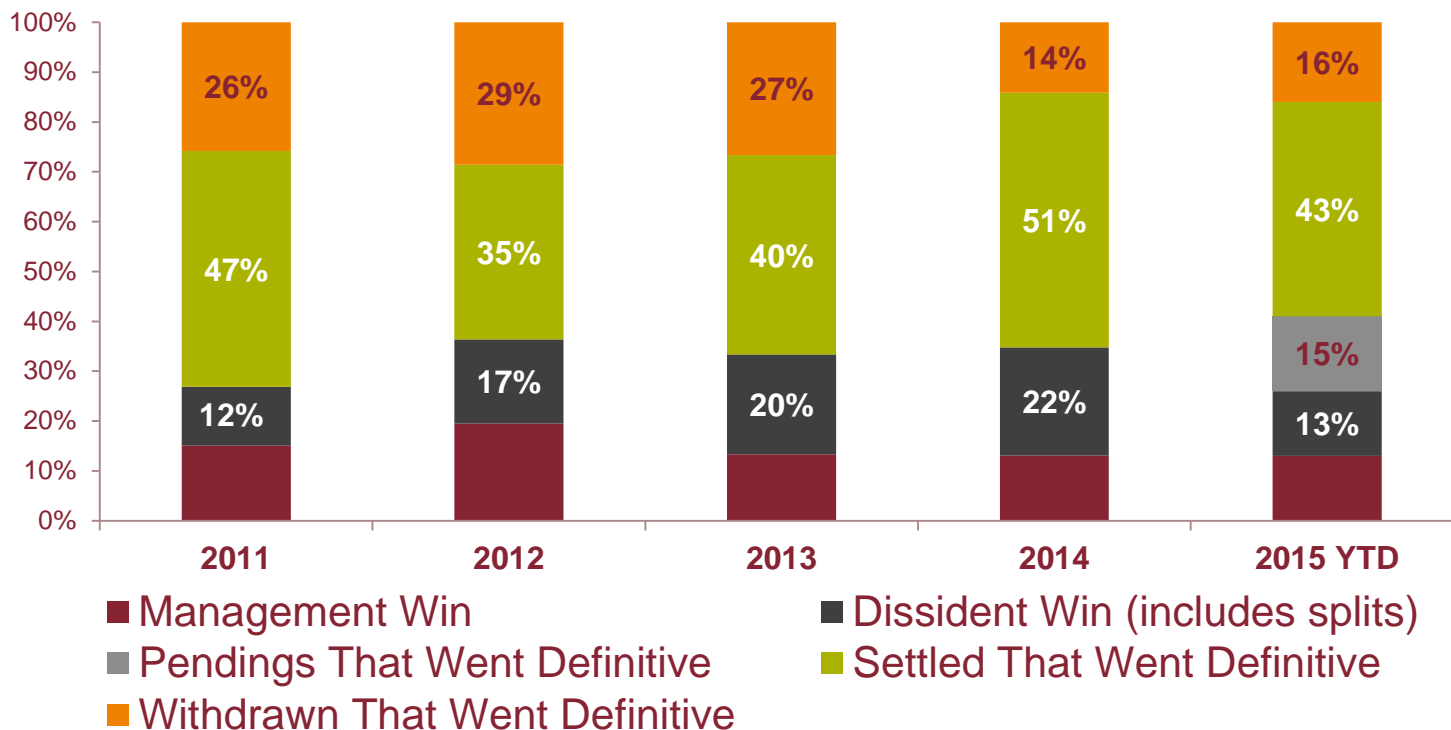


Source: 2015 *Activist Investing - An annual review of trends in shareholder activism*, Activist Insight



# Proxy Fight Analysis 2011 – 2015

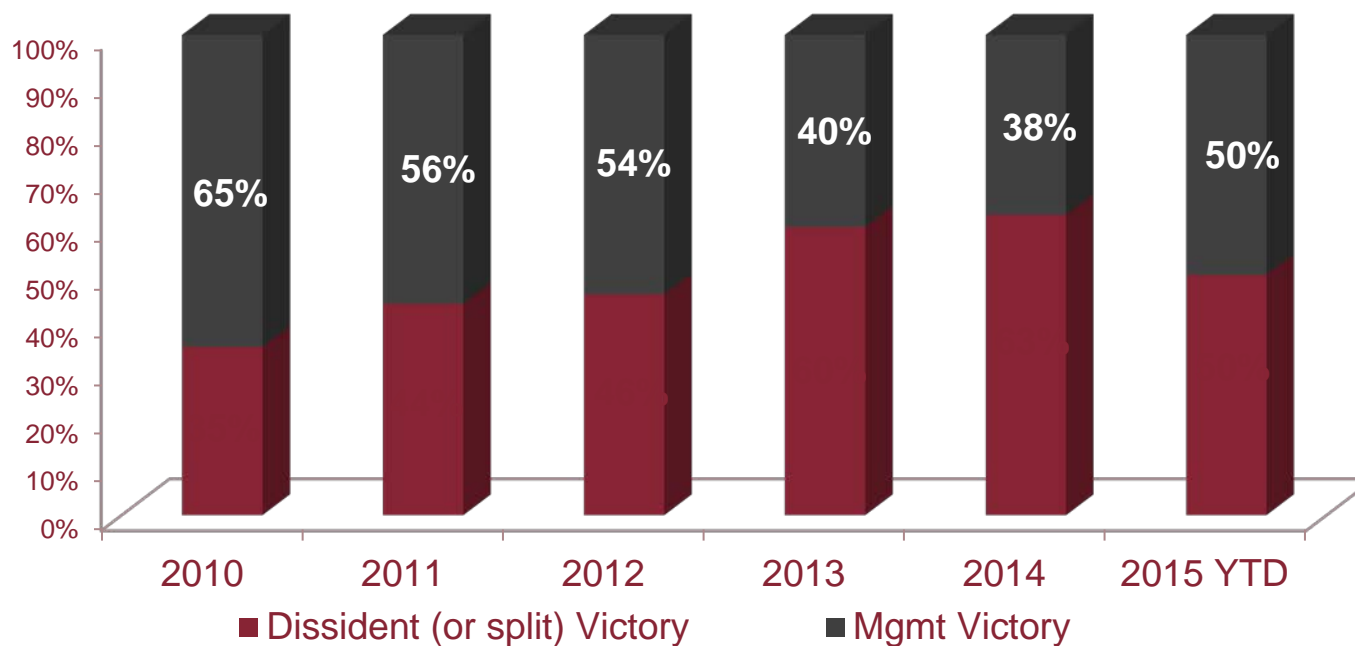
## Proxy Contests After Definitive Proxy Material Filed



Source: SharkRepellent.net



## Proxy Fights That Went the Distance




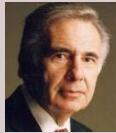








Source: SharkRepellent.net

# The Players



## Key Activists Dominating the Headlines

 <p><b>Bill Ackman</b> (Pershing Square)</p>	 <p><b>David Einhorn</b> (Greenlight Capital)</p>
 <p><b>Daniel Loeb</b> (Third Point)</p>	 <p><b>Nelson Peltz</b> (Trian)</p>
 <p><b>Carl Icahn</b></p>	 <p><b>Phillip Goldstein</b> (Bulldog Investors, LLC)</p>
 <p><b>Glenn Welling</b> (Engaged Capital)</p>	 <p><b>Jeff Smith</b> (Starboard Value LP)</p>
 <p><b>Barry Rosenstein</b> (JANA)</p>	 <p><b>James Mitarotunda</b> (Barrington Capital Group)</p>
 <p><b>Thomas E. Sandell</b> (Sandell Asset Management)</p>	 <p><b>J. Daniel Plants</b> (Voce Capital)</p>





# Activist Themes

	Investment Thesis	Goal	Selected Recent Examples	
<i>Capital Allocation</i>	Balance Sheet Capacity / Cash-Rich Situations	Return Cash to Shareholders	<ul style="list-style-type: none"> <li>Greenlight &amp; Icahn / Apple</li> <li>Marcato / Lear</li> <li>Appaloosa / GM</li> <li>Corvex / ADT</li> </ul>	<ul style="list-style-type: none"> <li>Third Point / Dow Chemical</li> <li>Trian / Ingersoll Rand</li> <li>Third Point / CF Industries</li> <li>Corvex / Crown Castle</li> </ul>
			Potential M&A Target	Sale of Company
<i>Operational</i>	Underperforming Companies	Change in Management / Board / Structure		
		Change in Operations / Business Strategy	<ul style="list-style-type: none"> <li>Starboard / Darden</li> <li>Trian / DuPont</li> <li>MSCI / ValueAct</li> </ul>	<ul style="list-style-type: none"> <li>Pershing Square / J C Penney</li> <li>Third Point / Sotheby's</li> <li>Pershing Square / Canadian Pacific</li> </ul>
	Businesses with Divestible or Non Core Assets	Divestitures / Break-Up	<ul style="list-style-type: none"> <li>Trian / PepsiCo</li> <li>Starboard / MeadWestvaco</li> <li>Trian / DuPont</li> <li>Trian / Kraft</li> </ul>	<ul style="list-style-type: none"> <li>Trian / Ingersoll Rand</li> <li>Relational / Timken</li> <li>JANA / Agrium</li> <li>Carl Icahn / eBay</li> </ul>
	Tax Structure	REIT Conversion / MLP Carve-Out	<ul style="list-style-type: none"> <li>JANA / Civeo</li> <li>Marcato / Life Time Fitness</li> <li>Corvex &amp; Marcato / CCA</li> <li>JANA / Marathon Petroleum</li> </ul>	<ul style="list-style-type: none"> <li>Carl Icahn / Transocean</li> <li>Elliot / Iron Mountain</li> <li>Starboard / Calgon Carbon</li> <li>Starboard / Darden</li> </ul>



# The Corporate Governance “Hook”

- Changes to Corporate Governance structure is not a key focus of activists, but a tool they use to portray the company as being entrenched
  
- Areas of Focus
  - Anti-Takeover Defenses (Poison Pills, Classified Boards, etc.)
  - Director Tenure
  - Director Qualifications
  - Board “Interlocks”
  - Board Diversity

**A Company’s Governance Structure Can Act As An Anchor**



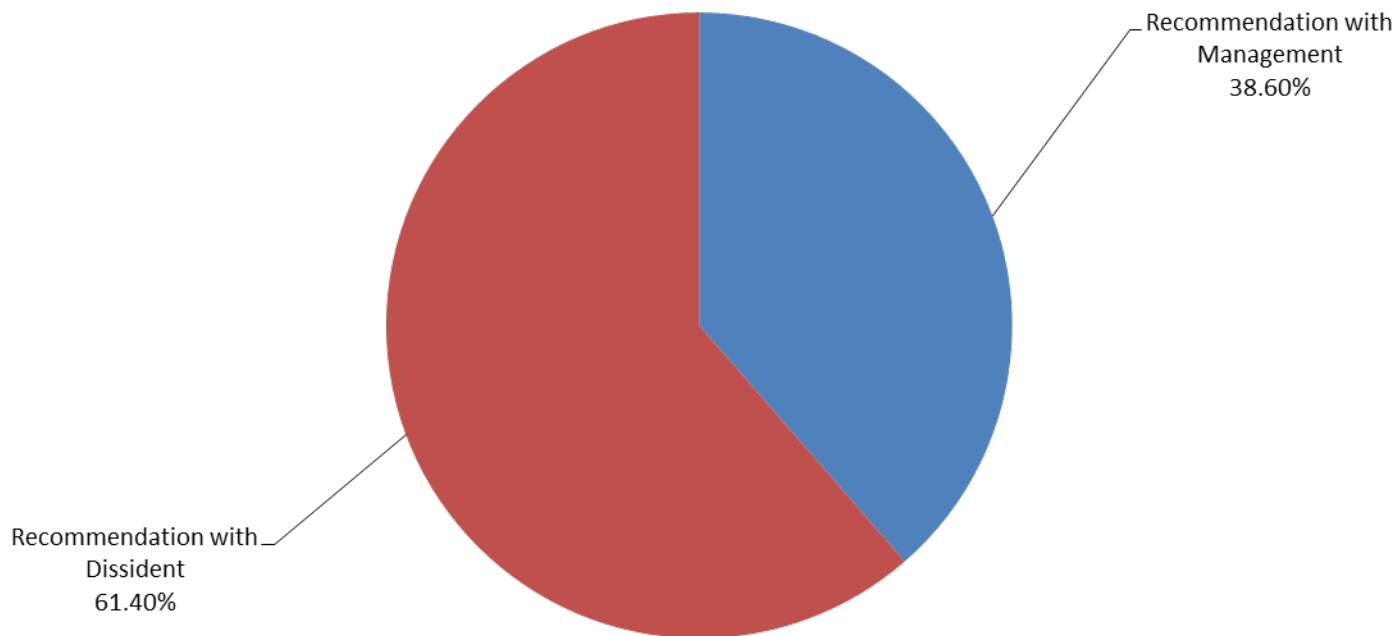
## ISS Policy in Proxy Contests

- 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.



# Dissidents Receiving Support from Proxy Advisory Firms

ISS Recommendations in Proxy Contests  
2013 - 2015



## Other Influences on Dissident Success

Change In Perception- Raider vs. Activist

Dissidents Ability to Attract More Qualified Candidates

Large Institutional Investors More Willing to Support Dissident Nominees

- High-End Dissidents Building Long-Term Relationships with Money Mangers
- Requests For Activism- RFAs

The Media Always Interested in a Story



# Activism Preparedness

No company is immune to the possibility of shareholder activism

To mitigate risk, companies should take three steps:

1. Conduct vulnerability assessments and identify likely activist strategies
2. Analyze the shareholder base and undertake a shareholder support analysis
3. Prepare for engagement and create “ready teams”

A company is more persuasive when it has already considered a proposed action and can readily describe its reasons for rejecting a shareholder activist’s approach in favor of the company’s strategic plan.



# Receipt of Nominations – Next Step Work Flows

## Workflow #1

- Assess what dissident is demanding/expecting.
- Pull apart each of the dissident's points, deconstruct those arguments to determine legitimacy.
- Do a side-by-side comparison of dissident nominees vs incumbents.
- If requested – take meeting with the dissident.

## Workflow #2

- Examine the current investor deck – refresh it to make an “Advocacy Deck”.
- Use the Advocacy Deck with investor outreach efforts.

## Workflow #3

- Evaluate internally ALL the opportunities available to the company:
- 3-5 year plan as stand-alone.
  - “Value Enhancing” ideas that dissident has raised/proposed. Identify specific \$\$ value for each and compare them each vs the status quo.
  - What is the potential total value of the company in a sale?
- These provide the board with the best judgment to decide what to do.

## Shareholder Activism - Key Takeaways

- Recognize no company is immune to shareholder activism.
- To capitulate or to fight? Recent high-profile management victories underscore the potential for building a successful defense, despite the statistics on settlements.
- Preparation – in advance of an activist emerging preparation is critical to a successful defense.
- Proactive and consistent institutional investor engagement is imperative – must articulate a clear strategic plan and vision for creating shareholder value.





# Evolution of engagement

## Historically

- “Engagement” consisted of earnings calls, the annual meeting and interactions by the CEO and CFO with portfolio investment managers
- Other forms of engagement were generally viewed as something companies did reactively and as quietly as possible when they were in trouble

## Today

- Engagement has become more proactive and widespread
- ISS studies in 2010 and 2013 show that overall engagement levels are higher and that fewer companies and investors report that they do not engage
  - In 2013, nearly half of issuers and more than half of investors, reported initiating more than 10 engagements

# Shareholder Engagement Trends



## Large Institutional Investors Becoming More Vocal

### Investor Letter-Writing Campaigns

#### **BlackRock's Latest Letter-Writing Campaign also to Largest Investee Companies to Advance Theme of Avoiding Short-Termism**

- Aspire to encourage taking long-term approach to creating value, as part of corporate leaders' duty of care and loyalty to company
- Letters varied by market, with US letters focusing more on specific US tax and buyback policies
- No replies generally expected, although continue to emphasize broad engagement and positive governance
- Also signaling more scrutiny of director nominees over tenure, attendance and diversity

#### **TIAA-CREF Letter to Top 100 Investee Companies Urging Adoption of Proxy Access by October**

- Urge 3%/3-year/25%-board model
- Encourage voluntary adoption vs. current inefficiencies of "private ordering" (investors engaging on a Company-by-Company basis on specific practices or policies)
- Expect more from them, notwithstanding quiet diplomacy approach

### CalPERS Ongoing Letter-Writing Campaigns

- Expect proxy access focus in advance of shareholder proposal deadlines, given support to NYC this season



# Shareholder Engagement Trends

## Investors Engaging with Companies on Governance More Frequently

Large Institutional Investors Can Own Up to 12,000 companies; now receiving thousands of requests for engagement

Many Large Companies Seek to Engage 2 – 3 times per year

Growing Trend Among Smaller Companies, Though Not As Prevalent

Important that Smaller Companies Make Engagement a Priority

- “If the first time we hear from you is when you have a problem, that’s a problem for us”



# Shareholder Engagement Trends

## More Proxy Advisory Firm Engagement

Increased requests for engagement due to SOP, also inquiries on specific policies or particular issues, vote-no campaigns, Shareholder proposals, M&A, fights

ISS now speaks to majority of S&P 500, fair number of Russell 3000, covering everything from 10-minute call to meeting with directors + management

- Often directors if on compensation, executive succession, M&A
- Calls can be just as good as meetings + email reminders can be helpful at last minute if you think firms may miss something (but not walking through whole proxy statement)

Usually both sides talk to ISS if “contested”; Glass Lewis offers “Proxy Talks”

## Why are companies engaging more?

- Say-on-pay vote requirement (since 2011)
- Voting policies on responsiveness to shareholder proposals
- Increased level of hedge fund activism
- Continued high level of activity by governance activists
- Changing expectations of mainstream institutional investors



# Engagement includes a range of activity

- Typical Activities
  - Isolated one-on-one meetings or calls with stockholders
  - Governance road show -- Series of one-on-one meetings or calls
  - Responding to letters from investors
  - Enhancing proxy and other disclosures to more clearly address governance and compensation practices
  - Attending events hosted by investor groups
  - Reviewing investors' published voting policies
- Less Common Activities
  - Group meeting with representatives from multiple, select investors
  - “Town Hall” meeting open to all shareholders
  - Participation in electronic forums
  - Participation in working groups with investors
  - Inviting shareholder representatives to Board meeting
  - Surveys



# Shareholder Engagement Trends

## Key Takeaways

- As with other engagements, best to have detailed agenda with company participants, so that firms know whom to bring on their end and can be prepared. If deck, send enough in advance for firms to review, if possible.
- Combination of IR and Corporate Governance Engagement
- Off-season engagement is best
- An Effective Investor Relations Department is the First Line of Defense for Fending Off An Activist
- Involvement of Independent Directors Where Appropriate



## Potential benefits of engagement

- Builds relationships in advance of when the company needs to ask for a specific vote
- Enables company to receive useful feedback from investors about their concerns
- Can serve as an early warning of potential activism targeting the company





# Questions?

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