

DISPATCHES FROM THE PROXY FRONT

Shareholder Activism and The 2008 Proxy Season

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Georgeson

A COMPUTERSHARE COMPANY

2007 Proxy Overview

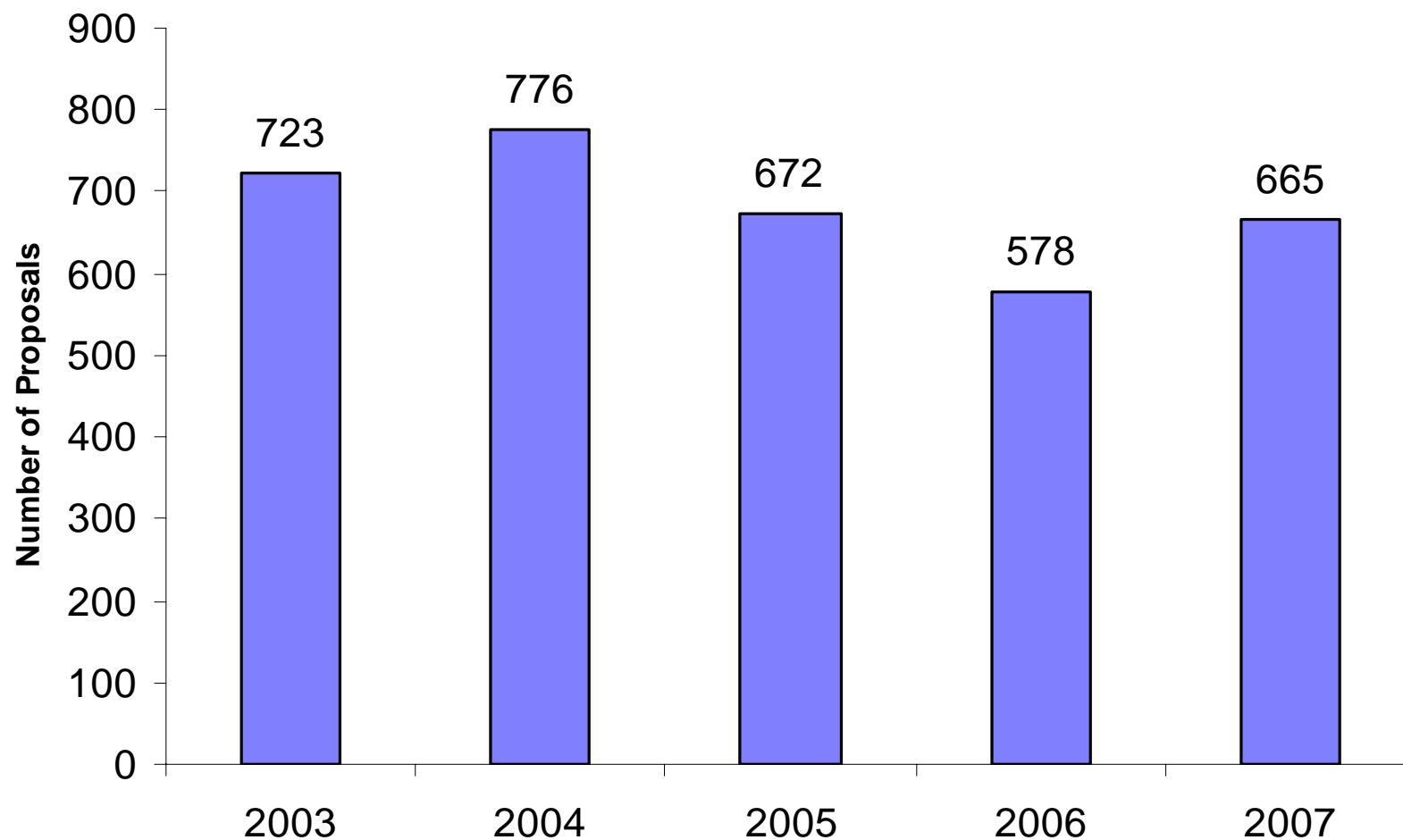
Table of Contents

- › **Shareholder Proposals and Governance Reform**
- › **2007 Proxy Fights**
- › **Hedge Funds and Hedge Fund Activism**
- › **Impending Regulatory and Governance Changes**
- › **Forecast for 2008**

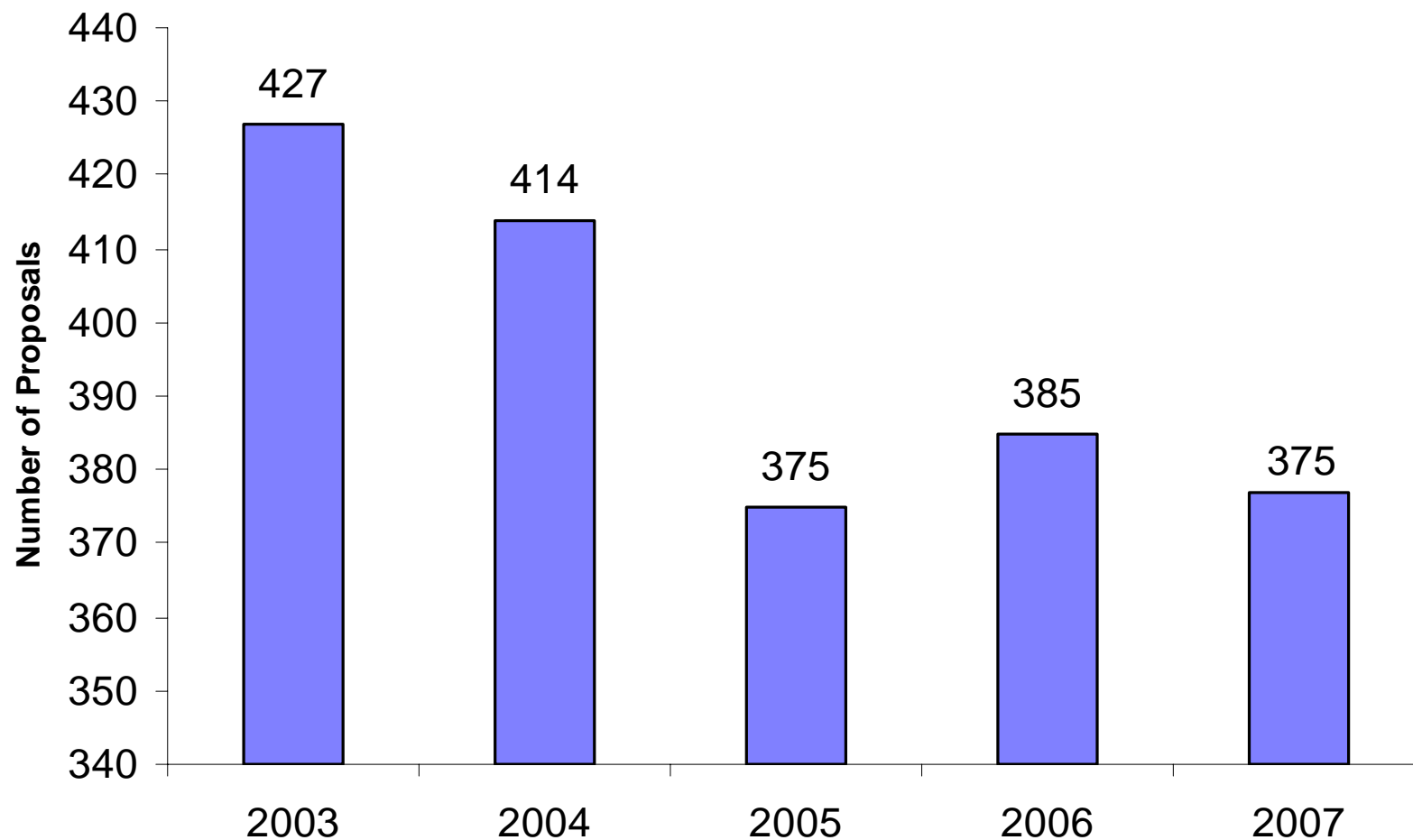
Shareholder Proposals and Governance Reform

- › **2007 Shareholder Proposal Overview**
- › **Selected Proposals 2006 vs. 2007**
- › **Executive Compensation - Major Themes**
- › **Management Initiatives**

Corporate Governance Shareholder Proposals *Submitted* 2003 - 2007

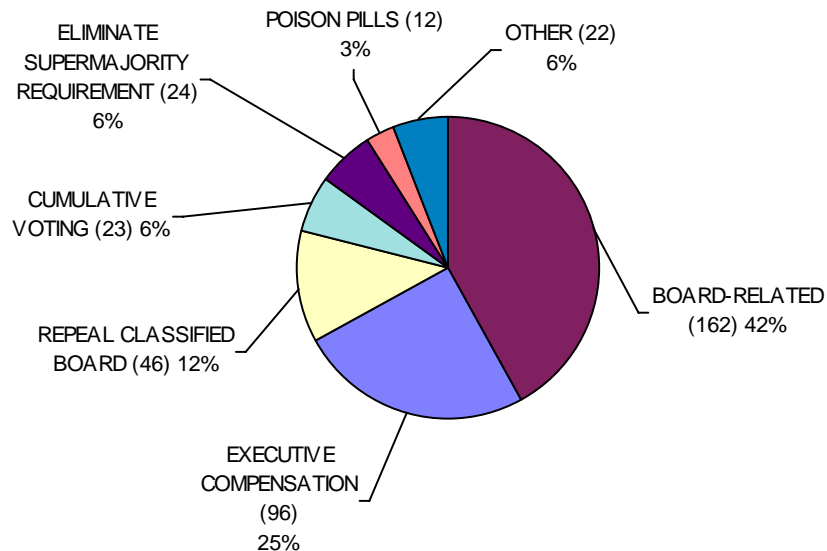


Corporate Governance Shareholder Proposals *Voted On* 2003 - 2007

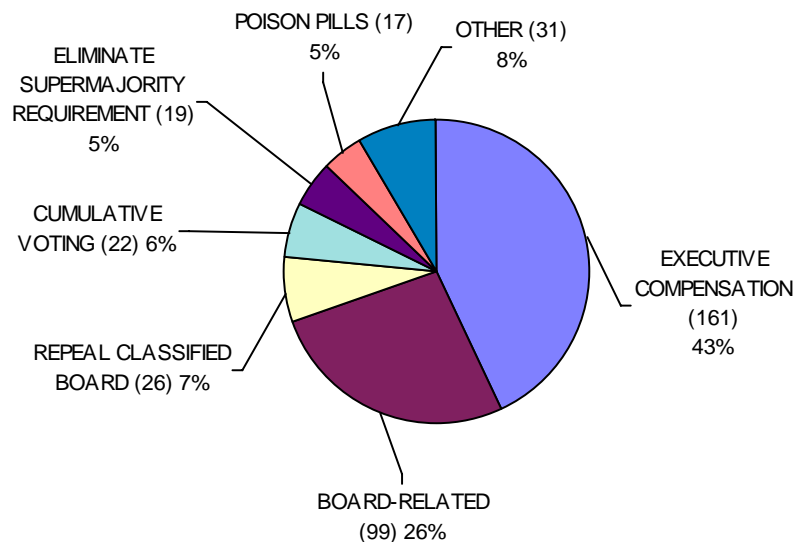


Corporate Governance Shareholder Proposals *Voted On* 2006 - 2007

2006



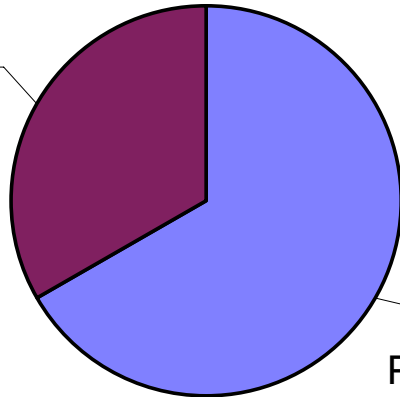
2007



Corporate Governance Shareholder Proposals Withdrawn or Omitted vs. Proposals Voted on 2006 - 2007

2006

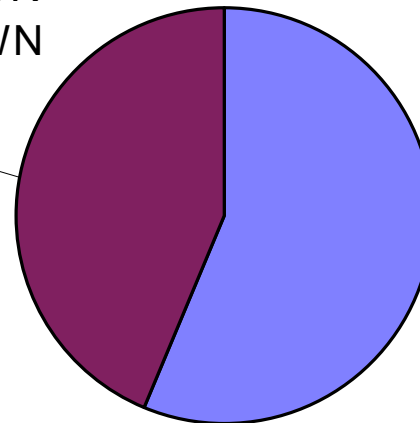
OMITTED OR
WITHDRAWN
33.4%



PROPOSALS
VOTED ON
66.6%

2007

OMITTED OR
WITHDRAWN
43.7%



PROPOSALS
VOTED ON
56.3%

2007 Proxy Overview

Selected Shareholder Proposals Results

PROPOSAL TYPE	# Voted	As % of Outstanding				As % of Votes Cast		
		For	Aga	Abs.	No-Vote	For	Aga	Abs.
EXECUTIVE COMPENSATION	161	23%	49%	3%	13%	31%	66%	4%
- Advisory Vote on Exec. Comp	39	29%	41%	4%	13%	39%	55%	6%
- Link Pay to Superior Performance	34	21%	52%	2%	14%	29%	69%	2%
- Add Perform. Criteria to Equity Award	16	24%	49%	1%	13%	32%	66%	2%
- Golden Parachutes	12	37%	36%	1%	11%	50%	48%	2%
BOARD RELATED	99	24%	49%	1%	13%	32%	66%	2%
- Majority Vote to Elect Directors	37	38%	37%	1%	11%	49%	49%	2%
- Ind. Bd. Chair/ Separate Chair-CEO	37	18%	56%	1%	12%	25%	74%	1%
REPEAL CLASSIFIED BOARD	26	54%	25%	1%	10%	68%	31%	1%
CUMULATIVE VOTING	22	24%	49%	2%	12%	33%	65%	2%
ELIM. SUPERMAJORITY REQUIREMENT	19	50%	23%	1%	13%	67%	32%	1%
POISON PILL PROPOSALS	17	24%	48%	2%	14%	31%	66%	3%

2007 Proxy Overview

Recent Results vs. 2006 Proxy Season

Proposal		# of Proposals	% of Cast in Favor
Repeal Classified Boards			
	<i>2006</i>	46	66%
	<i>2007</i>	26	68%
Poison Pill Proposals			
	<i>2006</i>	12	49%
	<i>2007</i>	17	31%
Cumulative Voting			
	<i>2006</i>	23	38%
	<i>2007</i>	22	33%

(continued)

2007 Proxy Overview

Recent Results vs. 2006 Proxy Season

Proposal		# of Proposals	% of Cast in Favor
Majority Vote to Elect Directors			
	<i>2006</i>	87	47%
	<i>2007</i>	37	49%
Eliminate Supermajority Requirement			
	<i>2006</i>	24	63%
	<i>2007</i>	19	67%
Ind. Bd. Chair/ Separate Chair-CEO			
	<i>2006</i>	49	29%
	<i>2007</i>	37	25%

2007 Proxy Overview

Executive Compensation – Major Themes

Advisory votes on Executive Compensation (a.k.a. "Say-on-Pay")

- › Requests annual advisory vote on executive compensation by shareholders
- › Seeks to provide another link between performance and compensation
- › Proposal first appeared in 2006 and averaged better than 40% in favor
- › Adopted by Aflac
- › Returns in 2007 even stronger (achieved majority at Ingersoll Rand, Motorola, and Blockbuster)
- › Averaged ~40% during 2004 Proxy Season

Link Pay-to-Performance

- › "Pay for performance" increasingly becoming standard for institutional voting not only on specific proposals but also on re-election of members of compensation committee (more than 55 "performance" related proposals in 2007)
- › Institutions increasingly looking for performance-based vesting of equity in any compensation plan
- › Latest variation on this theme involves pay for "superior" performance (performance must exceed median of peers) with 34 proposals garnering an average of almost 30% of votes cast

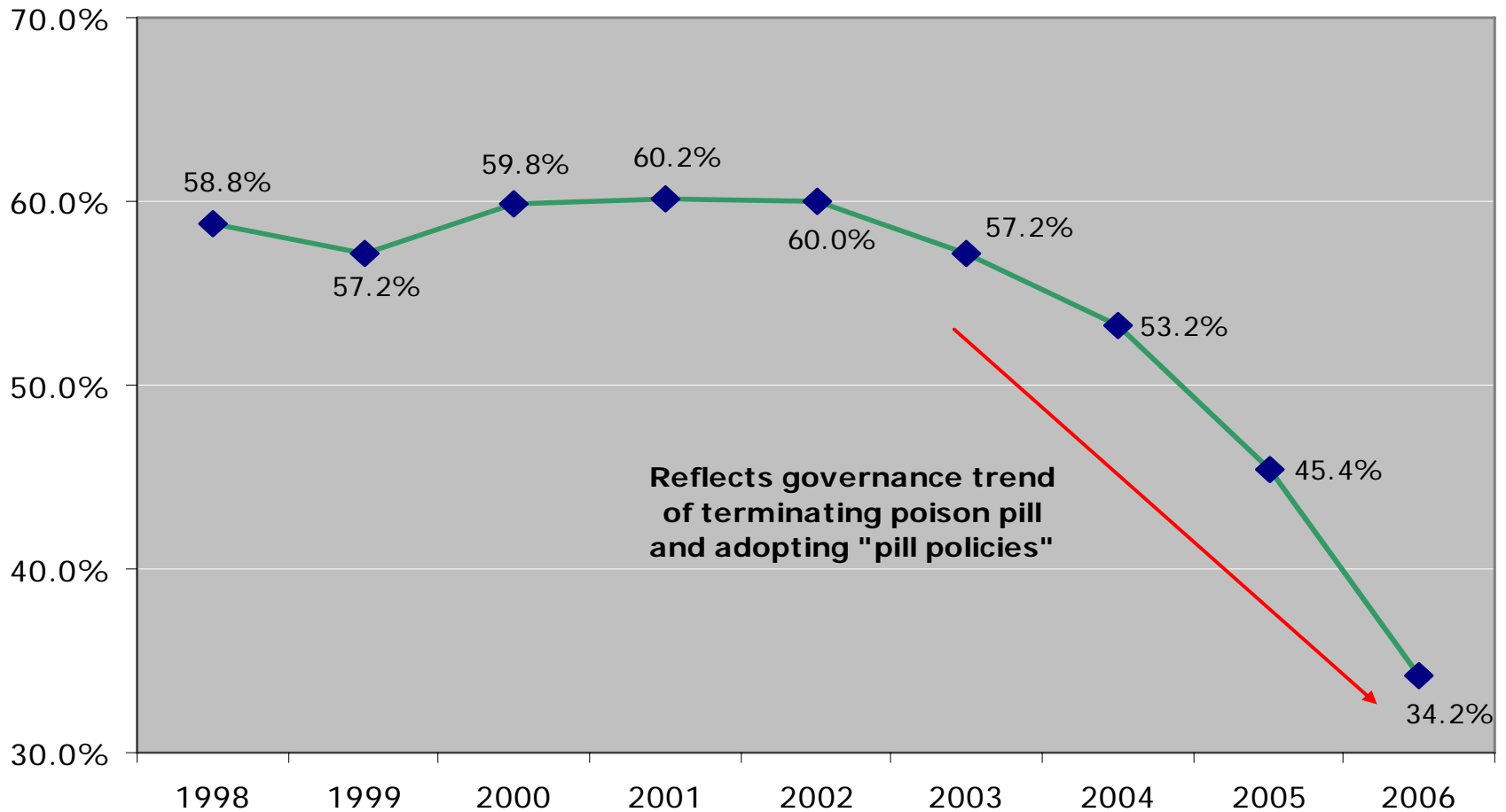
Golden Parachutes

- › Votes on severance packages and/or parachutes and severance benefits that exceed 2.99x salary plus bonus now typically average better than 50% of votes cast. Have broad institutional support

2007 Proxy Overview

Management Initiatives - S&P 500 Companies with Pills

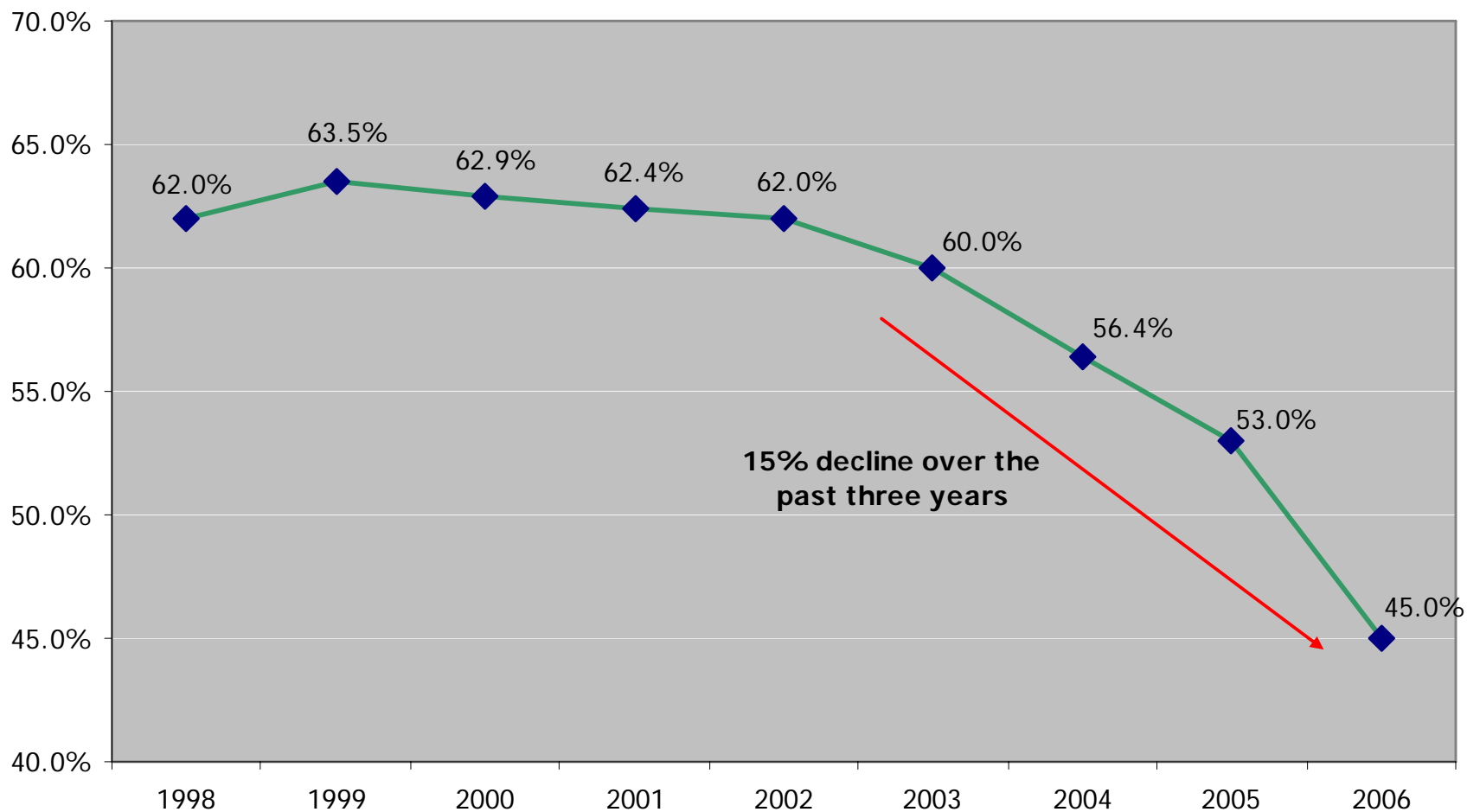
1998-2006



2007 Proxy Overview

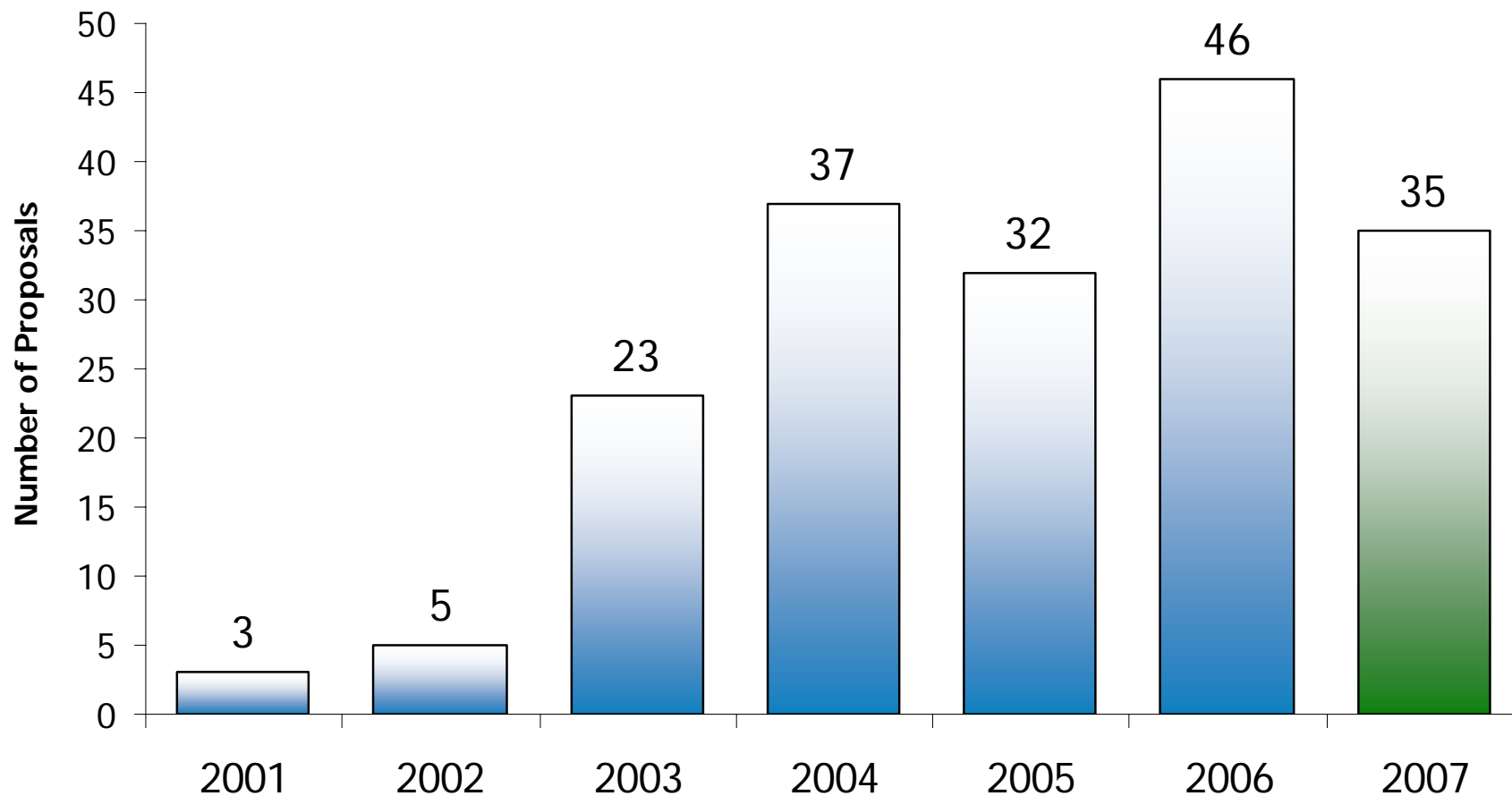
Management Initiatives - S&P 500 Companies with Classified Board

1998-2006



2007 Proxy Overview

Mgmt. Proposals to Repeal Classified Board - 2001-2007

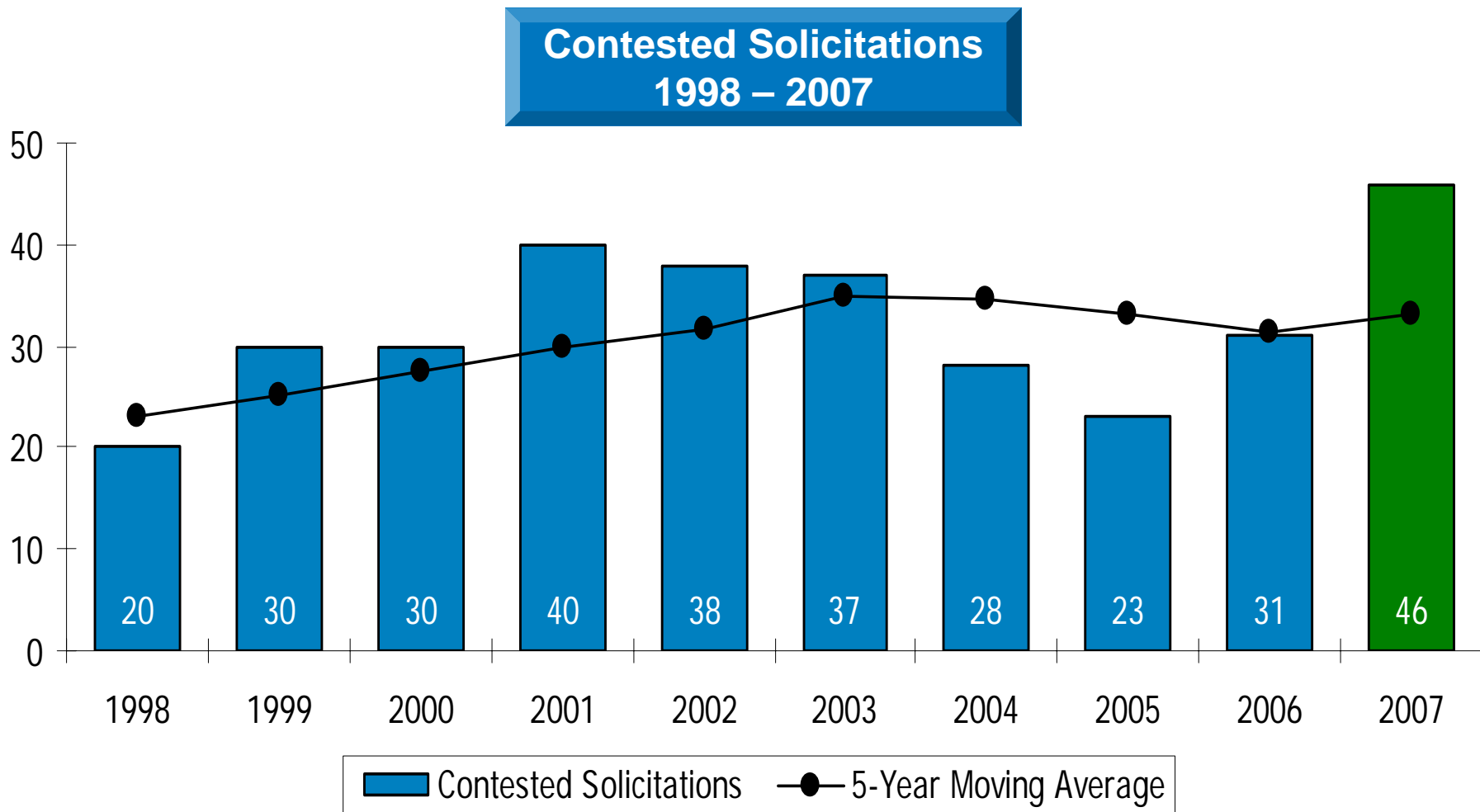


2007 Proxy Fight Overview

- › **Proxy Fights at Record Levels**
- › **The Proxy Fight Game**
- › **Proxy Advisory Firms**
- › **Proxy Fight Strategy**

2007 Proxy Fight Overview

Dissident Solicitations at an All-Time High



The Proxy Fight Game

- › **What are they asking for?**
 - Sales, Spin-offs, Buybacks, Dividends
 - Executive compensation reform
 - Far fewer fights asking for operational changes or control
- › **Representation vs. Change-of-control**
 - Short slate solicitations far more common
- › **The Player's have changed**
 - Hedge funds act as catalysts (the "non-group group")
- › **Rumors of proxy fights can cause turnover in shareholder base**

Proxy Advisory Firms



RiskMetrics Favors Minority Representation

- › **When Seeking Board Control, Dissidents Need to Provide:**
 - A well-reasoned and detailed business plan (including strategic alternatives)
 - Explanation of why dissident plan is preferable
 - A transition plan that describes how the change in control will be effected
 - Identification of a qualified and credible new management team
 - ISS will compare dissident plan and nominees vs. current board

- › **When Seeking Minority Representation:**
 - Detailed plan of action not required
 - Proof that dissident plan is preferable to the incumbents' plan not required
 - Must show change is preferable to status quo
 - Must show that dissident slate will add value to board deliberations by considering the issues from a different and unique viewpoint

RiskMetrics Focus Factors

› **Factors to Consider:**

- Company performance relative to its peers
- Strategy of the incumbents versus dissident strategy
- Independence of directors/nominees
- Experience and skills of board candidates
- Governance profile of the company
- Evidence of management entrenchment
- Management Responsiveness to shareholders
- Whether takeover offer has been rebuffed

Proxy Fight Strategy

- › **Proper Due Diligence Early On**
 - Meet with dissident group
 - Nominating Committee evaluations of dissident nominees
- › **Establish Proxy Fight “Team”: Legal, Financial, Proxy Solicitor and Public Relations Firm**
- › **Shareholder Composition and Vote Projections**
- › **Institutional Road Shows**
- › **Fight Letters and Other Media**
- › **Visit or Conference Calls with Proxy Advisory Firms**
- › **Telephone calls to Registered and NOBO Holders**
- › **Internet and Telephone Voting now permitted in contests**

Hedge Funds and Hedge Fund Activism

- › **Hedge Funds: The Basics**
- › **Hedge Fund Activism: Motivation, Techniques and Tactics**
- › **Dealing with Hedge Fund Activism**
 - Negotiations
 - Rallying Shareholder Support

2007 Proxy Overview

Hedge Funds: The Basics

- › **Hedge funds are private investment funds open only to accredited and high net worth investors**
- › **Currently 13,000+ hedge funds**
- › **Nearly \$2 trillion in assets**
 - Even large state pension funds such as CalPERS have allocated sizeable amounts of assets to be managed by hedge funds

Hedge Fund Activism: Motivation

- › **Declining returns and increased competition between hedge funds force creativity and increased activity**
- › **Growth in event-driven strategies: Short-term shareholder value enhancement**
- › **Fewer companies maintain strong takeover defense profiles**
- › **Activists are buoyed by recent successes**
 - Relational Investors at Home Depot and Sovereign Bancorp
 - Pershing Square at Wendy's and McDonalds
 - Carl Icahn at Kerr-McGee
 - Breedon Capital Management at H&R Block and Applebee's

Hedge Fund Activism: Techniques and Tactics

- › **Parallel-Investing (a.k.a “Wolf Pack Approach”)**
 - Hedge funds network extensively and often take follow-up positions in other funds initiatives
- › **Corporate governance and other initiatives attract the support of other shareholders**
- › **Hedge funds rarely seek control of target companies, but instead seek short-term gains in shareholder value**
- › **Wide range of intensities:**
 - Low-intensity: simple information request, letter to board or management
 - Middle intensity: threats of proxy campaign, public relations initiative
 - High-intensity: full-blown proxy campaign

Hedge Fund Activism: Techniques and Tactics

Mergers and Acquisitions

- › Hedge funds influential in M&A landscape
- › Full value offers required; Supermajority threshold problematic to issuers

BIOMET INC.

75% vote requirement

\$2/share bump in offer + tender offer

CLEAR CHANNEL COMMUNICATIONS

2/3 vote requirement

\$37.60 to \$39.20 plus 'equity stub'

STATION CASINOS

2/3 requirement

\$7.50/share to bump in offer

KINDER MORGAN

75% vote requirement

\$8/share bump in offer

Dealing with Hedge Funds - Negotiations

- › **Hedge funds may be persuaded to discontinue proxy campaigns if certain concessions are granted by issuer:**
 - Board representation
 - Corporate governance reforms
 - Changes in business strategy
 - Reimbursement of campaign expenses

Dealing with Hedge Funds - Rallying Shareholder Support

- › **Usually difficult to convince shareholders to ignore short-term share value gains**
- › **Wage fights like political campaigns**
 - Early communications

Corporate Governance and Regulatory Changes

- › **Majority Voting in Director Elections**
- › **Rule 452**
- › **Notice and Access**

Majority Voting in Director Elections Overview

- › **Default Standard: Plurality Voting**
- › **Movement Toward Majority Voting begins in 2004**
- › **Over 60% of S&P 500 companies have adopted some form of majority voting***
 - 2005 & 2006 most Issuers adopt Majority Vote “policy” (i.e: Pfizer Model)
 - 2007 brings clear movement toward bylaw and charter amendments
- › **State law amendments facilitate Majority Voting**
 - Model Business Corporation Act (MBCA) amended to allow for Majority Voting
 - DE: amends DGCL §141(b) to make resignation policies irrevocable
 - CA: amends Cal. Corp Code §153 to allow for director “approval of the shareholders”
 - OH: passes law to allow for majority voting in July 2007
- › **Debate has shifted from “should we” to “how do we”**
 - SEC won’t issue No-Action letter if shareholder proposal requests bylaw amendment and issuer only has policy in place
 - Policy vs. By-Law vs. Charter Provisions
 - Is it better to adopt early or wait?
 - Early adoption allows issuer to craft bylaw to their liking

Majority Voting - If Director Resignation Required:

› **Nominating Committee**

- Shareholder stated reason for issuing withhold or against votes
- Whether underlying cause for withhold is curable
- Composition of Board
 - With and without resignation
 - Independence requirements
- Director length of service and contributions
- Availability of suitable replacement

› **Recent Case: Gen-Probe 2007**

- Nominating & Governance committee does not accept resignation
 - Justifications for not accepting resignation: “unique qualifications, her past contributions to the Board, her historical attendance and participation in Board meetings and communications, and her commitment regarding future attendance and scheduling”

NYSE Rule 452: Overview

- › **Current System: In the case of a routine item, brokers are allowed to vote on behalf of their clients 10 or 15 days before the annual meeting**
- › **Generally brokers elect to vote with Management**
- › **In May 2006, the NYSE proposed to amend NYSE Rule 452 by making the election of directors a non-routine item**
- › **NYSE rule changes require approval by SEC**
 - NYSE announces that modifications would be in place by 2008 proxy season
 - SEC usually swift in approving NYSE rule modifications
 - Not so swift on Rule 452

NYSE Rule 452: Overview

› **Reasons for Delay:**

- Combined effect of 452 modifications and majority voting
 - Shareholder “withhold” campaigns could be problematic
- Inability to obtain quorum
- Additional costs incurred with elimination

› **Other Alternatives:**

- Proportional Voting
 - Brokers vote proportionally to how directed shares are voted
 - Some brokers already have it in place:
 - › Merrill Lynch, Charles Schwab, TD Ameritrade, Goldman Sachs
 - Potential consequence: Hedge funds maintain accounts at different brokerage houses
 - › Disproportional effect if they vote against

Notice and Access - Overview

› **How Does Notice and Access Work?**

- Notice and Access has Four Elements:
 - Notice of Internet Availability
 - Access to Proxy Materials on the Internet
 - Paper Copy Requests
 - Proxy Card

Notice and Access - Overview

› **Notice of Internet Availability**

- Post card must be sent 40 days before meeting date
- Summarizes the matters to be considered
- Tells holders that the materials are available online
- Tells holders that they can obtain paper copy upon request
- Proxy card CANNOT accompany the 40-day Notice
 - Follow-up mailing with proxy card allowed 30 days before meeting

› **Access to Proxy Materials on the Internet**

- Proxy materials must be posted on an Internet website at or prior to the time that the issuer or soliciting person sends out the notice
- Proxy materials must remain posted through the conclusion of the shareholder meeting

Notice and Access - Overview

› **Paper Copy Requests**

- Shareholders have the right to receive paper copies
- Requests for paper copy must be filled within 3 business days
- Obligation to deliver paper lasts for one year

› **Proxy Card**

- Again, CANNOT accompany the Notice
- Proxy card may be sent 10 days after the Notice is sent
- Shareholders must be able to access proxy statement in order to access proxy card

Notice and Access - Implementation Dates

› **Implementation Dates:**

- July 1, 2007: “Voluntary” notice and access for all Issuers
- January 1, 2008: large accelerated filers MUST post proxy materials on website and provide Notice of Internet Availability
- January 1, 2009: non-accelerated filers required to do the same

Notice and Access - Usefulness and Pitfalls

› **Usefulness: Segmented Use of Notice Option**

- Ex: bottom 5% of holders can constitute over 50% of total mailing cost
- Options:
 - Stratification by share range (250 shares and less)
 - Segmentation by street vs. registered

› **Potential Pitfalls:**

- Potential Loss of Retail Investors Requires Additional Solicitation Efforts
 - Separation of proxy statement from proxy card may require additional efforts to get responses
- Hidden Costs
 - Printing on demand is generally more expensive than bulk printing
 - Requests for paper copies must be satisfied via first class delivery
- Earlier Solicitations
 - Proxy material must be available 40 days in advance

Notice and Access: Where Does This Make Sense?

- › **Companies with large institutional shareholder base**
- › **Companies with large odd-lot shareholder base**

2008 Preview: Shareholder Proposals and Governance Reform

- › **Losing Battles for Issuers:**
 - Repeal Classified Board
 - Poison Pill Recession
 - Elimination of Supermajority Requirements

- › **2008 “Big” Issues: Executive Compensation**
 - “Say on Pay” dominates proxy landscape
 - No sign of wholesale issuer capitulation
 - Link Pay to Performance
 - Add Performance Criteria to Equity Based Awards

2008 Preview: The Next Battle: Social and Environmental Reform

- › **New Focus on Shareholder Proposals dealing with Social and Environmental Issues**
 - Political Contributions
 - Sustainability Reports
 - Greenhouse Gas Emissions
 - Human Rights, Labor Standards

2008 Preview: Proxy Fights and Hedge Funds

› **Hedge Funds**

- Sustained “above-average” returns not easy
- Fears of inflation and recession cause uneasy investors
- Just ask Pirate Capital...
 - 80% of assets withdrawn in last year

› **Proxy Fights**

- Hedge Fund effort to sustain short term gains creates more fights
- Potential for market downturn leads to unpredictability and volatility
- Success leads to additional contests

2008 Preview: Regulatory Reform

- › **Complications with Massive Regulatory Changes**
 - Notice and Access and Majority Voting
 - Complications could arise in the process of solicitation
 - Notice and Access and Rule 452
 - Potential Quorum Issues
 - Complications can arise in soliciting retail shareholders
 - Notice and Access, Majority Voting and Rule 452
 - The Perfect Storm?

- › **NYSE Rule 452 changes? Maybe Not...**

BIOGRAPHY

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David Drake works with clients to help them obtain favorable shareholder vote results on proxy contests, shareholder proposals, compensation plans and other corporate governance matters.

David is a frequent speaker and writer on corporate governance and compensation issues. His recent articles include “Seeking Shareholder Approval of Option Plans Under the New NYSE/NASDAQ Listing Standards” and “Are You Ready for the Ratings Game: The Corporate Governance Ratings Game.” Prior to joining Georgeson in 1997, David served as Vice President and Director of US Research and Senior Analyst for Institutional Shareholder Services (ISS).

David earned a BA in Political Science from George Washington University and an MBA in Finance from The American University in Washington, DC.