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RECENT INSTITUTIONAL INVESTOR VOTING TRENDS IN CONTESTED BOARD ELECTIONS

THE TEN LARGEST INSTITUTIONAL INVESTORS HAVE INCREASED THEIR SUPPORT FOR ACTIVIST NOMINEES BY MORE THAN 21% OVER THE SIX-YEAR PERIOD ENDED 2018

As can be seen from the voting summary displayed in Table 1, on a weighted average basis, support for activist board slates among the ten largest institutional investors (controlling, in the aggregate, over $12 trillion in equity or nearly two-thirds of the $19 trillion in equity assets under management at the top fifty institutional investors) increased from 33% in the two-year period ended 12/31/2014 to 36% in the two-year period ended 12/31/2016 to 40% in the two-year period ended 12/31/2018- an overall increase of more than 21% over the six-year period ended 2018.

THE THREE LARGEST PASSIVELY MANAGED FUNDS HAVE NEARLY DOUBLED THEIR SUPPORT FOR ACTIVIST NOMINEES OVER THE SIX-YEAR PERIOD ENDED 2018

On a weighted average basis, the bulk of the increase described above arose from voting by the three largest passively managed funds (Vanguard, BlackRock and State Street) as displayed in Table 2, where aggregate support for activist board slates increased among the passively managed funds from 17% in the 2013/14 Period to 28% in the 2015/16 Period to 33% in the 2017/18 Period – an overall increase of more than 94% over the six-year period ended 2018.

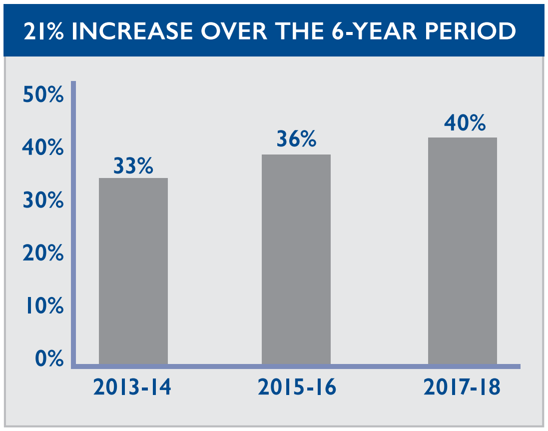


Table 1 *Top Ten Institutional Investors: Support for Activist Nominees*

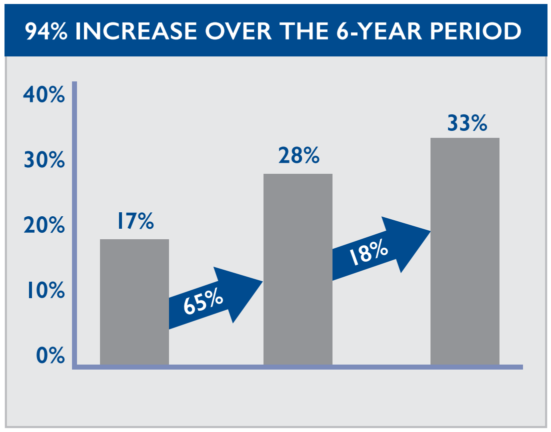
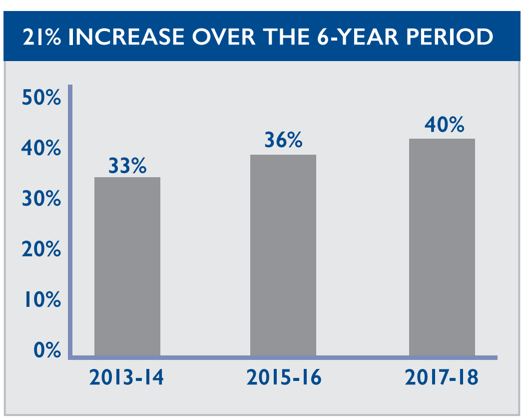


Table 2 *Three Largest Passively Managed Funds: Support for Activist Nominees*

In an effort to gauge actual support for dissident board slates among institutional investors, last year we reviewed voting by the top fifty institutional investors (ranked and weighted by equity assets under management) in contested board elections that went to a vote at U.S. issuers in the five-year period ended June 30, 2017, as reported in the Forms N-PX filed by these investors with the Securities and Exchange Commission (the "SEC").[1] See *Institutional Investor Voting in Board Election Contests,* March 13, 2018.

In that study, we reported that, as a group, the top fifty institutional investors, controlling, in the aggregate, more than $19 trillion in equity assets under management, had voted for the election of dissident board nominees less than a majority (i.e., only about 40%) of the time in the board election contests occurring over the five-year period ended June 30, 2017, indicating that these investors were predisposed to support incumbent board and management teams. However, in the five-year period studied, activist campaigns were increasingly successful because a significant (albeit minority) share of institutional voting was more than enough to ensure a growing number of activist victories in board election contests, especially when that support was combined with uniform hedge fund support for activist platforms.[2, 3]

This article reports on trends in voting by the top ten institutional investors (ranked and weighted by equity assets under management) in contested board elections that went to a vote at U.S. and Canadian issuers with market capitalizations of $500 million or more in three two-year periods ended December 2014, 2016 and 2018, as reported in the Forms N-PX filed by these investors with the SEC. It also studies the extent to which the voting by these investors in the proxy contests studied has adhered to the voting recommendations of proxy advisory firms, such as Institutional Shareholder Services ("ISS") and Glass Lewis & Co., LLC ("Glass Lewis").[4, 5]



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THE TEN LARGEST INSTITUTIONAL INVESTORS HAVE INCREASED THEIR SUPPORT FOR ACTIVIST NOMINEES BY MORE THAN 21% OVER THE SIX-YEAR PERIOD ENDED 2018

As can be seen from the voting summary displayed in Table 1, on a weighted average basis, support for activist board slates among the ten largest institutional investors (controlling, in the aggregate, over $12 trillion in equity or nearly two-thirds of the $19 trillion in equity assets under management at the top fifty institutional investors) increased from 33% in the two-year period ended December 31, 2014 (the "2013/14 Period") to 36% in the two-year period ended December 31, 2016 (the "2015/16 Period") to 40% in the two-year period ended December 31, 2018 (the "2017/18 Period") - an overall increase of more than 21% over the six-year period ended 2018.

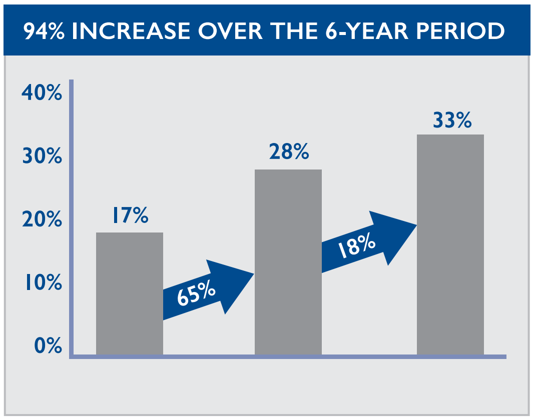

Table 2 *Three Largest Passively Managed Funds: Support for Activist Nominees*

On a weighted average basis, the bulk of the increase described above arose from voting by the three largest passively managed funds (Vanguard, BlackRock and State Street) as displayed in Table 2, where support for activist board slates increased among the passively managed funds from 17% in the 2013/14 Period to 28% in the 2015/16 Period to 33% in the 2017/18 Period – an overall increase of more than 94% over the six-year period ended 2018.

While the substantial increase in support for dissident board nominees among passively managed funds over the six-year period ended 2018 was significant, it was not uniform. For example, as displayed in Table 3 below, only 6% of the votes cast by Vanguard in the 2013/14 Period were for the election of dissident board nominees, increasing to 23% of the votes cast by Vanguard in the 2015/16 Period and to 41% of the votes cast by Vanguard in the 2017/18 Period. Similarly, only 18% of the votes cast by State Street in the 2013/2014 Period were for the election of dissident board nominees, increasing to 23% of the votes cast in the 2015/16 Period and to 37% of the votes cast in the 2017/18 Period. But BlackRock was an outlier, with 29% of its votes cast for the election of dissident board nominees in the 2013/14 Period, increasing to 36% in the 2015/16 Period and decreasing to 22% of the votes cast in the 2017/18 Period. It remains to be seen whether BlackRock's relatively low support for the election of dissident board nominees in the 2017/18 Period will hold steady or revert to previously higher levels in 2019 and beyond.

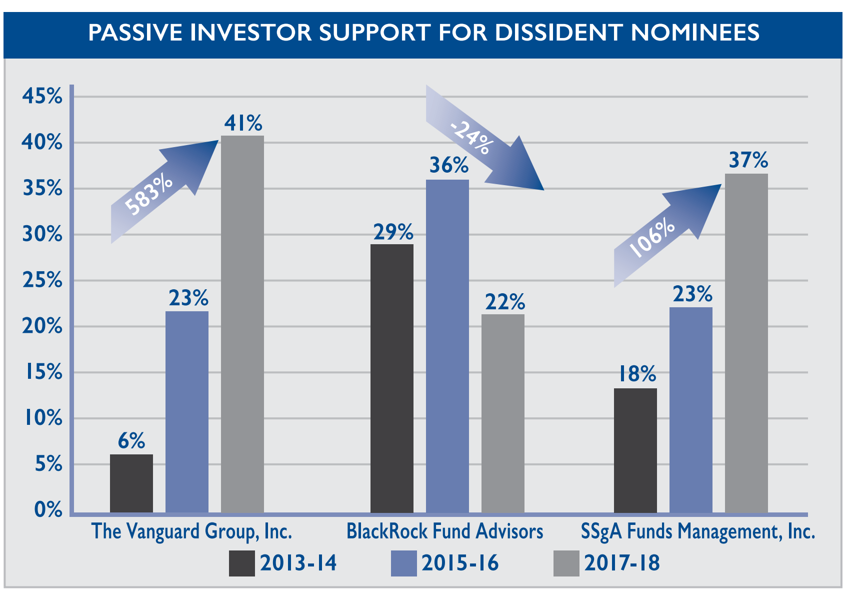

Table 3 *Vanguard, BlackRock, and SSgA Support for Activist Nominees*

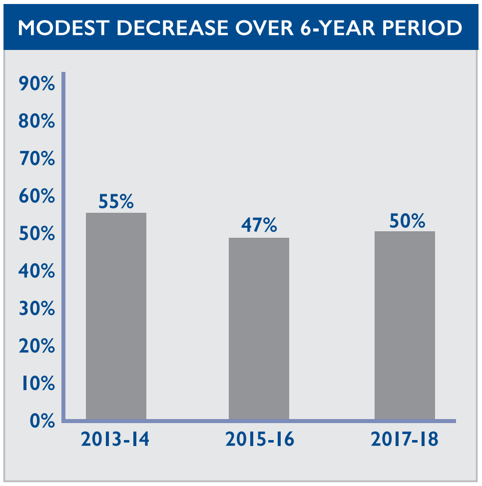

Table 4 Actively Managed Funds: Support for Activist Nominees

SUPPORT FOR ACTIVIST NOMINEES AMONG THE ACTIVELY MANAGED FUNDS WITHIN THE TEN LARGEST INSTITUTIONAL INVESTORS HAS DECREASED MODESTLY OVER THE SIX-YEAR PERIOD ENDED 2018

Support for activist board slates decreased modestly, again, on a weighted average basis, among the actively managed funds from 55% in the 2013/14 Period to 47% in the 2015/16 Period and to 50% in the 2017/18 Period - an overall decrease of about 9% over the six-year period ended 2018, as displayed in Table 4. However, support for activist nominees among the actively managed funds varied widely from one fund to the next and from one two-year period to the next. For example, in the 2013/14 Period Wellington Management Co., LLP voted for activist nominees 23% of the time, rising to 71% in the 2015/16 Period and declining to 67% in the 2017/18 Period.

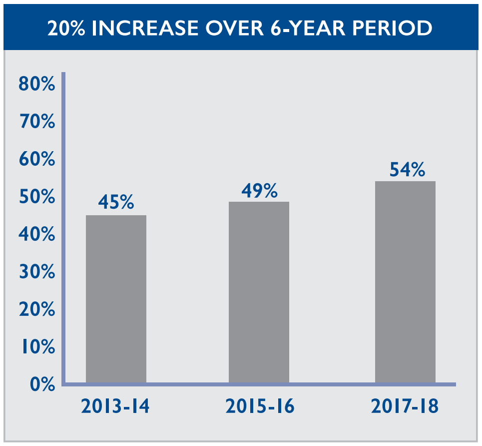

Table 5 Top 10 Institutional Investors: Adherence to ISS

ADHERENCE TO ISS VOTING RECOMMENDATIONS FOR ONE OR MORE ACTIVIST NOMINEES HAS INCREASED BY ABOUT 20%

As can be seen from the voting summary displayed in Table 5, when ISS supported the election of one or more dissident nominees, adherence to ISS voting recommendations increased among the ten largest institutional investors (ranked and weighted by equity assets under management) from 45% in the 2013/14 Period to 49% in the 2015/16 Period to 54% in the 2017/18 Period - an overall increase of 20% over the six-year period ended 2018.

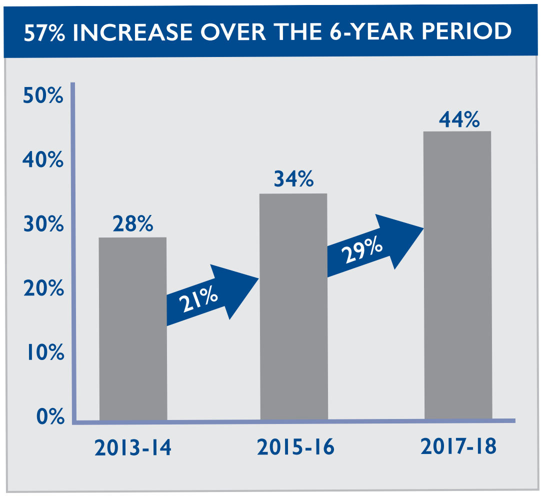

Table 6 *Passively Managed Funds: Adherence to ISS*

AMONG THE LARGEST PASSIVELY MANAGED FUNDS, ADHERENCE TO ISS VOTING RECOMMENDATIONS FOR ACTIVIST NOMINEES HAS INCREASED BY MORE THAN 57%.

Once again, the bulk of the increase described above arose from voting by: passively managed funds, (Vanguard, BlackRock and State Street) as displayed in Table 6, where adherence to ISS recommendations for the election of one or more dissident nominees increased among the passively managed funds, considered as a group, from 28% in the 2013/14 Period to 34% in the 2015/16 Period to 44% in the 2017/18 Period - an overall increase of more than 57% over the six-year period ended 2018.

And, once again, this increase was not uniform in and among the passively managed funds. For example, when ISS recommended the election of one or more dissident board nominees, only 11% of the votes cast by Vanguard in the 2013/14 Period were for the election of one or more dissident nominees, increasing to 33% of the votes cast by Vanguard in the 2015/16 Period and to 58% of the votes cast by Vanguard in the 2017/18 Period. Similarly, when ISS recommended the election of one or more dissident nominees, only 33% of the votes cast by State Street in the 2013/14 Period were for the election of one or more dissident board nominees, decreasing to 22% of the votes cast by State Street in the 2015/16 Period and increasing to 54% of the votes cast by State Street in the 2017/18 Period. But, again, BlackRock was an outlier. When ISS recommended the election of one or more dissident nominees, 44% of the votes cast by BlackRock were for the election of one or more dissident nominees in the 2013/14 Period, decreasing to 40% in the 2015/16 Period and decreasing further to 23% of the votes cast in the 2017/18 Period. Again, it remains to be seen whether BlackRock's relatively low adherence to ISS voting recommendations for the election of dissident board nominees in the 2017/18 Period will hold steady or revert to previously higher levels in 2019 and beyond.

WHILE SUPPORT FOR ACTIVIST NOMINEES ENDORSED BY ISS HAS REMAINED UNCHANGED AMONG THE ACTIVELY MANAGED FUNDS

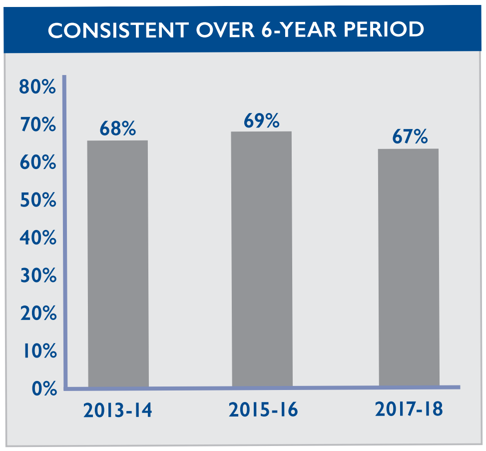

Table 7 *Actively Managed Funds: Adherence to ISS*

Adherence to ISS voting recommendations when ISS supported the election of one or more dissident nominees was unchanged among the actively managed funds, ranging from 68% in the 2013/14 Period to 69% in the 2015/16 Period to 67% in the 2017/18 Period, as displayed in Table 7.

Thus, it appears that ISS voting recommendations have become more influential among the passively managed funds (considered as a group) and remain significant for actively managed funds in election contests. But ISS voting recommendations are by no means determinative with respect to overall voting by institutional investors in election contests, particularly when we consider that the voting described above includes many instances where institutional investors voted for fewer dissident nominees than were recommended by ISS.

GLASS LEWIS RECOMMENDATIONS FOR ONE OR MORE NOMINEES ARE FOLLOWED BY THE TEN LARGEST INSTITUTIONAL INVESTORS ABOUT HALF THE TIME

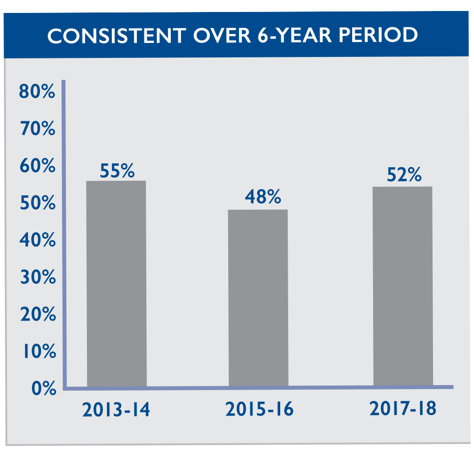

Table 8 *Top 10 Institutional Investors: Adherence to Glass Lewis*

When Glass Lewis recommended a vote for the election of one or more dissident nominees, the ten largest institutional investors (ranked and weighted by equity assets under management) adhered to the Glass Lewis voting recommendation about half of the time, ranging from 55% of the votes cast in the 2013/14 Period to 48% of the votes cast in the 2015/16 Period to 52% of the votes cast in the 2017/18 Period, as displayed in Table 8.

Notwithstanding significant institutional subscribers to Glass Lewis voting recommendations (including certain institutions that always vote as recommended by Glass Lewis), our data shows that ISS voting recommendations remain more influential than Glass Lewis voting recommendations in and among institutional investors generally. But our data also shows that certain institutional subscribers to ISS are more apt to ignore ISS voting recommendations and vote contrary to those recommendations than other institutional investors, which creates opportunities for boards (and dissidents) even with adverse ISS voting recommendations.

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IMPLICATIONS FOR INCUMBENT BOARD AND MANAGEMENT TEAMS

Separate and apart from the debate over competing platforms of board and activist nominees for election as director, the share ownership profile of the issuer determines its overall vulnerability to an activist campaign. However, share ownership profiles differ from one issuer to the next.

The share ownership profiles of some issuers make them easy targets for an activist agenda (e.g., insignificant ownership by directors, officers and employees, together with insignificant ownership by retail investors, substantial hedge fund ownership and substantial ownership by institutional investors with a demonstrated propensity to vote for the election of activist nominees), while the share ownership profiles of other issuers present what may be insurmountable challenges for an activist (e.g., substantial ownership by directors, officers and employees, together with substantial ownership by retail investors, insignificant hedge fund ownership and substantial ownership by institutional investors with a demonstrated propensity to vote for the election of nominees proposed by the incumbent board). And, as you might expect, the share ownership profile of most issuers presents some combination of the two extremes described above – not exactly an "easy target" for activists, but not "invulnerable" either.

For these reasons, among others, every issuer should know its own share ownership profile – specifically, how many shares are controlled by: officers, directors and employees (including shares controlled by employee plans); retail investors; institutional investors (including the mix of active and passive – or indexed – ownership, as well as the mix of investment strategies employed among the actively managed funds); hedge funds; and, if applicable, known activist investors. In addition, issuers should know the demonstrated voting preferences of their institutional owners (or, at least, the demonstrated voting preferences of their top fifty or one hundred institutional investors), including the extent to which these investors have adhered to the voting recommendations of ISS and Glass Lewis, based on actual voting and not merely conjecture, anecdotes or hearsay.

Our studies of institutional voting in board election contests have shown that, generally speaking, actual support for the election of dissident nominees varies widely from one institutional investor to the next, ranging from 0% to 100% of the votes cast, with some institutional investors adhering rigidly to the voting recommendations of ISS or Glass Lewis and others remaining flexible with respect to the voting recommendations of ISS and Glass Lewis.

Knowing each investor's demonstrated propensity to support the election of activist nominees, as well as each investor's demonstrated propensity to vote as recommended by (or contrary to the recommendations of) ISS and Glass Lewis, enhances the accuracy of the vote projection models that can be used in the strategic planning stages of an issuer's response to an actual or threatened proxy contest, and ensures the efficient allocation of board and management resources in a contested election.

For example, when planning an investor meeting program in response to an actual or threatened proxy contest, it makes sense to assign priority to those institutional investors who are most likely to support the incumbent board based upon historical voting on the same or similar issues. And, if ISS and/or Glass Lewis has or have recommended against the incumbent board, it makes sense to adapt to that setback by assigning priority to institutional subscribers who have demonstrated the greatest propensity to vote contrary to the recommendations of ISS or, as the case may be, Glass Lewis.

In situations where performance and/or governance has been less than optimal when compared to peers or the broader market and in situations where the issuer already has been approached by an activist, the issuer's need to know its own share ownership profile is paramount, including knowledge of its institutional investors' demonstrated voting preferences. But the benefits of knowing who owns the issuer and the voting preferences of the issuer's institutional investors are not limited to the activist arena.

A detailed understanding of the issuer's share ownership profile will enhance the issuer's ability to cope with a wide range of challenges (e.g., problematic shareholder proposals) and to act on the opportunities presented (e.g., improved engagement with institutional investors). Given the demonstrated overall predisposition of institutional investors to support incumbent board and management teams, issuers are well advised to nurture this asset by establishing reliable communications with their institutional investors to promote greater understanding and cooperation and to increase investor support for the incumbent board and management team long before a crisis arises.

Depending on their needs, our clients subscribe to periodic share ownership profiles, supplemented by detailed accountings of institutional voting in relevant board election contests, as well as on a wide range of shareholder-sponsored and board-sponsored proposals, including precise measurement of institutional adherence to the voting recommendations of ISS and Glass Lewis. These reports are based on our proprietary Institutional Research and Analytics Database ("IRaAD") and, when appropriate, our reports are supplemented by vote simulations based on prior institutional voting on the same or similar issues. Our findings, conclusions and recommendations are highlighted in board presentations and usually are incorporated into the issuer's ongoing investor relations efforts, including enhanced engagement with key investors.

Peter C. Harkins, Jr.
David S. Honick
Lisa Chang

[1] The SEC requires registered management investment companies, other than small business investment companies registered on Form N-5, to file a report, known as a Form N-PX, with the SEC, not later than August 31 of each year, containing the registrant's proxy voting record for the most recent twelve-month period ended June 30, pursuant to section 30 of the Investment Company Act of 1940 and rule 30b1-4 thereunder (17 CFR 270.30b1-4). Mutual funds were required to file their first Form N-PX not later than August 31, 2004.

[2] In the board election contests studied, the top fifty institutional investors voted, as a group, for the election of one or more of the dissident's nominees about 39% of the time (39.3%) and for the election of all dissident nominees about 22% of the time (22.4%).

At companies with a market cap of $2 billion or more, again, as a group, the top fifty institutional investors voted for the election of one or more of the dissident's nominees about 36% of the time (36.3%) and for the election of all dissident nominees about 22% of the time (22.4%). However, at companies with a market cap of less than $2 billion, these investors voted for the election of one or more of the dissident's nominees about 40% of the time (40.6%) and for the election of all dissident nominees about 21% of the time (21.5%).

And, in control board election contests generally, as a group, the top fifty institutional investors voted for the election of one or more of the dissident's nominees about 39% of the time (39.4%) and for the election of all dissident nominees about 19% of the time (19.1%), while in minority-slate board election contests generally, these investors voted for the election of one or more of the dissident's nominees about 38% of the time (38.4%) and for the election of all dissident nominees about 22% of the time (22.7%).

[3] To one degree or another, the following seven factors are present in successful dissident campaigns to elect board slates: (1) a substantive business platform advanced by the dissident, highlighting what are perceived to be realistic opportunities for appreciation in share value not previously proposed or supported by the incumbent board and management team; (2) significant to substantial dissident share ownership; (3) substantial hedge fund ownership; (4) relatively insignificant retail ownership; (5) endorsements of the dissident's nominee(s) by ISS and/or Glass Lewis; (6) corporate governance shortcomings on the part of the issuer and, importantly, (7) significant institutional support (though not a majority of the shares voted by institutional investors) for the slate. Shortfalls in any one of these seven factors can be offset by surpluses in one or more of the remaining six, but experience demonstrates that activists need at least a few of these factors working in their favor to elect one or more directors in opposition to an incumbent board.

For example, most activists proposing new directors purport to have a business plan for the issuer, including the promise of share price appreciation in the foreseeable future. And, most activists begin a contested board election with significant to substantial share ownership. Finally, many activist campaigns are supported by substantial hedge fund ownership, where the hedge funds vote almost uniformly for the activist nominees. When combined with significant support from institutional investors (albeit, less than a majority of the shares voted by institutional investors), these three factors often are enough to result in a victory at the polls, particularly when the activist slate is endorsed, in whole or in part, by ISS and/or Glass Lewis, when the retail ownership of the issuer is insignificant (or, at least, not substantial) and when the issuer has suffered from a variety of corporate governance deficiencies.

Activist hedge funds control only a fraction of the capital under management by all hedge funds, but it is not unusual to see many hedge funds invested in a single issuer or industry and it takes only one hedge fund activist to lead the charge at any one company. While individual hedge funds claim unique and complex investment strategies, hedge funds as a group are fundamentally opportunistic investors. As a result, they often converge on companies that have faltered or industries in transition. Because crowding happens, normally passive hedge funds frequently find themselves invested alongside funds whose investment strategies include activism. Correspondingly, activists are likely to find fast allies among hedge funds already invested in the stock of a target company. This convergence of interests and investments has led to concerns about the potential for "wolf packs" of like-minded (or single-purpose) investors intent upon putting the issuer into play.

Thus, hedge funds have fostered shareholder activism by providing a ready base of support for activist investors, lending credibility and momentum to activist campaigns. In fact, the emergence of the hedge fund investor class has coincided with increased shareholder activism and fuels the continuing success of activism as we know it.

Without this built-in support base provided by hedge funds generally, activists would be largely dependent upon mainstream institutional investors for leverage at public companies. But, unlike their hedge fund cousins, the largest mainstream institutional investors generally do not vote as recommended by activists, as indicated by the voting results reported above. We conclude that the single most important factor supporting activism is not mainstream institutional support for the cause, but growth in equity ownership by hedge funds, supplemented by at least some support from mainstream institutional investors (albeit, substantially less than a majority of the votes cast by institutional investors).

[4] *The top fifty institutional investors, measured by equity assets under management, were identified with data provided by FactSet Research Systems Inc., 601 Merritt 7, 3rd Floor, Norwalk, CT 06851, website: www.factset.com.*

[5] *The content of Forms N-PX filed with the SEC by the institutional investors studied in this report was obtained from Proxy Insight, 1350 Avenue of the Americas, Floor 3, New York, NY 10019, website: www.proxyinsight.com.*

SERVICES

SHARE OWNERSHIP PROFILES AND TRADING ANALYSES (STOCKWATCH)

Summary presentations and analysis of the issuer's existing share ownership profile, including the identification and tracking of aberrant share accumulations, along with option trading analyses.

VOTE PROJECTIONS

Accurate estimates of likely voting based on, among other things, an extensive data base of voting by institutional investors (IRaAD), together with the analytics required to interpret the data correctly, and prior experience in numerous similar campaigns in the U.S. and Europe

PROXY/CONSENT SOLICITATIONS

Our proxy/consent solicitation services begin with strategic planning, based on the insights contained in the share ownership profiles and vote projections described above. We provide the analytical, logistical and marketing support necessary to maximize investor participation and support levels when voting on key issues of corporate control and governance.

CORPORATE GOVERNANCE AND EXECUTIVE COMPENSATION CONSULTING

Informed input regarding how the issuer's corporate governance profile and executive compensation plans will be viewed under established proxy advisory firm and institutional investor voting guidelines, including strategic insights regarding the practical consequences of deviations from those guidelines, which often vary, depending on, among other things, the issuer's overall share ownership profile and the issues presented for shareholder consideration and action.

INFORMATION AGENT AND OFFER RESPONSE SERVICES IN TENDER / EXCHANGE OFFERS

Our information agent services in tender/exchange offers begin with strategic planning, based on the insights contained in the share ownership profiles described above. We assist clients in determining the most efficient allocation of resources, including the development and implementation of practical approaches to institutional investors, hedge funds and arbitrage firms, incorporating the insights gleaned from direct experience with these investors in numerous prior campaigns regarding the same or similar issues,.

INBOUND / OUTBOUND CALL CENTER SERVICES

We offer a full suite of call center solutions specifically tailored to the proxy, consent and tender solicitation needs of our clients.

LITIGATION SUPPORT

Expert witness testimony, primarily in connection with U.S. District Court and Delaware Chancery Court proceedings regarding corporate control matters, including shareholder rights plans.

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We provide clients and their advisors with the diagnostics required for accurate assessments of the risks posed by shareholder activism and for the proper planning of investor outreach programs to marshal requisite levels of shareholder support in M&A transactions and in proxy contests for board representation and control.

Our strategic advice flows directly from our own due diligence regarding share ownership, including projections of likely voting by shareholders based on, among other things, extensive prior experience in numerous similar campaigns and our proprietary database of institutional voting. Our analyses illustrate the overall nature and scope of the challenges posed, while highlighting alternative paths to optimal outcomes based on likelihood of success.

We also develop, implement and coordinate comprehensive and multifaceted investor outreach programs to maximize shareholder support in M&A transactions and in proxy contests for board representation and control. Our campaigns are matched carefully to the individual needs of our clients, and we routinely assist clients and their advisors with timely adaptations to company-specific, industry and market developments and trends, including (importantly) ongoing and anticipated changes in share ownership.

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