

## Recent Trends in Stockholder's Meetings and Proxy Solicitation

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**Innisfree**  
M&A Incorporated

# VOTING ADVISORY SERVICES

## Key Players

- ISS (formerly RiskMetrics Group)
  - ISS has a separate team primarily responsible for evaluating contentious M&A transactions and proxy contests
  - Will engage in active dialogue with the company and dissident. Additionally, will speak with large investors and review public filings
- Glass, Lewis & Co.
  - Differentiates itself from ISS by not offering consulting services to public companies
  - Other than occasionally hosting a conference call for GL clients to post questions to contest participants (a “Proxy Talk”), GL does not engage in active dialogue as part of its analysis—instead relies on publicly filed documents
- PROXY Governance, Inc. and Egan Jones Proxy Services
  - Relatively small client bases at this time, as compared to ISS or even Glass Lewis. However, the press generally fails to distinguish between a ISS recommendation, which typically moves a significant number of votes, and other advisory recommendations.

# THE VOTING ADVISORY SERVICES

- ISS clients typically control 20-30% of a midcap/largecap corporation's outstanding shares. Glass Lewis clients typically control 5-10% of such shares.
- Other advisory services have negligible voting impact.
- A "Withhold" recommendation from ISS, on average, impacts 20% of the votes cast.
- Given the change in NYSE Rule 452, the combination of a ISS "Withhold" recommendation with the reduction in broker voting (often 10% to 15% of the votes cast) can have significant consequences, particularly at companies with majority voting.

# THE VOTING ADVISORY SERVICES AND HEDGE FUND ACTIVISM

Analysis of Proxy Contests Waged by Hedge Funds since 2006, Involving Companies with Market Capitalizations of \$100M or More

## ISS Supports Hedge Fund Activism

- Only 5 relevant contests have gone to a vote in 2010, with 17 contests having gone to a vote in 2009, 20 in 2008, 17 in 2007 and 13 in 2006.
- ISS recommendation is frequently outcome determinative.
- In the 71 relevant proxy contests where ISS issued recommendations, ISS supported the dissident in 45 (or 63.4%) of cases.
  - In the 10 contests where board control was at risk, ISS never supported the full dissident slate. It supported management in 4 cases, and partial dissident slates in the other 6.
  - In the 61 contests where board control was not at risk, ISS supported all of the dissident nominees in 15 cases (24.6%), partial dissident slates in 24 cases (39.3%) and management in 22 cases (36.1%).
- In the 45 proxy contests in which ISS supported dissident nominees, at least one dissident gained a board seat in 31 of them (or 68.9%).
- If all *settlements* involving the placement of dissident nominees on the Board are included, the dissident success rate would be significantly higher.
- ISS' decision regarding the number of dissident nominees to support can be influenced by their understanding of board dynamics, and their view that one dissident director is unlikely to have much of an effect on board deliberations.

## THE VOTING ADVISORY SERVICES AND HEDGE FUND ACTIVISM, cont.

### Glass Lewis Supports Hedge Fund Activism Less Frequently than ISS

- In the 70 relevant proxy contests where Glass Lewis issued recommendations, Glass Lewis supported the dissident in 28 of them (or 40.0%).
  - In the 10 cases where board control was at risk, Glass Lewis never supported the full dissident slate. It supported management in 6 cases and partial dissident slates in the other 4.
  - In the 60 contests where board control was not at risk, Glass Lewis supported all of the dissident nominees in 8 cases (13.3%), partial dissident slates in 16 cases (26.7%) and management in 36 cases (60.0%).
- In the 28 proxy contests waged by hedge funds in which Glass Lewis supported dissident nominees, at least one dissident gained a board seat in 22 of them (or 77.8%). In all but three such contests, ISS also supported at least one dissident. One additional contest settled prior to the ISS recommendation.

# THE VOTING ADVISORY SERVICES AND HEDGE FUND ACTIVISM, cont.

## ISS & Glass Lewis Recommendations

Contest	Dissident(s)	Date	Total Board Seats	Total Seats Up For Election	Control at Risk	ISS Rec.	Glass Lewis Rec.	Result (Winner)
Bally Total Fitness	Pardus/Liberation	01/26/06	9	3	N	DISS	MGMT	DISS (3)
KT&G (Korea)	Steel Partners	03/17/06	6	2 <sup>1</sup>	N	DISS	DISS	DISS (1)
GenCorp	Pirate Capital	03/31/06	10	3	N	DISS (1 of 3)	DISS (2 of 3)	DISS (3)
Yardville National	Seidman	05/03/06	13	3	N	MGMT	MGMT	MGMT
Massey Energy	Third Point	05/16/06	9	3	N	DISS (1 of 2)	MGMT	DISS (2)
infoUSA	Dolphin	05/26/06	8	3	N	DISS	DISS	MGMT
SCPIE Holdings	Stilwell Value Partners	06/22/06	12	3	N	MGMT	MGMT	MGMT
Motient	Highland Capital	07/12/06	6	6	Y	DISS (2 of 6)	DISS (2 of 6)	MGMT
Topps	Crescendo	07/28/06	9	3	N	DISS	DISS	DISS <sup>2</sup> (3)
H.J. Heinz Co.	The Triun Group/Sandell	08/16/06	12	12 <sup>3</sup>	N	DISS (3 of 5)	DISS (2 of 5)	DISS (2)
Tri-Continental Corp.	Western Investments	09/28/06	9	3	N	DISS	DISS	MGMT
Bradley Pharma	Costa Brava	10/26/06	8	8 <sup>4</sup>	N	DISS (2 of 3)	DISS	DISS <sup>5</sup> (2)
Rural Metro	Accipiter	12/01/06	7	2	N	MGMT	MGMT	MGMT
Openwave	Harbinger Capital	01/17/07	6	2	N	DISS (1 of 2)	DISS (1 of 2)	DISS (1)
Cyberonics	Metropolitan Capital	02/01/07	8	8 <sup>6</sup>	N	DISS (2 of 3)	DISS	DISS <sup>7</sup> (3)
Phoenix Technologies	Ramius	02/14/07	6	2	N	MGMT	MGMT	DISS <sup>8</sup> (2)
Motorola	Icahn	05/07/07	11	11 <sup>9</sup>	N	DISS	MGMT	MGMT
Center Bancorp	Seidman	05/15/07	17	4	N	DISS (2 of 3)	DISS (2 of 3)	DISS (3)
Bancorp Rhode Island	PL Capital	05/16/07	15	5 <sup>10</sup>	N	MGMT	MGMT	MGMT
Peerless Systems Corp.	Pembridge Cap./Whitehall Cap.	06/11/07	7	4	N	MGMT	MGMT	DISS (1)
Wilshire Enterprises, Inc.	Bulldog Investors	07/19/07	8	2	N	DISS (1 of 2)	MGMT	MGMT
Pomeroy IT Solutions, Inc.	Flagg Street Capital	07/31/07	12	9 <sup>11</sup>	N	DISS (2 of 3)	N/A	DISS (3)
Ryerson	Harbinger Capital	08/23/07	11	11 <sup>12</sup>	Y	MGMT	DISS (1 of 7)	MGMT
WCI Communities	Icahn	08/30/07	10	10	Y	MGMT	MGMT	Settled <sup>13</sup>
H&R Block	Breeden Capital	09/06/07	11	3	N	DISS	DISS	DISS (3)
Ceridian Corp.	Pershing Square	09/12/07	7	7	Y	DISS (2 of 7)	MGMT (5 of 7)	DISS <sup>14</sup> (4)
Gyrodyne Co. of America, Inc.	Bulldog Investors	12/05/07	11	3	N	DISS (1 of 3)	MGMT	MGMT
Nautilus	Sherborne Investors	12/18/07	7	4 <sup>15</sup>	Y	DISS (2 of 4)	DISS (2 of 4)	DISS (4)
Datascope	Ramius	12/20/07	7	2	N	DISS (1 of 2)	MGMT	DISS (1)
MedQuist Inc.	Costa Brava	12/31/07	12	6	N	DISS (2 of 6)	MGMT	MGMT
A. Schulman	Ramius	01/10/08	12	4 <sup>10</sup>	N	DISS	DISS (1 of 2)	DISS (2)
Luby's	Ramius	01/15/08	10	4	N	DISS (3 of 4)	DISS (2 of 4)	MGMT
Steak & Shake Company	The Lion Fund	03/07/08	11	9 <sup>10</sup>	N	DISS	DISS	DISS (2)
Bassett Furniture industries, Inc.	Costa Brava	04/15/08	9	9 <sup>12</sup>	Y	DISS (3 of 7)	MGMT	MGMT <sup>16</sup> (0)
Office Depot	Levitt Corp/Woodbridge Equity	04/23/08	12	12 <sup>17</sup>	N	MGMT	MGMT	MGMT

# THE VOTING ADVISORY SERVICES AND HEDGE FUND ACTIVISM, cont.

## ISS & Glass Lewis Recommendations

Contest	Dissident(s)	Date	Total Board Seats	Total Seats Up For Election	Control at Risk	ISS Rec.	Glass Lewis Rec.	Result (Winner)
Media General, Inc.	Harbinger Capital	04/24/08	9	3	N	DISS (2 of 3)	DISS (1 of 3)	DISS (3)
Furniture Brands International, Inc.	Sun Capital Partners, Inc.	05/01/08	8	3	N	DISS	DISS (2 of 3)	DISS (3)
Phoenix Companies, Inc.	Oliver Press Partners, LLC	05/02/08	13	5	N	MGMT	N/A	DISS <sup>18</sup> (2)
Charming Shoppes, Inc.	Crescendo / Myca Partners	05/08/08	8	3	N	DISS (2 of 3)	DISS (1 of 3)	DISS <sup>19</sup> (2)
Hexcel Corporation	OSS Capital Management LP	05/08/08	10	10 <sup>11</sup>	N	MGMT	MGMT	MGMT
Insituform Technologies, Inc.	Water Asset Management	05/19/08	7	7 <sup>20</sup>	Y	MGMT	DISS (2 of 5)	DISS (1)
Micrel Incorporated	Obrem Capital	05/20/08	5	5	Y	DISS (2 of 6)	MGMT	MGMT
Coinstar, Inc.	Shamrock Partners	06/03/08	7	3	N	MGMT	MGMT	DISS <sup>21</sup> (1)
Vaalco Energy Inc.	Nanes Delorme Partners	06/04/08	7	3	N	DISS (1 of 3)	MGMT	DISS <sup>22</sup> (0)
Footstar, Inc.	Outpoint Capital Management LP	06/17/08	9	2	N	MGMT	MGMT	MGMT
Biogen Idec Inc.	Icahn	06/19/08	12	4	N	MGMT	MGMT	MGMT
CSX	T.C.I. / 3G Capital	06/25/08	12	12 <sup>3</sup>	N	DISS (4 of 5)	DISS (2 of 5)	DISS (4)
Emageon Inc.	Oliver Press Partners, LLC	07/08/08	8	3	N	DISS (2 of 3)	DISS (1 of 3)	DISS <sup>23</sup> (3)
Point Blank Solutions, Inc.	Steel Partners	08/19/08	7	5	Y	MGMT	MGMT	DISS (5)
Cleveland-Cliffs Inc	Harbinger Capital	10/03/08	N/A	N/A	N	MGMT	MGMT	MGMT <sup>24</sup>
Tier Technologies, Inc.	Discovery Group I LLC	03/11/09	9	7 <sup>17</sup>	N	MGMT	DISS (1 of 2)	DISS (2)
Agilysys	Ramius	03/26/09	9	3	N	MGMT	MGMT	DISS <sup>25</sup> (2)
Orthofix International	Ramius	04/02/09	10	4	N	DISS (3 of 4)	DISS (1 of 4)	MGMT
Charlotte Russe Holdings, Inc.	KarpReilly LLC	04/28/09	7	3	N	MGMT	MGMT	MGMT <sup>26</sup>
Federal Signal	Kanders Group	04/29/09	10	3	N	MGMT	MGMT	MGMT <sup>26</sup>
Online Resources Corporation	Tennenbaum Capital Partners	05/06/09	10	3	N	DISS (2 of 3)	MGMT	DISS (3)
Mac-Gray Corporation	Fairview Capital Investment	05/08/09	8	2	N	DISS	MGMT	DISS (1)
Conseco Inc.	Otter Creek Management Inc.	05/12/09	9	9 <sup>9</sup>	N	DISS	MGMT	DISS <sup>27</sup> (1)
Consolidated-Tomoka Land Co.	Wintergreen Advisers, LLC	05/13/09	11	6 <sup>28</sup>	N	MGMT	MGMT	DISS (3)
Amylin Pharmaceuticals Inc	Eastbourne, Icahn	05/27/09	12	12 <sup>3</sup>	N	DISS (3 of 5)	DISS (3 of 5)	DISS (2)
Target Corporation	Pershing Square Capital Management LP	05/28/09	12	4	N	DISS (2 of 5)	MGMT	MGMT
Chemed Corporation	MMI Investments, LP.	05/29/09	11	11 <sup>3</sup>	N	MGMT	MGMT	MGMT <sup>26</sup>
Biogen Idec Inc.	Icahn	06/03/09	13	4	N	DISS (2 of 4)	MGMT	DISS (2)
PHH Corporation	Pennant Capital Management LLC	06/10/09	7	3 <sup>10</sup>	N	MGMT	MGMT	DISS (2)
CPI Corp.	Ramius	07/08/09	6	6 <sup>10</sup>	N	DISS	MGMT	MGMT
Texas Industries Inc.	Shamrock Activist Value Fund LP	10/22/09	9	3	N	DISS	DISS (2 of 3)	DISS (3)
Adaptec, Inc.	Steel Partners	11/02/09	9	2 <sup>29</sup>	N	DISS	MGMT	DISS
Myers Industries	GAMCO Investors Inc.	04/30/10	9	9 <sup>30</sup>	N	MGMT	MGMT	MGMT
Denny's Corporation	Oak Street Capital / Dash Acquisitions	05/19/10	8	8 <sup>11</sup>	N	DISS (1 of 3)	MGMT	MGMT
MCG Capital Corporation	Western Investments LLC	05/26/10	8	2	N	MGMT	MGMT	MGMT
Genzyme Corporation	Icahn	06/16/10	10	10 <sup>31</sup>	N	N/A	DISS (1 of 4)	DISS <sup>32</sup> (2)
Penwest Pharmaceuticals Co	Tang Capital /Perceptive Life Sciences Fund	06/22/10	8	3	Y	DISS <sup>33</sup> (1 of 3)	MGMT	DISS

# THE VOTING ADVISORY SERVICES AND HEDGE FUND ACTIVISM, cont.

## Endnotes:

- 1) Company and Dissident litigated the issue of how many seats were up for election, and therefore how many seats were available for Dissident nominees. Ultimately the Company's agenda prevailed and only 2 seats were available to the Dissident nominees. ISS recommended for 2 of the 3 nominees originally proposed by Dissident.
- 2) Settlement included expanding Board to 10, Management support of Dissident's 3 nominees.
- 3) Dissident ran 5 nominees under the "Short-Slate" Rule.
- 4) Common shareholders entitled to elect 3 directors only.
- 5) Settlement reached post meeting. Two Dissident nominees elected by common holders; 1 Dissident nominee withdrew. The 2 Dissident directors then appointed 1 Management director.
- 6) Dissident ran 3 nominees under the "Short-Slate" Rule.
- 7) Three days before the meeting, Company announced settlement, with 3 incumbent nominees withdrawing and the appointment of all 3 Dissident nominees.
- 8) Company settled a week after the initial ISS recommendation, with company replacing its 2 nominees with 1 Dissident nominee and 1 nominee jointly representing the Dissident and the Company's second largest shareholder (AWM).
- 9) Dissident ran 1 nominee under the "Short-Slate" Rule.
- 10) Dissident ran 2 nominees under the "Short-Slate" Rule.
- 11) Dissident ran 3 nominees under the "Short-Slate" Rule.
- 12) Dissident ran 7 nominees.
- 13) Management and Dissident each named 3 directors, with balance named by large shareholders.
- 14) Parties reached an agreement shortly before the meeting whereby Dissident withdrew from contest, Management expanded Board from 7 to 11, and 4 Dissident nominees were added to the Board.
- 15) Dissident sought to remove and replace 4 directors, fixing Board size at 7.
- 16) Settlement included Dissident support of Management nominees, Management agreed to provide dissident with a board observer.
- 17) Dissident ran 2 nominees.
- 18) Settlement included expanding Board to 15, adding 2 dissident representatives.
- 19) Expand board to 11 directors, appointed 2 dissident nominees.
- 20) Dissident ran 5 nominees.
- 21) Settlement included appointing 1 dissident nominee, select and appoint to its Board an additional director from a pool of candidates to be nominated by the major stockholders of the Company, reimburse Shamrock for up to \$350,000 of their reasonable out-of-pocket expenses incurred in connection with soliciting proxies.
- 22) Settlement included increasing the size of the Board to 8, appointing a new independent director to the Board submitting a binding proposal to the Company's stockholders at the 2009 Annual Meeting for the declassification of the Company's Board, separating roles of CFO and President, and undertake to hire a new CFO.
- 23) Settlement included expanding Board to 9, adding 3 dissident representatives.
- 24) Dissident sought approval to acquire greater than 1/5 and less than 1/3 of Cliffs common stock under the Ohio Control Share Acquisition Statute.
- 25) Settlement included appointing 2 dissident nominees and also called for two incumbent directors to resign from the board.
- 26) Dissident withdrew nominees prior to meeting.
- 27) ISS also recommended withhold on 2 members of the Audit Committee for chronic internal control issues.
- 28) 2 of 3 dissident candidates were included on management proxy card.
- 29) Dissident sought to remove 2 directors, fixing Board size at 7. Dissident had previously settled a proxy contest (10/07) appointing three dissident directors.
- 30) Dissident ran 3 nominees.
- 31) Dissident ran 4 nominees under the "Short-Slate" Rule.
- 32) Settlement included appointing 2 dissident nominees.
- 33) ISS recommended a vote on management's card. Withhold recommendation on 1 of management's nominees because ISS determined that as a result of the dissident's 41.3 percent portion of the shares outstanding a recommendation to vote on the dissident's card would result in an unintended dissident majority representation on the board.



# THE VOTING ADVISORY SERVICES AND HEDGE FUND ACTIVISM, cont.

## 2009 - 2010 Proxy Contests by Market Capitalization

Contest	Dissident(s)	Date	Total Board Seats	Total Seats Up For Election	Control at Risk	ISS Rec.	Glass Lewis Rec.	Result (Winner)	Market Cap (Million)
Target Corporation	Pershing Square Capital Management LP	05/28/09	12	4	N	DISS (2 of 5)	MGMT	MGMT	29,446.43
Biogen Idec Inc.	Icahn	06/03/09	13	4	N	DISS (2 of 4)	MGMT	DISS (2)	15,416.77
Genzyme Corporation	Icahn	06/16/10	10	10 <sup>31</sup>	N	N/A	DISS (1 of 4)	DISS <sup>32</sup> (2)	13,728.55
Amylin Pharmaceuticals Inc	Eastbourne, Icahn	05/27/09	12	12 <sup>3</sup>	N	DISS (3 of 5)	DISS (3 of 5)	DISS (2)	1,645.41
Texas Industries Inc.	Shamrock Activist Value Fund LP	10/22/09	9	3	N	DISS	DISS (2 of 3)	DISS (3)	1,147.32
Chemed Corporation	MMI Investments, LP.	05/29/09	11	11 <sup>3</sup>	N	MGMT	MGMT	MGMT <sup>26</sup>	862.89
PHH Corporation	Pennant Capital Management LLC	06/10/09	7	3 <sup>10</sup>	N	MGMT	MGMT	DISS (2)	860.43
Conseco Inc.	Otter Creek Management Inc.	05/12/09	9	9 <sup>9</sup>	N	DISS	MGMT	DISS <sup>27</sup> (1)	563.71
Federal Signal	Kanders Group	04/29/09	10	3	N	MGMT	MGMT	MGMT <sup>26</sup>	394.54
Adaptec, Inc.	Steel Partners	11/02/09	N/A	N/A	N	DISS	MGMT	DISS <sup>29</sup>	392.74
MCG Capital Corporation	Western Investments LLC	05/26/10	8	2	N	MGMT	MGMT	MGMT	392.37
Myers Industries	GAMCO Investors Inc.	04/30/10	9	9 <sup>30</sup>	N	MGMT	MGMT	MGMT	382.81
Orthofix International	Ramius	04/02/09	10	4	N	DISS (3 of 4)	DISS (1 of 4)	MGMT	334.53
Denny's Corporation	Oak Street Capital / Dash Acquisitions	05/19/10	8	8 <sup>11</sup>	N	DISS (1 of 3)	MGMT	MGMT	290.97
Charlotte Russe Holdings, Inc.	KarpReilly LLC	04/28/09	7	3	N	MGMT	MGMT	MGMT <sup>26</sup>	256.61
Consolidated-Tomoka Land Co.	Wintergreen Advisers, LLC	05/13/09	11	6 <sup>28</sup>	N	MGMT	MGMT	DISS (3)	166.37
Online Resources Corporation	Tennenbaum Capital Partners	05/06/09	10	3	N	DISS (2 of 3)	MGMT	DISS (3)	150.48
Mac-Gray Corporation	Fairview Capital Investment	05/08/09	8	2	N	DISS	MGMT	DISS (1)	122.47
Penwest Pharmaceuticals Co	Tang Capital /Perceptive Life Sciences Fund	06/22/10	8	3	Y	DISS <sup>33</sup> (1 of 3)	MGMT	DISS	111.57
CPI Corp.	Ramius	07/08/09	6	6 <sup>10</sup>	N	DISS	MGMT	MGMT	110.84
Agilisys	Ramius	03/26/09	9	3	N	MGMT	MGMT	DISS <sup>25</sup> (2)	108.14
Tier Technologies, Inc.	Discovery Group I LLC	03/11/09	9	7 <sup>17</sup>	N	MGMT	DISS (1 of 2)	DISS (2)	107.49

# LEADING CORPORATE GOVERNANCE ISSUES

## Key Vote Results\*- Shareholder Proposals

### Say on Pay

2010	54 Proposals	43.6%	Average Support (1 Pending/Awaiting tally, 55 Total)
2009	78 Proposals	45.7%	Average Support
2008	78 Proposals	41.4%	Average Support
2007	53 Proposals	41.8 %	Average Support
2006	7 Proposals	40.0 %	Average Support

### Majority Voting

2010	31 Proposals	57.1%	Average Support (1 Pending/Awaiting tally, 32 Total)
2009	47 Proposals	58.4%	Average Support
2008	25 Proposals	48.0 %	Average Support
2007	40 Proposals	50.4 %	Average Support
2006	93 Proposals	48.5 %	Average Support

### Shareholder Right to Call a Special Meeting

2010	43 Proposals	43.0%	Average Support
2009	59 Proposals	52.0%	Average Support
2008	27 Proposals	46.7%	Average Support
2007	18 Proposals	56.5%	Average Support
2006	1 Proposals	65.1%	Average Support

### Eliminate Classified Board

2010	47 Proposals	61.6%	Average Support
2009	68 Proposals	63.9%	Average Support (3 Not Disclosed, 71 Total)
2008	74 Proposals	71.6%	Average Support (1 Not Disclosed, 75 Total)
2007	36 Proposals	66.6%	Average Support
2006	58 Proposals	66.7%	Average Support

# LEADING CORPORATE GOVERNANCE ISSUES

## Key Vote Results\*- Shareholder Proposals

### Rescind Poison Pill

2010	3 Proposal	58.3% Average Support
2009	7 Proposals	61.5% Average Support
2008	5 Proposals	49.9% Average Support
2007	15 Proposals	44.3% Average Support
2006	15 Proposals	53.2% Average Support

### Separate Chairman and CEO Positions

2010	37 Proposals	28.4% Average Support (1 Pending/Awaiting tally, 38 Total)
2009	38 Proposals	34.3% Average Support
2008	29 Proposals	29.7% Average Support
2007	43 Proposals	27.4% Average Support
2006	55 Proposals	30.1% Average Support

### Reduce/Eliminate Supermajority Vote Requirement

2010	32 Proposals	71.7% Average Support (1 Pending/Awaiting tally, 33 Total)
2009	16 Proposals	71.0% Average Support
2008	12 Proposals	62.9% Average Support
2007	21 Proposals	68.2% Average Support
2006	24 Proposals	61.7% Average Support

# LEADING CORPORATE GOVERNANCE ISSUES

## Management Say on Pay Proposals

	2010	2009
<b>Proposals</b>	140 (9 Pending/Awaiting tally/not disclosed)	151 (6 Results not disclosed)
<b>Voluntary</b>	49	17
<b>Involuntary (e.g.,TARP)</b>	91	134
<b>Average Support</b>	89.6%	88.0%
<b>ISS support</b>	113 (80.71%)	109 (72.18%)

- 2009 lowest vote – 59.0% at Bank of the Ozarks
- 2010 - 3 proposals have failed to achieve majority shareholder support
  - Motorola, Inc. – 45.7%
  - Occidental Petroleum Corporation – 46.8%
  - KeyCorp – 42.5%

## THE DODD-FRANK ACT: SAY-ON-PAY

- Beginning for 2011 annual meetings, stockholders will have two say-on-pay related votes
  - Advisory vote to approve the compensation of executive officers as disclosed in the proxy statement
  - Advisory vote on timing of future say-on-pay votes—i.e., every one, two or three years, which shall occur at least once every six years
- Golden parachutes in M&A transactions — At meetings occurring on or after January 21, 2011, at which shareholders are asked to approve a merger, consolidation or proposed sale of substantially all the company's assets, a company must:
  - Provide shareholders a non-binding vote to approve merger-related compensation agreements or understandings that have not previously been subject of a required say-on-pay vote
- Eliminated broker discretionary voting authority with respect to director elections, executive compensation or other significant matters as determined by SEC
- Form 13F institutional investment managers must annually disclose how they voted on say-on-pay proposals for their investments

## PROXY ACCESS – RULE 14A-11

### ■ Key Thresholds:

- At least 3% voting power
- Holding period of at least 3 years
- Up to 25% of the company's board seats

### ■ Effective mid-November 2010

- Nomination deadline: 120-150 days before the anniversary of the mailing date for prior year's annual meeting proxy statement

## SOUND ADVICE FOR EXTRAORDINARY CIRCUMSTANCES

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