Public versus Private Provision of Governance: The Case of Proxy Access

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Abstract

We use a unique setting to study the efficiencies and frictions in pursuing governance changes through private market channels. Recent regulatory changes made it possible to pursue proxy access at individual firms through shareholder proposals. We document a large wave of such proposals, and identify a 0.5 percent increase in shareholder value for targeted firms. However, we find that proponents do not selectively target the firms that the market expected to benefit most from a rule that would have mandated proxy access universally, and that management is more likely to challenge proposals at firms that stand to benefit more.

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1. Introduction

Changes in a firm's corporate governance structure are often pursued through private market channels, such as through the shareholder proposal process. Such "private ordering" may play an important role in helping firms to achieve or maintain an optimal governance structure. However, the effectiveness of private ordering in instituting value-enhancing changes in governance may be limited by collective action problems and by the agency problems that may necessitate enhanced governance. We use recent developments with respect to a particular governance mechanism — proxy access — to address two fundamental questions about the private ordering process: (1) Is private ordering a useful governance tool? and (2) What are the benefits and limitations of private ordering of proxy access relative to universally mandated proxy access?

"Proxy access" is the ability of shareholders to nominate their own candidates for director positions on a company's proxy voting card, together with the nominees of the current board. By providing a new platform through which shareholders can introduce alternative director candidates, proxy access may enhance shareholder voice and increase corporate accountability. Currently, when dissatisfied with a corporate board, shareholders can withhold votes from directors in an uncontested election, but this may have limited effect; even directors with low shareholder support often continue to serve on boards.[1] Alternatively, one or more shareholders could engage in a proxy contest, but this would likely be costly. The ability to put forth a limited number of shareholder director nominees beside management's nominees may therefore be a useful alternative, particularly when management is entrenched. In addition, the threat that proxy access could be used may enhance managerial engagement with shareholders, even if such access is not actually utilized often. However, proxy access may have a net negative effect in cases where it impedes the efficient working of boards or is exploited to further special interests.

In August 2010, the SEC adopted rules that mandated proxy access universally, with

[1] For example, Becker and Subramanian (2013) find that only two incumbent directors who did not receive a majority of the votes cast actually left their boards during in proxy seasons from 2007 through 2011.

a set of standardized terms of access, and also facilitated shareholder proposals to seek expanded terms of access at any given firm.[2] However, the universal proxy access rule was subject to a judicial challenge and never came into effect. Notably, the complementary amendment that would have facilitated the pursuit of expanded proxy access was not challenged and became effective in September 2011. In the absence of mandated proxy access, this amendment permitted the private ordering of proxy access at individual firms. That is, proxy access could be adopted on a case-by-case basis through the shareholder proposal process.[3]

This regulatory change allows us to study the newly available private ordering channel for proxy access. A unique feature of this setting is that the judicial challenge of the rule that would have made proxy access mandatory provides important information. In particular, the market response to the SEC's unexpected announcement that it was staying the effectiveness of the 2010 proxy access rules establishes a benchmark for the expected benefits of proxy access at a given firm. The existence of this benchmark allows us to examine choices under the private ordering regime, such as the selection of targets for proxy access proposals, in the context of the broader market's view of where proxy access was expected to be most value-enhancing. In addition, recent market events that followed these key regulatory developments, as detailed below, allow us to measure the market response to private ordering and to gauge how managers use their discretion in responding to proxy access proposals.

We start analyzing our first question, regarding the usefulness of private ordering, by examining whether or not shareholder proposals for proxy access are utilized. It is not obvious that private ordering would be used, since proponents have to bear the full cost of a proposal while receiving only a small share of the expected benefits.[4] Potential

[2]We use the term "universal" throughout to represent the broad application of the rule to all companies subject to the SEC's proxy rules, including, for example, all domestic exchange-listed public companies.

[3]We provide further details about the institutional setting in Appendix A.

[4]For example, Anne Simpson, the head of corporate governance at CalPERS commented that "[S]hareholders should have the ability to hire and fire the board of directors, but I have a team of 20 people, and they could be doing something else productive if we weren't having to go door to door to companies in our portfolio to get this right." She also added that a market-wide rule would have saved "both companies and investors an enormous amount of time and effort." See "Are Investors Bearing Proxy Access Costs?" The Wall Street Journal Online: CFO Journal, September 3, 2015.

proponents might also have alternative channels to communicate with management and thus have little incentive to pursue proxy access through private ordering. We find, however, that the private ordering process has been active, with about 160 shareholder proposals for proxy access submitted by institutional as well as individual shareholders over the four proxy seasons since this channel was made available.

The frequency of proposals suggests that private ordering is of value to the proponents who submitted these proposals. However, it does not tell us whether the average shareholder views this process favorably. Shareholders may value private ordering if they believe it will lead to beneficial changes. On the other hand, because proponents may target firms based on idiosyncratic concerns or special interests, proponents may submit proxy access resolutions at firms where shareholders do not collectively feel that proxy access would be value-enhancing.

To evaluate the impact on the average shareholder, we ideally need a measure of the market's expectations as to the value of these proposals. This presents an empirical challenge because the date at which the market first became aware of such targeting is usually unclear. However, in November 2014, the NYC Comptrollers office announced the Boardroom Accountability Project ("BAP"), an initiative under which it targeted 75 firms with shareholder proposals for proxy access. The fact that the NYC Comptroller's office made a prominent and unexpected public announcement about its proposals allows us to estimate the market expectation of the impact of these proposals.

We find that the BAP announcement led to a positive, statistically significant 53 basis point abnormal return for the average targeted firm, equivalent to a total increase of $10.3 billion in market value. Thus, the market appears to expect that being targeted with a proxy access proposal will lead to substantial benefits on average. The positive market reaction suggests that proxy access is expected to be beneficial on average across the targeted firms, and that the governance mechanisms that are already in place do not provide perfect substitutes for proxy access. Importantly, these results also indicate that the market expects a net positive impact of the proposals despite the uncertainty and frictions in the process from proposal to implementation.

What these results do not tell us is how this approach compares to a universal mandate for proxy access. We therefore move on to our second question by directly examining the efficiencies and frictions of the private process relative to universally mandated proxy access. Universally mandated proxy access has the potential to be more efficient than a private market solution, as it would institute proxy access in a quick and cost effective manner. In contrast, private ordering involves a long, uncertain road from proposal to implementation.[5] Importantly, a universal mandate imposes proxy access even where entrenched management might impede its adoption. It also eliminates reliance on shareholder proponents, whose interests may differ from those of other shareholders, and on voting outcomes, which might be swayed by the votes of insiders or less sophisticated investors. However, a one-size-fits-all public mandate would institute proxy access at all companies, even if the costs of such access outweigh the benefits at a particular company. Moreover, such an approach would limit the ability to optimally tailor the terms and conditions of proxy access to suit a particular company's needs. Therefore, the relative efficiency of the private process versus a public mandate is an open empirical question.

The first evidence of the efficiencies and frictions in the private process comes from the evolution of the proposals. Interestingly, we document that shareholder proponents are increasingly converging to a proxy access solution that is closely aligned with the requirements of the 2010 proxy access rule. In particular, proponents increasingly propose that proxy access be available to shareholders or groups of shareholders that held at least three percent of the company's stock for the past three years, mirroring the terms of the invalidated mandate. It does not seem, therefore, that the private process is delivering incremental value through the tailoring of proposals.

Moreover, we show that proponents do not target primarily those firms that the market believes would have benefited the most from mandated proxy access. To identify which firms were expected to benefit the most, we use returns to the unexpected announcement that the 2010 proxy access rules would be stayed. Our approach therefore assumes that these returns, from late 2010, remain a valid proxy for the cross-sectional

[5]We present details about the private ordering process together with a sample timeline of a typical proxy access proposal in Appendix A.

variation in the expected benefits of proxy access for proposals submitted in 2011 through 2014. This assumption is supported by the strong correlation between the returns upon the BAP announcement in 2014 and the returns for the same firms attributed to the announcement of the stay of the proxy access rules in 2010. Also, we find that the targeting of proposals in the first couple of years after the stay is no more aligned with the stay returns than proposals in the more recent proxy seasons. This result mitigates the possibility that the lack of alignment in our targeting analysis stems from the gradual evolution of other aspects of governance to compensate at those firms where proxy access was initially most needed.

We therefore conclude that the firms that were expected to benefit more from proxy access are not more likely to be targeted. The dearth of tailored proposals and the lack of correlation between being targeted and the expected benefit of mandated proxy access suggest that the private process falls short exactly where it has the potential to deliver the most substantial efficiencies relative to a universal mandate. That is, the efficiencies of private ordering that arise from the ability to selectively target the right firms with customized proposals are not being realized.

Our next set of tests examine potential frictions in private ordering following the initial, targeting stage. We consider actions taken by management in response to being targeted and voting outcomes for those proposals that reach a vote. Among the actions available to managers is the ability to request "no-action" relief from the SEC staff to exclude a proposal from their proxy materials on specified grounds. The success of such no-action requests generally hinges on shareholder proposal drafting choices or procedural deficiencies. However, in the 2015 proxy season an alternative style of no-action request, which did not rely on the technical details of the proposals, became very popular for a short time. Interestingly, we find that these arguably fully discretionary requests to exclude proxy access proposals are significantly more likely to be made by targeted firms that were expected to benefit more than others from proxy access. We find similar results for firms where management took actions that could confound voting outcomes for proposals that made it to a vote, including pre-emptively adopting a more restrictive

version of proxy access, putting forth a conflicting proposal, or promising to adopt proxy access at some future time. These results hold whether we measure the expected benefits from proxy access using the returns attributed to the stay of the 2010 proxy access rules or the more recent abnormal returns upon the BAP announcement. Our results suggest that managers are likely to impede the private ordering of proxy access where it would be most beneficial.

Finally, we find that proposals that have reached the voting stage to date have received significant shareholder support, particularly those that include the three percent for three years ownership threshold used in the vacated universal proxy access rule. However, we find only weak evidence that vote outcomes are aligned with our measures of the expected benefits from proxy access. To a large degree, this may result from the substantial heterogeneity in voting behavior across shareholder types. While less-concentrated institutional ownership is associated with significantly higher support for proxy access proposals, large institutional blockholders (who may already have influence with management) and retail ownership are not. Also, high inside ownership is associated with significantly lower support for proxy access proposals. Thus, the voting process may reflect an additional friction in private ordering, in that the aggregation of views via voting may differ from the market aggregation of views.

Our paper contributes to several strands of literature. The first explores the adoption and evolution of governance structures. Several seminal papers argue that observed governance structures are the equilibrium outcome of optimization based on market forces (see, e.g., Demsetz and Lehn (1985) and Hermalin and Weisbach (1998)). In contrast, other papers present evidence that suboptimal governance structures may arise and can persist despite market forces, perhaps because of the influence of entrenched managers on those structures (e.g., Bebchuk and Fried (2003) and Schoar and Washington (2011)) or other factors (see, e.g., Coates (2001) on law firm fixed effects). A related literature studies the relative strengths of private versus public enforcement of regulation (see, e.g., La Porta, Lopez-De-Silanes, and Shleifer (2006) and Jackson and Roe (2009)). We provide direct evidence relevant to these debates by documenting the workings of a new

private market for a governance tool, and identifying the specific factors that seem to impede market forces from implementing this tool where it would be value-enhancing.

Further, we contribute to the literature on proxy access. Most directly related to our paper are Becker, Bergstresser, and Subramanian (2013) and Jochem (2012), who identify positive wealth effects of proxy access based on returns to the unexpected staying of the 2010 proxy access rules and the vacating of the part of this rulemaking that mandated proxy access. Similarly, Campbell, Campbell, Sirmon, Bierman, and Tuggle (2012) and Cohn, Gillan, and Hartzell (2014) examine other events associated with the 2010 proxy access rules and find that they were expected to be value-enhancing, particularly at firms with weak governance characteristics or poor performance. However, Stratmann and Verret (2012) find that the 2010 rules had negative wealth effects on firms with less than $75 million in market capitalization. Also, Larcker, Ormazabal, and Taylor (2011) and Akyol, Lim, and Verwijmeren (2012) study a large number of events related to the consideration of proxy access regulations over time and find that proxy access might be value-decreasing because of the risk of exploitation by large institutional investors. We add to this literature by contrasting the effects of the previously studied uniform regulation with the efficiencies and frictions associated with the newly available private ordering of proxy access.

We also contribute to the extensive body of literature on shareholder activism. Several papers highlight the increasing role of shareholder interventions in corporate governance (e.g., Gillan and Starks (2007), Denes, Karpoff, and McWilliams (2015)), particularly through hedge fund activism and proxy fights.[6] Bebchuk (2007) and Gantchev (2013) show that such interventions can be quite expensive, and Bebchuk (2005) advocates for expanding the ability of shareholders to intervene via the less burdensome shareholder proposal process. However, the impact of activism through shareholder proposals is highly debated. Historically, these proposals have not been associated with a posi-

[6]With respect to hedge fund activism, see, e.g., Kahan and Rock (2007), Clifford (2008), Brav, Jiang, Partnoy, and Thomas (2008), Klein and Zur (2009, 2011), Greenwood and Schor (2009), Boyson and Mooradian (2011), Brav, Kim, and Jiang (2015), Brav, Jiang, Ma, and Tian (2014), and Bebchuk, Brav, and Jiang (2015). With respect to proxy fights, see, e.g., Bebchuk (2007), Alexander, Chen, Seppi, and Spatt (2010), Becker and Subramanian (2013), and Fos and Tsoutsoura (2014).

tive stock impact (e.g., Karpoff, Malatesta, and Walkling (1996), Smith (1996), Wahal (1996), Strickland, Wiles, and Zenner (1996), Del Guercio and Hawkins (1999), Gillan and Starks (2000), Prevost and Rao (2000), Del Guercio, Seery, and Woidtke (2008), Cai and Walkling (2011)). On the other hand, several studies have found that more recent shareholder proposals are associated with positive valuation effects and that they have become more effective over time, achieving higher voting support and higher likelihoods of implementation (e.g., Thomas and Cotter (2007), Ertimur, Ferri, and Stubben (2010), Ertimur, Ferri, and Muslu (2011), Renneboog and Szilagyi (2011). We identify a positive value impact of shareholder proposals in the area of proxy access but also provide direct evidence of the frictions that reduce the effectiveness of this governance channel.

2. Data, Summary Statistics, and Methodology

Our tests are based on a hand-collected sample of shareholder proposals for proxy access submitted to firms in the 2012 through 2015 proxy seasons, after such proposals were made feasible by a rule amendment that became effective in September 2011. Below, we describe our sample and provide support for our methodology.

2.1. Data Sources

We collect a sample of firms that received proxy access proposals beginning in the 2012 proxy season based on two sources: all definitive proxy materials on Schedule 14A filed on EDGAR that refer to the term "proxy access," and the no-action requests posted online by the SEC's Division of Corporation Finance. Screening no-action requests allows us to include in our sample any proxy access proposals which were submitted to firms but were excluded from the proxy statement by management. However, our sample does not include proxy access proposals that were submitted to firms but were withdrawn by the proponent before the final proxy statement was filed, unless they were also the subject of no-action requests by firms.[7] We read each proxy access proposal and classify the

[7]Such proposals might not become known to the public, so it would not be possible to capture all such proposals. However, some such proposals may be publicized. For example, in the Appendix we discuss

relevant characteristics of the proposal, such as whether it is a binding or a proposal and the requirements for eligibility for proxy access. For each proposal that reached a vote, we collect the voting outcome from the Form 8-K filed after the annual meeting of shareholders.

We then match the sample of targeted firms to the CRSP, Compustat, Thomson Reuters 13F, and ISS governance databases.[8] We also collect information from these databases for untargeted firms. However, we exclude foreign private issuers (identified based on their EDGAR filings) from our full sample because they are not subject to the U.S. proxy rules. In tests involving returns upon the stay of the 2010 proxy access rules, we further restrict the sample to exclude smaller reporting companies because the adopted rules provided a three year delay in the effectiveness of universal proxy access for such companies. As in the case of foreign private issuers, we identify smaller reporting companies based on their EDGAR filings.

Our full sample of firms, including those that have not received proxy access proposals, consists of 3,722 firms that have accounting, stock return, institutional ownership, and governance data available in our sample period.

2.2. Summary Statistics

Table 1 reports summary statistics for the full set of firm-years that we study. Given the data requirements, our full sample reflects relatively large firms with an average market capitalization of $5 billion and an average level of institutional ownership of 57 percent. The firms experienced 17 percent annual returns on average over the sample period covering annual meetings from 2012 to 2015.

Our tests focus on the firms that were targeted with shareholder proposals for proxy access. In total we analyze 158 proxy access proposals at 133 firms over the 2012 through 2015 proxy seasons, including 75 proposals that were part of the NYC Comptroller's 2015 initiative (i.e., the BAP sample) and 83 other proposals over the four seasons we study

two known proxy access proposals which were both withdrawn in exchange for unrelated governance changes.

[8]Details about the timing and alignment of the relevant variables can be found in Appendix C.

(i.e., the non-BAP sample). Table 2 presents univariate analyses of the characteristics of the firms targeted with non-BAP or BAP proposals relative to those that did not receive proxy access proposals.

In Panel A of Table 2 we document that firms that were targeted outside of the BAP initiative demonstrate significant stock underperformance in the twelve months preceding the targeting decision. This univariate evidence is consistent with the notion that shareholder proponents are more likely to intervene at under-performing firms. We also find that firms without classified boards, firms with more independent directors, and firms with separated Chairman and CEO roles are associated with more proxy access proposals. These differences suggest that proxy access proposals might be targeting firms with less entrenched management. However, we later show that the predictive power of governance characteristics is weaker in a multivariate setting. The targeted firms are different from the average firm in terms of firm size and financial policies such as financial leverage and dividends. Hence, we control for these firm characteristics when presenting models that aim to explain the targeting behavior of shareholders.

Panel B of Table 2 documents that the firms targeted in the BAP initiative were also larger and had higher institutional ownership than the full sample of firms. Interestingly, the firms targeted by the NYC Comptroller did not exhibit stock market underperformance relative to the control group. This is consistent with the Comptroller's explanation that these firms were selected based on well-defined criteria that focused on carbon intensity, lack of board diversity, or unfavorable Say-on-Pay voting results.

Finally, Table 3 presents the industry distribution of our targeted firms based on the 30 industry Fama-French classification. We document that the non-BAP subsample has a higher relative concentration of firms in the financial industry. This may be due to the fact that this industry underperformed in our sample years, and performance seems to be an important factor in the targeting decision outside of the BAP sample. In contrast, the BAP sample is concentrated in the petroleum and natural gas industry. This is consistent with one of the targeting criteria used by the NYC Comptroller: carbon intensity. Beyond this concentration, the BAP sample represents a fairly diverse set of

over 20 different industries. We control for industry in our tests.

2.3. The Stay of the 2010 Universal Proxy Access Rule

In our tests, we use the market reaction on date on which the SEC unexpectedly announced that it would voluntarily stay the 2010 universal proxy access rule and private ordering amendments as a benchmark for the expected value of proxy access at different firms. As documented by Becker et al. (2013), news accounts clearly indicated that the stay was a surprise.[9] Becker et al. (2013) also provides intra-day trading evidence demonstrating that the market reacted just after the announcement, providing further support for the assertions that the stay was unexpected and that the measured returns could be attributed to the stay.

Although a motion to stay the universal proxy access rule was filed with the SEC and publicly announced on the date that the lawsuit was filed, there is evidence that the announcement of the stay was the first event to generate a significant market response based on the expectation of an extensive delay for both mandated proxy access as well as private ordering. For example, the market does not seem to have associated the motion to stay with a significant likelihood that the universal proxy access rule would be stayed. In particular, one news source reported that it was rare for the SEC to grant such a motion.[10] Finally, the announcement that the stay would be granted law firm alerts[11] and Google search volume[12] demonstrated a spike of interest in proxy access. We did not

[9]For example, as noted by Becker et al. (2013), Wachtell, Lipton, Rosen & Katz published a memorandum on October 4, 2010, referring to the stay as an "unexpected development."

[10]Reporting on the stay, Jessica Holzer stated that "It is rare for the SEC to agree to a delay when its rules have been challenged in court." See "SEC To Delay Proxy Access Rule While Court Considers It" published in the Dow Jones Corporate Governance Newsletter on October 6, 2010. We note that several other recent motions to stay SEC rules, including rules related to mutual fund governance, conflict minerals, resource extraction, and securities issuance under Regulation A, were denied. Also, news accounts did not highlight the stay of the private ordering amendments (which were not a subject of the motion to stay) as more of a surprise relative to the stay of the universal proxy access rule.

[11]On October 5, 2010, a day after the SEC stayed the rule, Broc Romanek of TheCorporateCounsel.net discussed the stay and wrote: "Interestingly, dozens of law firms already have sent out emails regarding this development but these firms had remained silent when the lawsuit was filed last week." See "Proxy Access: SEC Stays Ahead of Court Review Dead for 2011," by Broc Romanek, posted on October 5, 2010. As per this assertion, we were not able to find, for example, a Wachtell, Lipton, Rosen & Katz memorandum regarding proxy access on September 29, 2010, though they did publish a memorandum on October 4th as mentioned above.

[12]A Google Trends analysis demonstrates that there were 45 percent more searches for "proxy access" in the week of the stay announcement than the week of the lawsuit and motion to stay the rule, when

find similar spikes around the motion to stay.

One concern related to using the stay date returns is that the reaction of the market would have reflected a significant delay in proxy access availability rather than the full value of eliminating proxy access. For this reason, we use returns on the stay date only as a proxy for the sign and relative magnitude of the value effect of proxy access across firms. An alternative approach would be to instead rely on the date on which the rule was invalidated. However, it is not clear that returns upon the invalidation of the rule would have represented a longer-term impact, as it was not a ban on future proxy access regulation and it was widely accepted that an eventual re-proposal of a proxy access rule could follow.

More importantly, the stay of the effectiveness of the rules was applied to all parts of the adopted rules and thus represented a delay of at least one proxy season for both universal proxy access and the availability of the private ordering process. In contrast, the vacating of the universal proxy access rule represented at least one more proxy season in which universal proxy access would not be mandated, but it was also accompanied by anticipation that private ordering might be available in the following proxy season.[13] As such, when considering the returns on the date on which the rule was vacated, the value of proxy access and the likelihood of private ordering may confound each other and complicate interpretation of the event returns.

In summary, we build a sample of firms that have received shareholder proposals for proxy access since the rule change, as well as a sample of untargeted firms. We also construct a firm-level benchmark for the expected benefits of proxy access using the returns on the date of the announcement that the 2010 proxy access rules would be stayed. Next, we use this data to explore two key questions: (1) Is private ordering valuable to shareholders? and (2) What are the efficiencies and frictions in the private ordering process relative to a universal mandate?

such searches were slightly below average for the second half of 2010.

[13] On July 22, 2011, the day that the rule was vacated, the SEC released a brief statement expressing its disappointment and stating further that, "We note that our rule allowing shareholders to submit proposals for proxy access at their companies, which we adopted at the same time, is unaffected by the court's decision." Six weeks later, on September 6th, an SEC press release stated affirmatively that the stay on private ordering would expire later that month, absent further Commission action.

3. Is Private Ordering Valuable to Shareholders?

If the private ordering of proxy access is valuable to shareholder proponents, we should observe proponents actively engaging in this private channel. If it is valuable to shareholders at large, we would also expect to see a positive market response to shareholder proposals for proxy access. Therefore, we first study the frequency and success of proxy access proposals since this channel was made available. We then use the unexpected announcement of a major shareholder initiative to assess the broader value implications of proxy access proposals.

3.1. The Frequency of Proposals

In 2010, the SEC passed an amendment that removed the ability of companies to rely on a provision of Rule 14a-8 to exclude all such proposals from proxy materials. If the resulting private ordering channel is of value to shareholder proponents, we would expect to see evidence of them actively submitting proposals for proxy access.

In particular, if the process for the private provision of proxy access is efficient, we expect shareholders to submit proxy access proposals at firms at which they believe proxy access would be value-increasing. However, several factors may limit the submission of proxy access proposals. First, an individual shareholder (or a small group of shareholders) will incur the full cost of submitting and presenting a proposal, perhaps responding to challenges to the submission, and, if deemed appropriate, taking additional steps (such as communicating with other shareholders or engaging proxy solicitors)[14] to steward it through the proxy process, all while only expecting to receive a fraction of the benefits. Also, beyond the nominal costs, a proxy access proposal may damage the shareholder proponent's relationship with the targeted firm's management or management at other firms, further increasing the total cost of submitting a proxy access proposal.

Second, shareholders might not use private ordering at firms where they expect proxy access to be value-enhancing if success is unlikely or distant. That is, the likelihood of

[14]For example, exempt solicitations (reported on Form PX14A6G) were mailed to shareholders of numerous firms in order to convince shareholders to vote "For" on the BAP proxy access proposals.

the proposal passing or being implemented after passing may be low, or implementation may be significantly delayed. It may be difficult to garner substantial voting support in a firm with dispersed ownership, even if the marginal shareholder believes the proposal is value-enhancing. The voting outcome may be further skewed by the votes held by insiders, blockholders that already have influence with management, and unsophisticated investors. Also, management can impede a proposal through actions such as seeking no-action relief to exclude the proposal, engaging proxy solicitors to encourage shareholders to vote against the proposal, and negotiating with other shareholders to form a coalition to prevent the proposal from passing. Even if a proposal passes, management can generally choose not to implement it.

Despite the potential constraints, our evidence demonstrates that the private ordering process has been active. Proxy access proposals were submitted to 24 firms in 2012, growing to over 100 in 2015.[15] As illustrated in Figure 1, the 2015 proxy season (and particularly the BAP initiative) is accountable for much of this increase, but proxy access proposals were gaining momentum even before 2015. In particular, with each proxy season, an increasing number of proxy access proposals have made it into the actual ballots and have received majority support from shareholders. In 2012, 12 proposals were voted on and 2 of these received greater than 50 percent shareholder support. By 2014, these numbers grew to 17 proposals voted on, of which 6 received majority support. This evidence is consistent with private ordering being an active effort that is gaining momentum.

3.2. The Value of Proposals

We next test for the value of private ordering to shareholders at large. While the number of proposals suggests that proxy access proposals are valued by the proponents, it cannot measure the overall value impact of such proposals. In this section, we therefore explore

[15] These totals represent proposals that we have been able to identify based on public reports, including a small number for which we do not have sufficient information for analysis. Additional proxy access proposals beyond these may have been submitted and then withdrawn, perhaps based on private negotiations with management, which we would not be able to identify if not publicly reported. Figure 1 reflects the number of proposals that we were able to collect in a systematic way and for which we have sufficient information for analysis.

the shareholder wealth impact of private ordering.

For a shareholder proposal for proxy access to be value-enhancing, two conditions should hold: (1) the shareholder proposal is likely to result in proxy access being implemented and (2) proxy access, if implemented, is expected to increase shareholder value at the firm.[16] Proxy access may be value-enhancing if it provides an effective governance mechanism (through the use or the threat of use of such access) at a firm where other available disciplinary devices are not sufficient. However, proponents may submit proxy access resolutions at firms where shareholders do not collectively feel that proxy access would be value-enhancing. For example, proxy access might be value-neutral or value-destroying if it impedes the efficient working of the board of directors or if it primarily serves the special interests of minority shareholders.

The value of proxy access *proposals* may vary further based on variation in the likelihood of achieving implementation. Unlike mandated proxy access, the private provision of proxy access is not certain, with many factors affecting the probability of proxy access being implemented. These include: (1) management may find grounds to exclude the proposal from the proxy statement, (2) management may negotiate an alternative solution with the shareholders, (3) even if the proposal is put to a vote, the proposal may not garner majority support,[17] and (4) even if the proposal does garner majority support, management may not implement proxy access or may delay implementation. Moreover, any potential benefits associated with actually electing a director nominated via proxy access or being able to avail of the threat of using proxy access are likely to be delayed by at least two years, as demonstrated in Table A1.

Therefore, the value implications of shareholder proposals for proxy access are ultimately an empirical question.

[16]While the proxy access process might have implications for the value of corporate liabilities, we do not explore that angle in this study, which focuses instead on the differential effects of private and universal public provision on shareholder value.

[17]While not passing may seem to suggest that proxy access is not deemed to be value enhancing at that firm, the voting population is not the same as the full set of shareholders or market participants. In particular, while the market price may reflect the view of the average sophisticated investor, insiders, blockholders, and unsophisticated investors may have different views. Thus, low voting support could also result if the median voter disagrees with the market. See Listokin (2009) for evidence in this regard.

3.2.1. Event Study around Announcement of Proposals

The ideal setting for testing the causal effect of proxy access proposals on shareholder value would involve unanticipated public announcements of proxy access proposals across a large randomized group of firms. However, such ideal circumstances are hard to come by. The date on which shareholder proposals are announced is often vague or coincides with the release of a company's preliminary proxy, making it difficult to measure the reaction of the market to a proxy access proposal. Moreover, firms are generally not randomly targeted. The terms for proxy access also vary across proposals, further complicating the interpretation of market reactions.

Surprisingly, something close to the desired experimental conditions occurred in the 2015 proxy season with the announcement of the Boardroom Accountability Project by the NYC Comptroller.[18] The proposals under BAP share the unique feature of being unexpectedly announced to the public on a well-defined date, making it possible to study the market reaction to these proposals. Further, the announced proposals put forth standardized requirements for proxy access that substantially mirror the overturned regulation. As in the case of the 2010 proxy access rule, the key terms of these proposals are a three percent for three years ownership requirement by a qualified shareholder or group of shareholders, and a 25 percent limit on the board members elected through shareholder nominations. This standardization allows meaningful cross-firm comparisons. Furthermore, it facilitates comparisons with the alternative of universal provision of proxy access at the same terms. The Comptroller's office also followed a well structured and clearly disclosed targeting process, allowing us to understand the driving factors behind the targeting decision.

Tables 2 and 3 demonstrate that the BAP sample represents a large number of different industries and is more similar in size and returns to the average untargeted firm than the firms targeted outside of the BAP initiative (non-BAP sample). Therefore, this sample could provide a reasonable measure of the anticipated net benefits of being targeted for

[18]The NYC Comptroller oversees retirement assets for firefighters, police officers, teachers, school administrators, and other New York City workers. The New York City Pension Funds are one of the largest groups of affiliated U.S. pension funds, worth about $160 billion as of the BAP announcement date.

proxy access through private ordering in the cross-section of U.S. public firms. While we cannot rule out the possibility that the market already incorporated some expectation of firms being targeted with such proposals, a much smaller number of firms was targeted in previous seasons, which may limit the targeting probabilities assumed by the market in advance of the 2015 proxy season. Indeed, as shown in Figure 1, in the year preceding the BAP announcement, less than one percent of firms were targeted (27 out of the cross-section of 3,529 firms for the 2014 proxy season). Moreover, only five of the 75 BAP targets represent repeat targets.

The Comptroller's office issued a press release on November 6, 2014, that outlined the project in detail. The announcement included a copy of the proxy access proposal, the targeting criteria, and a list of targeted firms indicating the criteria which led to each being targeted.[19] Thus, there is a well-defined announcement date on which all of the key information about the project was made public, and on which this information was made public in a prominent way.

We perform an event study on the abnormal returns of the targeted firms on the event day, November 6, since all of the news was released on this day or after markets closed the previous day. We use three different approaches, reported in Table 4. First, we calculate the abnormal return by firm for the targeted firms and compute standard errors assuming no cross-correlation. However, given our common event date, it might not be reasonable to assume no cross-correlation in the abnormal returns. Thus, we next use the standard portfolio approach, which addresses potential cross-correlation but sacrifices power. Finally, we use GLS estimation in a seemingly unrelated regression (SUR) framework, which improves the power of our test while still allowing us to account for cross-correlation.[20] In each case, we use a 180 day estimation window and control for

[19]The New York Times released a digital article describing the Boardroom Accountability Project late in the evening of November 5, 2014, which was subsequently followed by an article in the print edition on November 6th. This publicity concurrent with the announcement by the NYC Comptroller increases the likelihood that the market was aware of the event on the event date and could incorporate the information in a timely fashion.

[20]The use of GLS estimation of SUR models for event studies was proposed by Gibbons (1980) and is a commonly used approach to address potential cross-correlation in residual returns due to event clustering. This approach has the advantage of allowing firm-specific risk loadings while controlling for cross-correlation of the error terms. Others who have used use this methodology to study the effects of regulatory changes on asset prices include, e.g., Schipper and Thompson (1983, 1985); Binder (1985);

the three Fama-French factors, the Carhart momentum factor, and a factor representing the average return for all firms in the same Fama-French 30 industry that were not selected for inclusion in BAP.[21] We include the industry factor because with our small sample unrelated industry news may result in erroneous inferences.

As shown in Table 4, our results are similar across the three models. Using the GLS/SUR approach, which is our most reliable model, we find that on average the targeted firms experienced a statistically significant abnormal return of about 53 basis point abnormal return on the event date.[22] The event study returns are economically meaningful. The 53 basis point return implies an $141 million increase in the value of each targeted firm (average market cap of $26.7 billion $\times$ 0.0053 event return), and a total increase of $10.6 billion in the value for the 75 targeted firms (75 $\times$ $26.7 billion $\times$ 0.0053).

As part of BAP, the NYC Comptroller's office stated the criteria that resulted in each firm being targeted. We break down the full BAP sample by stated targeting reason. In all four subsamples and across the three different methods we estimate a positive effect, though it is not statistically significant in every subsample and every model. We find that the abnormal returns are largest for the set of firms for which the NYC Comptroller's office indicated that one of the reasons for targeting a firm was because of "other governance" reasons, though this was not defined or highlighted as a primary targeting criteria.

Overall, our results suggest that proxy access proposals are deemed to be value-enhancing by shareholders at large: the market expects that these proposals will lead to positive changes in the firms. While we document a positive market reaction to the BAP announcement, the estimated reaction is a function of both the value of proxy access and the probability that BAP will achieve proxy access. Our results, therefore, suggest that even after considering the additional impediments in the private market process,

Mamun, Hassan, and Lai (2004); Fernandes, Lel, and Miller (2010); Betzer, Doumet, and Rinne (2013).

[21] In the case of energy firms, the BAP project targeted those energy firms with the largest carbon reserves still in the ground. For this reason, the targeted firms may be more sensitive to energy commodity prices than their peers, even within the same industry. In unreported robustness tests, we include a factor for commodity prices and our results are substantially similar.

[22] Five firms made earnings announcements on the event day, which confounds the estimation of the effect of proxy access. As such we remove them from the sample for these tests.

the average return from initiating a proxy access proposal is positive and economically meaningful.

3.2.2. Cross-Sectional Variation in Returns to BAP Proposals

The abnormal returns from the previous section might partially reflect information embedded in the BAP announcement that is unrelated to the private ordering of proxy access. For example, the market may have believed that the NYC Comptroller's focus on these 75 companies was indicative of other interventions by the Comptroller to come in the future, potentially focused on the same firms. To address this concern, we explore how the returns to the BAP announcement varied across firms. In Figure 2 we partition the BAP sample into quintiles based on their raw return on the date that the SEC announced a stay of the universal proxy access rule and private ordering amendments. Returns on the announcement of the stay provide a benchmark for the relative value impact that the market expected universal proxy access to have on different firms.[23] Therefore, if the BAP announcement returns reflect gains related to proxy access, then we expect that the firms that gained most from the BAP announcement would have the lowest returns on the stay date, reflecting the loss of proxy access in at least the near term.

Indeed, we find that the BAP announcement return varies strikingly with returns to the stay announcement: among the targeted firms, the firms that the market expected to benefit more from universal proxy access have higher returns to being targeted with a proxy access proposal. The commonality between these returns demonstrates that the BAP announcement returns capture information about proxy access and the private ordering process.

We test the relation between the BAP and stay returns formally in Table 5. We partition the firms into above and below median groups based on their reaction to the unexpected stay of the SEC rule. We then test whether the average abnormal return on the event day, as estimated using SUR, is different from zero for a particular subsample,

[23]Direct comparisons of the size of the BAP announcement return to the magnitude of the stay date returns are not informative because the latter provide us with only a proxy for the sign and relative magnitude of the value of proxy access.

and whether the mean difference between the estimates in the two resulting subsamples is statistically significant. Consistent with the evidence in Figure 2, we find that the targeted firms that were expected to benefit from the universal proxy access (and therefore had lower returns on the stay date) have higher returns upon announcement of the BAP initiative. Targets that had a return on the stay date below the BAP sample median return had, on average, a 94 basis point abnormal return on the announcement of being targeted, while targets that had an above median stay date return had a 15 basis point abnormal return which was not statistically different from zero at conventional levels. Additionally, in a regression framework robust to outliers, we find there is a negative and statistically significant relationship.[24] This evidence indicates that, conditional on being targeted, private ordering is deemed to be most value-enhancing in the same firms that were expected to benefit most from the public provision of proxy access. In addition to validating our measure of the value impact of private ordering, this also suggests that the two mechanisms can, to some extent, be substitutes for each other.

In Table 5 we further test whether some firms had a differential reaction based on their characteristics. We do not find statistically significant differences between the subsamples, though firms with high institutional ownership, low board independence, firms with classified boards, and firms with a dual CEO-Chair all have higher abnormal returns on the event day. Thus, consistent with the prior literature on universal proxy access, our findings suggest, though only weakly, that the net effect of private proxy access proposals may be more positive at firms with shareholders that may be able to use proxy access and in firms with relatively weaker governance.

While these results demonstrate that the private process may be a viable tool for proxy access, various frictions as well as advantages may impact the efficiency of the private proxy access process. In the following two sections, we assess the factors unique to the private process and their impact on the effectiveness of the private provision of proxy access relative to a universal proxy access mandate.

[24] In an OLS regression of the BAP announcement return on the stay date return we find a negative relationship, though it is not statistically significant at conventional levels with a p-value of 0.15; though we find that if one firm that announced a shelf registration two days after the stay date is removed, an OLS regression results in a point estimate of -0.41 with a p-value of 0.01.

4. Potential Efficiencies in Private Ordering

In this section we evaluate the potential targeting and tailoring advantages of proxy access through private ordering over the one-size-fits-all terms of a universal mandate. In particular, we examine the terms of the proxy access proposals, and the evolution of the proxy access proposal terms over time. We also test whether targeting relates to the expected benefits of mandated proxy access, and evaluate the determinants of being targeted with a proxy access proposal.

4.1. Tailoring of shareholder proposals for proxy access

One clear advantage of a shareholder-driven process for pursuing proxy access is that the proponents can tailor the terms of the proxy access proposal to the needs of the particular company. This tailoring could include varying the ownership threshold or number of years of ownership required for a shareholder to qualify to nominate directors on the company's ballot, whether a group of shareholders can collectively meet such thresholds in order to make nominations, and the limit on how many directors can be nominated through such proxy access in a given year. The variation in the terms of a proxy access proposal could making utilizing proxy access relatively easy (if, e.g., a group of shareholders collectively holding one percent of the firm's equity for one year would qualify to use proxy access), or more difficult (if, e.g., a single shareholder must individually hold five percent of the firm's equity for five years to qualify). In addition, these terms, including the number of directors that could be nominated via proxy access, could affect the level of impact that using (or threatening to use) proxy access could have in the future. Of course, the same thresholds and limits could also mean very different things at firms of different sizes, ownership structure, board size, and board composition. Tailoring could therefore address variation across firms in their structure and their particular costs and benefits of different levels of proxy access.

Interestingly, proposal terms seem to be converging rather than becoming increasingly tailored over time. The terms that are emerging as a standard are similar to those that

would have been required as a minimum by the vacated 2010 proxy access rule. Proposals in 2012 and 2013 included ownership thresholds of one, two, or three percent, and holding period requirements of one, two, or three years. Some proposals included maximum ownership thresholds, such that shareholders holding greater than, say, five percent of the company would not be able to nominate directors through the proxy access provision. Also, in some cases, ownership thresholds and holding period requirements differed for individual shareholders as compared to coalitions of shareholders. In contrast, for the 2015 proxy season nearly all of the publicly-disclosed proxy access proposals have required a three percent ownership threshold with a holding period requirement of three years for either individual shareholder proponents or coalitions. The uniformity in proposal terms in 2015 is not just a function of the dominance of the BAP sample. The proposals with these standard ownership requirements were put forth by at least seven distinct shareholder proponents.

Subfigure (a) of Figure 3 demonstrates the convergence in proposal terms over time. The fraction of shareholder proposals presenting an ownership threshold of three percent for three years has grown steadily from less than 10 percent in 2012 to nearly 100 percent in 2015. Convergence in proposal terms suggests that private provision is not leading towards greater tailoring of proxy access relative to the public approach. Such convergence may result because the optimal terms for proxy access do not differ across firms, or it could be a result of proponents pursuing standardization in an attempt to lower the costs of private ordering. In particular, standardization may reduce the costs of developing and submitting proposals as well as the costs of individual shareholders analyzing and voting on proposals at different firms. In essence, the costs of coordination may be shared across many firms, helping to address the collective action problem at the expense of more tailored solutions.

This convergence may also be driven by vote outcomes in previous seasons. Subfigure (b) of Figure 3 plots the evolution across time of shareholder support for the different types of proxy access proposals. In the 2012 and 2013 proxy seasons the majority of shareholder proposals had ownership thresholds other than three percent for three years. These

proposals generally garnered low support in terms of votes cast for the proposal. Notably, in these years the proposals that presented the ownership threshold of three percent for three years generally received greater support than proposals with other thresholds. In the 2014 proxy season the majority of proposals presented ownership thresholds of three percent for three years, and these proposals garnered substantially more support than proposals that presented other ownership thresholds. The generally low support in terms of votes cast for proposals with ownership thresholds other than three percent for three years in the previous proxy seasons may be a driving force behind almost all of the proposals in the 2015 proxy season containing ownership thresholds of three percent for three years.

Collective action problems may constrain the ability of proponents and voting shareholders to propose and consider customized proposals. The 2010 proxy access rule may have served as a focal point solution that proponents used and voting shareholders supported in the absence of information and analysis about an optimal standard. Alternatively, it is possible that shareholders have coalesced around the three percent for three years approach as the value-maximizing choice relative to other alternative ownership requirements. They may have considered the academic literature on proxy access at these terms, or the economic analysis with respect to this threshold contained in the SEC rule release. In any case, the data does not support the idea that private ordering delivers a superior equilibrium through tailored proxy access provisions.

4.2. Who gets targeted with a proxy access proposal

Private ordering provides the ability to pursue proxy access only where it is value-enhancing. From the average investor's perspective, if constraints limit the number of firms that a proponent can target in a given proxy season, it would likely be most efficient if the firms that would benefit most from proxy access were targeted first. However, efficient targeting may be inhibited by individual shareholder interests, anticipated managerial opposition, and other frictions in achieving implementation. For example, shareholder proponents may target firms because of idiosyncratic concerns, private benefits, or

special interests, which may conflict with the interests of the majority of the shareholders. Alternatively, proponents may refrain from targeting firms with particularly entrenched management due to more aggressive anticipated opposition.

In our tests of the determinants of target selection we are interested in whether shareholders target the firms where proxy access is expected to be most beneficial, which would support the case that the private provision of governance could represent an effective alternative to a universal public mandate. Alternatively, if proponent incentives are not well aligned with the typical investor, we expect that the targeted firms will not be systematically chosen to benefit most in terms of overall shareholder value. Finally, if managerial opposition is expected to be much stronger exactly where proxy access is most needed, then proponents may have an incremental disincentive to target the firms where the market values proxy access most highly.

4.2.1. Private ordering targets and the distribution of returns at the stay date

We start our tests regarding the targeting decision by relating the empirical choice of targets to our benchmark for the expected value of proxy access at different firms. Specifically, we compare the returns on the date of the surprise announcement of the stay of the 2010 proxy access rules of the firms that were targeted to the returns of the firms that were not targeted (in total, a cross-section of 3,014 firms with available data). If shareholder proponents prioritize their target selection based on where proxy access would be most value-enhancing, we expect that they would target firms that had a more negative response to the stay of the proxy access and private ordering rules than the average response.

As discussed above, we focus on the stay announcement rather than the later announcement of the vacating of the universal proxy access rule because the vacating of the rule is confounded by any anticipation that the stay on private ordering would be removed. Our approach assumes that the returns to the stay announcement are a valid proxy for the cross-sectional variation in the expected benefits of proxy access for proposals submitted one to three years later, in 2011 through 2014 (for proxy seasons 2012

through 2015). This assumption is supported by the strong negative correlation between the returns to targeted firms upon the 2014 BAP announcement and the returns upon the stay announcement, documented in Figure 2 and Table 5. If the cross-sectional variation in stay returns were no longer a valid measure of variation in the expected benefits to proxy access in 2014, there would be no obvious reason for the commonality in these returns. We also separately consider the targeting of proposals relative to the stay returns in just the first couple of years after the stay, when there should be a much lower risk that these returns could be a stale measure.

In our tests we study the firms that received proxy access proposals over the four proxy seasons after the effectiveness of the amendment to Rule 14a-8 that made such proposals viable. Figure 4 shows the distribution of the returns of the targeted firms relative to the distribution of returns of all firms on the announcement of the stay. In particular, Subfigure (a) presents the distribution of the stay date return across all public firms (excluding smaller reporting companies, as discussed above), by quintiles. The first two quintiles are firms that had significant negative returns on that day, suggesting that they would have benefited most from the proxy access rule. The fifth quintile has a significant positive return, suggesting that some of the firms might not benefit from mandated proxy access.

Subfigure (b) demonstrates how targeting varies across these quintiles. We do not find that the firms with the lowest stay date returns are targeted disproportionately, suggesting that shareholder proponents have not primarily targeted firms at which proxy access was expected to be most beneficial. In Subfigure (c) we restrict the sample to targets in 2012 or 2013 to address concerns that returns at the stay date may become a stale measure of the benefits of proxy access as additional years pass. However, we find that the targeting of proposals in the first couple of years after the stay is no more aligned with the stay returns than proposals in the more recent proxy seasons.

However, because these charts focus on rates of return without regard for firm size, it is possible that it does not fully account for the targeting of firms with the largest expected dollar value enhancement from proxy access. It is possible that selection based on dollar

value enhancement explains why the firms targeted tend to be larger, as evidenced in our univariate analysis in Table 2. Thus, in Subfigure (d), we restrict the sample to the largest 20 percent of the firms. We reach a similar conclusion based on this subfigure as for the previous ones: there is little variation in targeting across stay date return quintiles for this subsample, suggesting that even if proponents targeted relatively larger firms, they did not target the firms that were expected to have the largest dollar value benefit from proxy access.

Table 6 presents a formal analysis to determine whether firms that were eventually targeted for proxy access had lower returns on the stay date than the average public firm in the U.S. In the tabulated results, we also distinguish between the BAP sample (targeted as part of the NYC Comptroller's major initiative in 2015) and the non-BAP sample. The non-BAP sample has the advantage of being selected by a range of market participants. Therefore, the choice of targeted firms might provide broad evidence regarding shareholders' targeting decisions. However, the terms of the non-BAP proxy access proposals are varied and the motivations of proponents submitting only one or two proposals may be more likely to be idiosyncratic. On the other hand, the BAP proposals were uniform with respect to the proposal terms, increasing the comparability across this sub-sample. The fact that the BAP proposals are consistent with the terms of the vacated rule also allows for cleaner comparisons to the public alternative.

In Panel A of Table 6 we examine the difference in the mean stay date return for firms that were targeted and firms that were not targeted. We do not find that the mean return is lower on the stay date for the firms that were eventually targeted for proxy access. If anything, the mean return for those firms may be slightly higher, suggesting that proponents targeted firms that were expected to benefit less than the average firm. In Panels B and C of Table 6 we separately examine those firms targeted outside the BAP initiative and those targeted as part of the BAP initiative. The results in each subsample are similar and consistent with the analysis of the full sample, in that we do not find evidence that the returns on the stay date are lower for those firms eventually targeted for proxy access relative to those firms that were not targeted.

As mentioned above, one concern may be that we have not fully accounted for the targeting of firms with the largest expected dollar value enhancement from proxy access, particularly given that we know that larger firms were more likely to be targeted. We address this concern in the second row of each panel of Table 6, which are matched sample tests. In each case, we consider the average difference between the return on the stay date of a firm that was eventually targeted for proxy access and a matched sample of firms with similar market capitalization that was not targeted for proxy access. Even in those more focused analyses we do not find evidence that those firms that were eventually targeted for proxy access had a lower return on the stay date.[25]

Overall, we do not find evidence that shareholder proponents target the firms expected to benefit most from proxy access. This is visually apparent in Figure 4, and formally tested in the differences in means and matched sample analyses we perform in Table 6. We interpret this evidence as demonstrating that private ordering does not achieve this potential efficiency over a universal mandate: it does not single out the firms that are expected to have the highest potential benefits from proxy access. The evidence is consistent with the alternative hypothesis of proponents having their own motivations to challenge management, and/or anticipated management opposition discouraging proposals in firms that need them most.

4.2.2. The determinants of a proponent's decision to target a firm

Because target selection does not seem to be prioritized based on where proxy access would most enhance shareholder value, we next test what other factors are related to the proponent's decision to target a particular firm. Table 7 examines these determinants in a multivariate setting and presents the results of conditional logit model with dependent variable an indicator for whether or not a firm was targeted for proxy access in a given year.[26]

The first two columns in the table report results for the full sample of targeted firms

[25] In unreported results, we obtain similar results if we further match on market capitalization and industry.

[26] Our results are similar if we use a linear probability model.

including the BAP sub-sample. We find that shareholders are more likely to submit proposals at large firms. As noted above, we do not find that proponents are maximizing their market impact by targeting those firms with the largest expected dollar value enhancement from proxy access within the set of large firms targeted. However, targeting large firms may build publicity and momentum with respect to proxy access proposals. Moreover, diversified investors hold larger dollar stakes in larger firms, and the condition of eligibility to submit shareholder proposals is a dollar value holdings threshold (there is also a percentage threshold that is generally more difficult to achieve), so shareholder proponents may also be more likely to be eligible to submit proposals to large companies as compared to small companies.[27]

Interestingly, we do not find a consistent relationship between common measures of corporate governance (such as classified board, institutional ownership, and board independence) and being targeted for proxy access. This is not surprising. While weak governance may increase the benefits of proxy access, it may also make the implementation of proxy access more challenging if entrenched managers more aggressively oppose and impede the implementation of shareholder proposals (something that we empirically test in our next section). We also find that common proxies for more severe agency problems (such as high cash holdings, low leverage or not paying dividends) do not explain the targeting decisions. The only exception is that we find evidence that companies where the CEO is also Chairman attract more shareholder proxy access proposals. Finally, we document that market participants are very likely to repeat their attempts to propose proxy access. As discussed above, getting traction on a proxy access proposal may be a multi-year effort.

Columns (3) and (4) of Table 7 report the results of estimating the selection model on just the non-BAP sub-sample.[28] In this sub-sample, based on a broad group of share-

[27]To be eligible, a shareholder must have continuously held at least $2,000 in market value, or 1 percent, of the company's voting securities for at least one year as of the date of submission, and intend to continue to hold the securities through the date of the shareholder meeting. The 1 percent threshold would only bind if the voting securities of the company had a market value of less than $200,000.

[28]At the time of this study we can not be certain that we have all the companies that will be targeted in proxy season 2015, but because the proxy season is highly concentrated in the first half of the year, we expect that we have captured the majority of proxy access proposals that will be submitted in 2015.

holder proponents, we find that firms with low growth opportunities and poor performance, as measured by their book-to-market ratio and previous 12 months of returns, are significantly more likely to be targeted with a shareholder proposal. This supports the notion that shareholders are more likely to intervene in cases of poor performance, as well as Cohn et al. (2014)'s finding that poorly performing firms were expected to benefit more from proxy access. However, the economic magnitude of the predictive power of performance on targeting is quite small.

Columns (5) and (6) of Table 7 report the results of estimating the selection model on just the BAP sub-sample during proxy season 2015. As part of BAP, the NYC Comptroller's office disclosed specific criteria for why the chosen firms were targeted. The primary criteria were disclosed to be carbon intensity, limited board diversity, and significant opposition in the 2014 say-on-pay vote. The public list of targets also identified some of the targets as being chosen for other, unspecified governance reasons. Our results support the notion that the BAP targets are not significantly associated with poor recent stock performance of the firm or the growth opportunities of the firm, in contrast to the results for the non-BAP targets. The criteria applied in the BAP initiative therefore appear different in nature than the targeting criteria used by proponents outside of this initiative.

Overall, we document that shareholder proponents target relatively larger firms and repeat the process where necessary. However, we do not find that shareholders disproportionately target firms at which proxy access is expected to be most value-enhancing, even amongst larger firms. Proponents also do not disproportionately target the firms that have characteristics that are associated with relatively more entrenched managers.

Other factors may also impact the efficiency of the private process. For example, as discussed above, the initial market reaction to being targeted (and the selection of targets for proxy access) may reflect not only the benefit from achieving an effective proxy access at a particular firm, but also the probability that the company will not resist the proposal or the expectation that the shareholders will pass such a resolution if it comes to a vote. We empirically analyze these aspects of the private process in the next section.

5. Frictions in Private Ordering: Managerial Actions and Shareholder Votes

In this section we study the private ordering process after the initial targeting stage, including the managerial response to shareholder proposals for proxy access and voting outcomes.

5.1. Management response to proxy access proposals

If private ordering is efficient, management will oppose proposals that are not beneficial or that are even outright harmful to the company. However, if conflicts of interests are strong, management may actively oppose shareholder proposals even if they are in the interest of the marginal investor. We start our discussion by reviewing the options that management has to oppose shareholder proposals. We then provide evidence that management at firms that are expected to benefit relatively more from proxy access are (1) more likely to resist including a proxy access proposal on the firm's proxy statement and (2) are more likely to take actions that may reduce the voting support for a proposal that has made it to the proxy statement.

Management can choose from a number of reactions to a proxy access proposal. For example, it may consider requesting no-action relief from the SEC or negotiating with the proponent to prevent the proposal from coming to a vote. For proposals that do come to a vote, management may include a rebuttal of any length and tone, and may engage in outreach to shareholders either directly or via proxy solicitors. They may also take actions, such as putting up a competing management proposal, that could have the effect of reducing voting support for the shareholder proposal. While it has been rare, management can also recommend that shareholders vote in support of a proposal or, in some cases, boards can change the bylaws and implement proxy access without a vote.[29]

[29]For example, at one firm targeted by the NYC Comptroller, management agreed to recommend support for the shareholder proposal, after negotiating changes in the terms (but retaining the three percent for three years threshold). Another firm targeted in the 2015 season by a different proponent voluntarily adopted, before the voting season, a proxy access bylaw with the suggested three percent for three years threshold.

In making these decisions, managers may weigh the value of proxy access of the proposed form at their particular firm. They may also consider their own, private incentives. As discussed above, such interactions of agency problems with private market forces are a key feature of the private provision of governance.

We first explore a particular type of managerial action that may prevent a proposal from making it to a vote. Shareholder proposals may be excluded from proxy materials if they do not meet the requirements, or if they fall under one of the listed exclusions, of Rule 14a-8. Firms alert the SEC of their intentions to exclude proposals for such reasons and may request no-action relief. If asked for its view, the SEC staff provides no-action letters in cases in which it deems there to be a basis for the company's claim of excludability. In our sample of private proxy access proposals, we find that firms requested no-action relief on 34 of the 83 non-BAP proposals (41 percent), among which the SEC staff granted no-action relief for 35 percent of the requests. Success in requests for no-action relief, however, generally hinges on failure to comply with the procedural requirements or particular drafting choices in the proposals. Therefore, no-action letter requests in general are not a clean measure of the strength of management opposition. That is, management that opposes a shareholder proposal might only make such a request if it identifies a procedural or drafting defect in the particular proposal, while strong opposition to other proposals might not show up in no-action letter requests. To study the incentives behind actions to try to prevent proxy access proposals from reaching the proxy statement, we need a type of no-action request that could reasonably be used by management irrespective of the technical details of the proxy access proposal.

In the 2015 proxy season, managers facing proxy access proposals began seeking such relief under an alternative basis for excludability that provided such a test case. In particular, one targeted company requested no-action relief on the grounds that management planned to present its own proxy access proposal, and that the shareholder proposal would pose a conflict with management's proposal and therefore be excludable.[30] The planned management proposal in this case was much more restrictive than the share-

[30]The company relied on Rule 14a-8(i)(9) regarding conflicting proposals in making this argument.

holder proposal the company was seeking to exclude, allowing only a single shareholder that owned nine percent or more of the company's stock for five years to nominate one candidate (or up to 10 percent of the board, if larger) on the proxy statement. The ownership threshold in the shareholder proposal being challenged was three percent for three years, and it would have allowed a group of shareholders to come together to meet the threshold and to nominate up to two candidates (or up to 20 percent of the board, if larger) on the corporate proxy. The proponent responded with a letter stating that "If the SEC grants a no-action request in this instance, staff will be signaling that boards can exclude proposals by shareowners simply by substituting any proposal on the same general subject, even a proposal that would clearly be highly improbable to achieve or would have no impact if passed."

This no-action request was initially granted by the SEC staff, and 25 additional firms used this approach to challenge proxy access proposals submitted by shareholders in 2015. The no-action relief in question was later reconsidered, and the SEC staff stated that it would express no view on the excludability of proposals on such grounds in the 2015 proxy season.[31] Regardless of this development, we can use the no-action requests of this style that were submitted before the SEC staff reconsidered its decision as a clean measure of managerial discretion to oppose proxy access. That is, because the decision to challenge shareholder proposals in these cases was not affected by considerations of how the technical details of the proposals would affect the likelihood of success, these requests provide rare insight into the decision of managers to challenge proposals.

We find that 26 firms requested a no-action letter with respect to proxy access proposals under the conflicting proposal exclusion, of which 18 were management proposals submitted by firms targeted by the NYC Comptroller's office. To facilitate comparison, we restrict the sample to the 16 BAP shareholder proposals challenged in this way that are part of the 70 firms that we used in the event study (based on the availability of data and lack of conflicting firm-specific events). Panel A of Table 8 compares the stay

[31]See Statement from Chair White Directing Staff to Review Commission Rule for Excluding Conflicting Proxy Proposals and Announcement of the Division of Corporation Finance Related to Exchange Act Rule 14a-8(i)(9) for Current Proxy Season, Jan. 16, 2015, available at http://www.sec.gov/news/statement/statement-on-conflicting-proxy-proposals.html.

return and the BAP announcement return for firms that challenged the proposals and firms that did not challenge the proposal. In the case of the stay announcement, a more negative return suggests that the firm would benefit more from proxy access, while in the case of the BAP announcement, a positive return indicates that the market anticipates benefits from the BAP proxy access proposal. Interestingly, we find that firms that chose to challenge the proposal are exactly the firms that were expected to benefit more from universal proxy access and also benefit more from the BAP private proxy access shareholder proposal. The magnitude of both differences is statistically significant and similar – an economically meaningful difference of about 0.75 percent of firm value.[32]

Next, we explore managerial opposition at the voting stage, by considering actions that may reduce voting support for the shareholder proposals. In particular, we construct a measure that indicates whether management at a firm took any one of the following actions: (1) pre-emptively adopting a version of proxy access that is more favorable to management; (2) putting forth a competing management proposal for proxy access, again with more management-friendly terms; or (3) promising to propose or adopt a version of proxy access, either with more management-friendly terms or with unspecified terms, at some point in the future. This measure aims at quantifying an alternative set of management actions that may negatively affect the outcome of the shareholder proposals that are poised to come for a shareholder vote. As in the case of the actions before a proposal made it to a vote, when considering actions relevant at the voting stage, we find that management takes actions that may impede shareholder proposals exactly in the cases where it is expected to be relatively more valuable. As documented in Panel B of Table 8, we again find that firms that took these actions were expected to benefit significantly more from universal proxy access and had a significantly higher positive reaction upon the announcement of the NYC Comptroller's initiative.

Overall, the results in Panels A and B of Table 8 support the notion that the private

[32]In untabulated results, we also consider returns on the announcement that the SEC staff was reconsidering its decision and concluded that it would, in fact, express no view on the excludability of conflicting proposals in the 2015 proxy season. In these tests we do not detect a statistically significant abnormal return for the affected firms upon this announcement. It is therefore possible that managerial opposition of this form was not expected to be successful at hindering the proposals in the long run.

provision of governance is more likely to be challenged exactly where it can deliver the most shareholder value. Our results are consistent with conflicted management opposing shareholder proposals, and not consistent with the idea that management acts as an additional gatekeeper screening out value-destructive shareholder proposals.

5.2. Shareholder Votes

The next step in the process of the private ordering of proxy access is the actual voting on the proposals. Shareholders are expected to weigh the cost and benefits and support value-enhancing proposals. However, in reality, shareholders are rarely a homogeneous group. Therefore, we first test if shareholders support proposals that the market expects to be value-enhancing, but then test if the ownership structure of different firms explains some of the variation in support for proxy access proposals.

We split the sample of proposals that come to a shareholder vote depending on whether or not they received majority support (had more than 50 percent "for" votes out of all "for" and "against" votes cast).[33] While these votes are advisory, there is some pressure to respond to proposals that pass because failure to act may result in, for example, increased shareholder activism or proxy advisor recommendations to vote against directors. In Table 9 we document that firms that receive a majority vote on proxy access proposals have a slightly lower return at the announcement of stay of the 2010 proxy access rules and slightly higher returns upon announcement of the BAP initiative. The direction of the results is consistent with higher voting support at firms where proxy access is expected to be more value-enhancing.

The differences in our return measures across these voting outcomes are, however, economically small and not statistically significant at conventional levels. This lack of a strong relationship between our market value measures and the voting outcomes is not surprising given Listokin (2009), who provides evidence that voting and market pricing aggregate information in different ways.[34] In our setting, this result may be driven by

[33]We note that at the time of this study there are a number of shareholder proposals for proxy access in the 2015 proxy season that have not yet been voted on.

[34]Other papers also document significant stock market responses to the outcomes of close corporate votes (e.g., Cuñat, Gine, and Guadalupe (2012)). If voting outcomes were aligned with market beliefs,

voting by groups of shareholders with interests and views that may diverge from that of the average investor, such as insiders, retail investors, and large institutional blockholders. We explore this possibility in our next set of tests.

Table 10 regresses the overall support for shareholder proxy access proposals on measures of inside ownership and institutional ownership. We find substantial heterogeneity in voting behavior among shareholder types. Across a variety of specifications, we document that higher levels of inside ownership is strongly negatively correlated with support for proxy access proposals. This result is consistent with management opposition to shareholder proposals for proxy access. Indeed, we find that management nearly always recommends a vote "against" these proposals. Moreover, while having more institutional owners that individually hold up to one percent of a firm is associated with significantly higher support for proxy access proposals, having large institutional blockholders or high retail ownership (the omitted category) is not.

The result with respect to large institutional blockholders is consistent with the notion that such blockholders may already have influence with management, and therefore may not have an incentive to support proxy access. The result for retail ownership is consistent with an industry report that documents 85 percent of voted shares held by retail investors were voted against proxy access,[35] and with academic studies that associate higher non-institutional ownership with higher support for management recommendations in other contexts.[36]

In our tests we further control for firm size because ownership structures as well as voting outcomes may vary with size. However, because institutional ownership may be strongly correlated with size, we present specifications with and without this control to demonstrate that the result is not being driven by collinearity. Overall, we find that the voting process may reflect an additional friction in private ordering, in that the aggregation of views via voting may differ from the view of an average sophisticated

close votes should occur when markets are close to the indifference point and would thus have little market impact.

[35]See "2015 Proxy Season Wrap-Up" by Broadridge and PWC, available at http://proxypulse.broadridge.com/.

[36]See, e.g., Alexander et al. (2010) and Cai, Garner, and Walkling (2009).

investor.

Given the extended time horizon generally associated with private ordering, it is too early in the process to statistically analyze the actual implementation decisions in our sample. However, media reports indicate that roughly 40 companies have adopted proxy access provisions to date, though these differ significantly in their terms. In particular, as discussed above, some firms adopted proxy access with very restrictive terms, which may have reduced voting support for proposals with more expanded terms of access. On the other hand, some firms have moved toward implementing proxy access with the three percent for three years ownership requirement around which shareholders seem to be converging.[37]

6. Conclusion

In this study we provide the first systematic academic analysis of the usage and effectiveness of the private ordering process for proxy access in the U.S. The efficacy of such a market-driven approach to delivering a governance mechanism cannot be taken for granted, particularly because of the role of agency problems in the private provision of governance. Our unique setting allows us to directly study the frictions that affect the private process and to compare it with the alternative of a universal mandate.

We document the emergence of numerous cases of privately initiated proxy access proposals, demonstrating that this channel is of value to the shareholder proponents who put forth these proposals. Moreover, we document that private ordering is also of value to shareholders at large, as we find that the market reacted positively to the announcement of a major shareholder initiative for proxy access at 75 U.S. public companies. However, we find that the proposals have been converging to standard terms, particularly the three percent for three years ownership requirement of the vacated universal proxy access rule,

[37]In early 2015, GE and Prudential Financial made the news by voluntarily adopting proxy access bylaw amendments under which groups of shareholders with combined ownership of three percent for three years would qualify to use proxy access. Also, PayPal notably included proxy access under the three percent for three years standard in its initial organizing documents as it prepared for its spinoff from eBay. See, e.g., "Ammunition for Shaking Up a Board," by Emily Chasan, The Wall Street Journal, August 15, 2015.

which suggests that the private ordering process is not tending towards the delivery of customized, firm-specific solutions, as may have been expected. In addition, we find that proponents do not target disproportionately those firms that, as measured by their returns on the announcement of the stay of the 2010 proxy access rules, were expected to benefit most from proxy access.

We also find evidence of frictions in the private ordering process. Management is more likely to resist proposals in firms that stand to benefit more from proxy access, providing further evidence that the private ordering process may struggle to deliver proxy access where the market believes it to be most valuable. Finally, because of the holdings of groups such as insiders, the aggregation of views via voting may differ from the view of an average sophisticated investor.

Overall, we document that the private ordering process provides a functioning, albeit imperfect, channel for the implementation of a governance mechanism, providing hope for the market-driven institution of governance tools more broadly. It remains to be seen if the increased engagement by key institutional shareholders will usher in a new era of proxy access.

References

Akyol, A. C., Lim, W. F., Verwijmeren, P., Oct. 2012. Shareholders in the Boardroom: Wealth Effects of the SEC's Proposal to Facilitate Director Nominations. Journal of Financial and Quantitative Analysis 47 (05), 1029–1057.

Alexander, C. R., Chen, M. A., Seppi, D. J., Spatt, C. S., Dec. 2010. Interim News and the Role of Proxy Voting Advice. Review of Financial Studies 23 (12), 4419–4454.

Bebchuk, L. A., Jan. 2005. The Case for Increasing Shareholder Power. Harvard Law Review 118 (3), 833–914.

Bebchuk, L. A., May 2007. The Myth of the Shareholder Franchise. Virginia Law Review 93 (3), 675–732.

Bebchuk, L. A., Brav, A. P., Jiang, W., 2015. The Long-Term Effects of Hedge Fund Activism. Columbia Law Review 115, 1085–1156.

Bebchuk, L. A., Fried, J. M., 2003. Executive Compensation as an Agency Problem. Journal of Economic Perspectives 17 (3), 71–92.

Becker, B., Bergstresser, D., Subramanian, G., Feb. 2013. Does Shareholder Proxy Access Improve Firm Value? Evidence from the Business Roundtable's Challenge. Journal of Law and Economics 56 (1), 127–160.

Becker, B., Subramanian, G., 2013. Improving Director Elections. Harvard Business Law Review 3, 1.

Betzer, A., Doumet, M., Rinne, U., May 2013. How policy changes affect shareholder wealth: the case of the Fukushima Dai-ichi nuclear disaster. Applied Economics Letters 20 (8), 799–803.

Binder, J. J., 1985. Measuring the Effects of Regulation with Stock Price Data. The RAND Journal of Economics 16 (2), 167–183.

Boyson, N. M., Mooradian, R. M., Jul. 2011. Corporate governance and hedge fund activism. Review of Derivatives Research 14 (2), 169–204.

Brav, A., Jiang, W., Ma, S., Tian, X., 2014. Shareholder Power and Corporate Innovation: Evidence from Hedge Fund Activism. SSRN Electronic Journal.

Brav, A., Jiang, W., Partnoy, F., Thomas, R., Aug. 2008. Hedge Fund Activism, Corporate Governance, and Firm Performance. The Journal of Finance 63 (4), 1729–1775.

Brav, A., Kim, H., Jiang, W., Dec. 2015. Recent advances in research on hedge fund activism: Value creation and identification. Annual Review of Financial Economics.

Cai, J., Garner, J. L., Walkling, R. A., Oct. 2009. Electing Directors. The Journal of Finance 64 (5), 2389–2421.

Cai, J., Walkling, R. A., Apr. 2011. Shareholders' Say on Pay: Does It Create Value? Journal of Financial and Quantitative Analysis 46 (02), 299–339.

Campbell, J. T., Campbell, T. C., Sirmon, D. G., Bierman, L., Tuggle, C. S., Dec. 2012. Shareholder influence over director nomination via proxy access: Implications for agency conflict and stakeholder value. Strategic Management Journal 33 (12), 1431–1451.

Clifford, C. P., Sep. 2008. Value creation or destruction? Hedge funds as shareholder activists. Journal of Corporate Finance 14 (4), 323–336.

Coates, J. C., 2001. Explaining Variation in Takeover Defenses: Blame the Lawyers. California Law Review 89 (5), 1301–1421.

Cohn, J. B., Gillan, S. L., Hartzell, J. C., Aug. 2014. On Enhancing Shareholder Control: A (Dodd-) Frank Assessment of Proxy Access. Journal of Finance Forthcoming.

Cuñat, V., Gine, M., Guadalupe, M., Oct. 2012. The Vote Is Cast: The Effect of Corporate Governance on Shareholder Value. The Journal of Finance 67 (5), 1943–1977.

Del Guercio, D., Hawkins, J., Jun. 1999. The motivation and impact of pension fund activism. Journal of Financial Economics 52 (3), 293–340.

Del Guercio, D., Seery, L., Woidtke, T., Oct. 2008. Do boards pay attention when institutional investor activists "just vote no"?*. Journal of Financial Economics 90 (1), 84–103.

Demsetz, H., Lehn, K., 1985. The structure of corporate ownership: Causes and consequences. Journal of Political Economy 93 (6), 1155–1177.

Denes, M., Karpoff, J. M., McWilliams, D. V., 2015. Thirty Years of Shareholder Activism: A Survey of Empirical Research. SSRN Electronic Journal.

Ertimur, Y., Ferri, F., Muslu, V., Feb. 2011. Shareholder Activism and CEO Pay. Review of Financial Studies 24 (2), 535–592.

Ertimur, Y., Ferri, F., Stubben, S. R., Feb. 2010. Board of directors' responsiveness to shareholders: Evidence from shareholder proposals. Journal of Corporate Finance 16 (1), 53–72.

Fernandes, N., Lel, U., Miller, D. P., Feb. 2010. Escape from New York: The market impact of loosening disclosure requirements. Journal of Financial Economics 95 (2), 129–147.

Fos, V., Tsoutsoura, M., Nov. 2014. Shareholder democracy in play: Career consequences of proxy contests. Journal of Financial Economics 114 (2), 316–340.

Gantchev, N., Mar. 2013. The costs of shareholder activism: Evidence from a sequential decision model. Journal of Financial Economics 107 (3), 610–631.

Gibbons, M. R., 1980. Econometric Methods for Testing a Class of Financial Models:–an Application of the Nonlinear Multivariate Regression Model. Ph.D. thesis, University of Chicago, Department of Economics.

Gillan, S. L., Starks, L. T., Aug. 2000. Corporate governance proposals and shareholder activism: the role of institutional investors. Journal of Financial Economics 57 (2), 275–305.

Gillan, S. L., Starks, L. T., Jan. 2007. The Evolution of Shareholder Activism in the United States*. Journal of Applied Corporate Finance 19 (1), 55–73.

Greenwood, R., Schor, M., Jun. 2009. Investor activism and takeovers. Journal of Financial Economics 92 (3), 362–375.

Hermalin, B. B. E., Weisbach, M. S., 1998. Endogenously Chosen Boards of Directors and Their Monitoring of the CEO. The American Economic Review 88 (1), 96–118.

Jackson, H. E., Roe, M. J., Aug. 2009. Public and private enforcement of securities laws: Resource-based evidence. Journal of Financial Economics 93 (2), 207–238.

Jochem, T., 2012. Does Proxy Access Increase Shareholder Wealth? Evidence from a Natural Experiment. SSRN Electronic Journal.

Kahan, M., Rock, E. B., May 2007. Hedge Funds in Corporate Governance and Corporate Control. University of Pennsylvania Law Review 155 (5), 1021–1093.

Karpoff, J. M., Malatesta, P. H., Walkling, R. A., Nov. 1996. Corporate governance and shareholder initiatives: Empirical evidence. Journal of Financial Economics 42 (3), 365–395.

Klein, A., Zur, E., Feb. 2009. Entrepreneurial Shareholder Activism: Hedge Funds and Other Private Investors. The Journal of Finance 64 (1), 187–229.

Klein, A., Zur, E., May 2011. The Impact of Hedge Fund Activism on the Target Firm's Existing Bondholders. Review of Financial Studies 24 (5), 1735–1771.

La Porta, R., Lopez-De-Silanes, F., Shleifer, A., Feb. 2006. What Works in Securities Laws? The Journal of Finance 61 (1), 1–32.

Larcker, D. F., Ormazabal, G., Taylor, D. J., Aug. 2011. The market reaction to corporate governance regulation. Journal of Financial Economics 101 (2), 431–448.

Listokin, Y., Sep. 2009. Corporate Voting versus Market Price Setting. American Law and Economics Review 11 (2), 608–635.

Mamun, A. A., Hassan, M. K., Lai, S. V., Sep. 2004. The impact of the Gramm-Leach-Bliley act on the financial services industry. Journal of Economics and Finance 28 (3), 333–347.

Prevost, A. K., Rao, R. P., Apr. 2000. Of What Value Are Shareholder Proposals Sponsored by Public Pension Funds? The Journal of Business 73 (2), 177–204.

Renneboog, L., Szilagyi, P. G., Feb. 2011. The role of shareholder proposals in corporate governance. Journal of Corporate Finance 17 (1), 167–188.

Schipper, K., Thompson, R., 1983. The Impact of Merger-Related Regulations on the Shareholders of Acquiring Firms. Journal of Accounting Research 21 (1), 184–221.

Schipper, K., Thompson, R., 1985. The Impact of Merger-Related Regulations Using Exact Distributions of Test Statistics. Journal of Accounting Research 23 (1), 408.

Schoar, A., Washington, E. L., May 2011. Are the Seeds of Bad Governance Sown in Good Times? National Bureau of Economic Research.

Smith, M. P., Mar. 1996. Shareholder Activism by Institutional Investors: Evidence from CalPERS. The Journal of Finance 51 (1), 227–252.

Stratmann, T., Verret, J. W., Jun. 2012. Does Shareholder Proxy Access Damage Share Value in Small Publicly Traded Companies? Stanford Law Review 64 (6), 1431–1468.

Strickland, D., Wiles, K. W., Zenner, M., Feb. 1996. A requiem for the USA Is small shareholder monitoring effective? Journal of Financial Economics 40 (2), 319–338.

Thomas, R. S., Cotter, J. F., Jun. 2007. Shareholder proposals in the new millennium: Shareholder support, board response, and market reaction. Journal of Corporate Finance 13 (2-3), 368–391.

Wahal, S., Mar. 1996. Pension Fund Activism and Firm Performance. The Journal of Financial and Quantitative Analysis 31 (1), 1.

Appendices

A. Setting.

Federal regulations do not require public companies in the U.S. to provide a mechanism whereby shareholders can nominate directors on the company's proxy materials.[38] In this study, we rely on key changes from the status quo that allow us to explore the effectiveness of different approaches to providing proxy access, and study the value placed by the market on proxy access at different companies.[39] In particular, the 2010 proxy access rules removed the ability for companies to exclude shareholder proposals regarding proxy access,[40] allowing us to study the private ordering of proxy access. In addition, events surrounding the legal challenge to the part of the 2010 rulemaking that mandated proxy access at all affected firms allow us to benchmark the public provision of universal proxy access as an alternative to private ordering. In the next two sub-sections we present the institutional details behind these two developments.

A.1. Private provision of proxy access

A shareholder proposal can be excluded from a company's proxy materials, and thus not receive a vote, if the shareholder proponent does not meet certain eligibility and procedural requirements or the proposal is excludable under certain criteria set forth by the SEC.[41] Since 1998, the SEC staff interpreted one of these criteria — contained in Rule 14a-8(i)(8) — to allow the exclusion of any proxy access proposal. Following a legal challenge to this interpretation, which prevented the exclusion of a handful of proxy access proposals, the SEC amended the rule to more clearly make such proposals excludable.[42] Thus, shareholders generally did not have access to a formal channel through which to propose proxy access from the late 1990s until 2012.

In 2010, the SEC adopted an amendment to the rules governing shareholder proposals which removed the blanket ability to exclude proxy access proposals from proxy materials. While this amendment was adopted together with the universal proxy access rule that was later invalidated, it was not a subject of the judicial challenge. The amendment became effective in September 2011, clearing the way for shareholders to propose proxy access at individual

[38]The absence of a requirement does not prevent a board from adopting (or management from proposing, for shareholder approval) a bylaw amendment that allows proxy access at an individual firm. For example, Comverse Technology unilaterally adopted a proxy access bylaw in 2007. However, our understanding is that this has been a very rare occurrence in the absence of shareholder proposals requesting proxy access.

[39]While shareholders have access to other channels through which to nominate directors — including proxy fights, private negotiation, candidates proposed for the consideration of the board's nominating committee, and nominations from the floor at shareholder meetings — we do not believe that any of these alternatives are perfect substitutes for proxy access or that access to these alternatives has meaningfully changed in the time period we focus on.

[40]See amended Exchange Act Rule 14a-8(i)(8). The rule was effective as of September 2011, as specified in Facilitating Shareholder Director Nominations, Securities Act Release No. 9259, Exchange Act Release No. 65343 (Sept. 15, 2011).

[41]Exchange Act Rule 14a-8 dictates the eligibility and procedural requirements for a shareholder proposal. Also, a proposal is excludable if it falls under one of the rule's substantive bases for exclusion (Rule 14a-8(i)(1) through 14a-8(i)(13)).

[42]The Second Circuit court held in 2006 that a proxy access proposal by AFSCME could not be excluded by AIG despite the SEC's then-customary position, based on an older interpretation of the language of the rule by the SEC. See AFSCME v. AIG, 462 F.3d 121 (2d Cir. 2006). Following this decision, in the 2007 proxy season, proxy access proposals were voted on at Hewlett-Packard, the UnitedHealth Group and Cryo-Cell International. The SEC amendment to Rule 14a-8(i)(8) that clarified the excludability of proxy access proposals became effective on January 10, 2008.

companies beginning in the 2012 proxy season. We study the roughly 160 proxy access proposals submitted since then. The 2015 proxy season is of particular interest because a broad wave of shareholder proposals for proxy access was submitted in this year, perhaps marking a watershed moment for proxy access. The recent wave of proposals, in addition to being large, also reflects learning from the previous proxy seasons, in that the proposals avoid content or language choices that led previous proposals to be excluded from proxy statements. This wave of proposals includes 75 proposals by the NYC Comptroller's office under their Boardroom Accountability Project which are well-suited for empirical analysis because of their standardized terms and identifiable announcement date.

It is important to acknowledge that even if a shareholder proposal for proxy access reaches a vote and is approved by shareholders, the ability of shareholders to make nominations on the company's proxy materials may still not be guaranteed. Moreover, even if this ability is achieved, it may come with a significant delay. Specifically, the passage of a binding resolution to amend a company's bylaws in one year would generally mean that qualifying shareholders could begin to have the directors they nominate included in the company proxy materials in the next year's proxy season. However, binding proxy access proposals have thus far been rare relative to non-binding or "precatory" proposals. Potential reasons for this include the fact that binding proposals directly amend a company's bylaws and may thus require more careful and tailored drafting (which could be further complicated by the 500 word limit for shareholder proposals), and that binding proposals may be subject to stricter requirements.[43]

A precatory proposal, on the other hand, is advisory and does not require board action.[44] Thus, such a proposal could pass for multiple years in a row before resulting in implementation, or not be implemented at all. For example, proxy access proposals received a majority vote at Nabors Industries Ltd. in 2012 and 2013. In 2014, Nabors adopted a policy to permit limited proxy access under terms substantially more restrictive than what had been proposed, followed by another majority vote in favor of the same, less restrictive shareholder proposal in the 2014 proxy season.[45] Ertimur et al. (2010) found that 40 percent of precatory proposals that received a majority vote between 1997 and 2004 resulted in actual implementation by boards, and that the likelihood of implementation generally increases with the number of consecutive years that the same proposal received a majority vote.

If the implementation of precatory proposals is pursued, shareholders may be required to approve a resulting bylaw amendment, delaying actual proxy access for at least one more year. For example, shareholder resolutions for proxy access at CenturyLink, Inc., and Verizon Communications, Inc., were submitted in 2012, passed in 2013, and were followed by management proposals in 2014 to amend the bylaws accordingly. These also passed, meaning that qualifying shareholders of these companies can seek to include their director nominees in the company proxy materials as of the 2015 proxy season. See Table A1 for an example of the potential timing of key events related to the process of proposing and implementing proxy access.

In addition to the management discretion and delays in the implementation of shareholder proposals, proposals (whether binding or precatory) may be excluded from proxy materials in certain cases. One reason for such exclusion would be a withdrawal by the proponent based on private negotiations. For example, a 2012 proxy access proposal at Pioneer Natural Resources Co. and a 2014 proxy access proposal at Walt Disney Corp. were both withdrawn in exchange

[43]For example, some companies may require a supermajority vote by shareholders in order for such a binding proposal to pass.

[44]While precatory proposals do not legally require boards to act, there is some pressure to respond to a proposal that passes because failure to act may result in, for example, proxy advisor recommendations to vote against directors or in increased shareholder activism.

[45]Nabors did not classify the 2012, 2013, or 2014 votes, in which more shares voted for the proposals than against them, as passing because it included broker non-votes and abstentions as "against" votes in the final voting tally.

for unrelated governance changes. Often, though, proposals are excluded because they do not meet the requirements, or the proposal falls under one of the listed exclusion criteria, of Rule 14a-8. Companies must alert the SEC of their intentions to exclude proposals for such reasons, and, if asked for its view, the SEC staff provides no-action letters in cases in which there appears to be a basis for the company's claim of excludability. As discussed above, early proxy access proposals were often excluded because of their wording or content. For example, some of these early proposals were excludable because they defined eligibility for proxy access by referring to the eligibility requirements of the rules for shareholder proposals rather than explicitly defining these requirements, which was deemed to make these proposals vague and indefinite.[46]

If a proposal meets all of the basic requirements and is not voluntarily withdrawn, it will generally proceed to a vote, though management nearly always recommends against the proposal and provides a rebuttal to the proposal in the proxy materials. The scope for no-action relief with respect to a proxy access proposal is generally limited because excludability is usually a function of defects in proposal drafting and the meeting of eligibility and procedural requirements by the proponent. For a short period in the 2015 proxy season, however, managers had reason to believe that they could rely on an alternative basis for no-action relief that could be successfully applied irrespective of the technical details of a proposal. We discuss requests of this type in more detail in our empirical analysis.

A.2. Public provision of proxy access

In contrast to the private, market-based solution, regulations mandating uniform proxy access would result in a standardized level of proxy access whether or not the market believes such access to be value-increasing at a given firm and regardless of whether the shareholders or managers desire proxy access at that firm. Requirements for proxy access have not been implemented in the U.S., though they exist in other jurisdictions such as the U.K., Canada and Australia.

The SEC considered proxy access requirements at least six times in the past 60 years, beginning as early as 1942.[47] A 2003 proposal was met with over 13,000 comments and was not pursued further by the SEC. A 2007 proposal related to proxy access was also not adopted in that form. Section 971 of the Dodd-Frank Act explicitly authorized, but did not require, the SEC to adopt rules requiring proxy access. In 2009, the SEC proposed and in August 2010 adopted, a rule requiring a specified minimum level of proxy access and amendments to an existing rule which would allow the private ordering of expanded proxy access at individual companies.[48]

In particular, Rule 14a-11 mandated that proxy access would be available to shareholders or groups of shareholders holding at least three percent of the voting power of a company's securities, and who have held their shares for at least three years. The rule specified that nominees advanced through proxy access could represent up to 25 percent of the board. Separately, existing Rule 14a-8(i)(8) was amended to eliminate the excludability of shareholder proposals for proxy access under this section of the rule (except in certain limited cases primarily related to potential impacts on the election of directors in the same proxy year).[49] These amendments

[46]See, e.g., SEC No-Action Letter to Dell, Inc., March 30, 2012, available at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2012/jamesmcritchie033012-14a8.pdf.

[47]For a discussion of four occasions on which SEC considered proxy access through 2003, see SEC Staff Report, Review of the Proxy Process Regarding the Nomination and Election of Directors, Division of Corporation Finance, U.S. Securities and Exchange Commission (July 15, 2003).

[48]For the release corresponding to adoption of the rules, see Facilitating Shareholder Director Nominations, Securities Act Release No. 9136, Exchange Act Release No. 62764 (Nov. 15, 2010).

[49]As amended, a proxy access proposal would no longer be excludable under Rule 14a-8(i)(8) unless the proposal would disqualify a nominee standing for election; would remove a director before his/her term expired; questions the competence, business judgment, or character of one or more nominees or

were intended to complement the universal proxy access rule by allowing shareholders to seek expanded access at individual companies, beyond what was mandated by the rule.

Rule 14a-11, the universal proxy access rule, was the subject of a lawsuit by the Business Roundtable and the U.S. Chamber of Commerce filed on August 29, 2010. The SEC stayed the effectiveness of universal proxy access as well as the amendments with respect to shareholder proposals on October 4, 2010. In July 2011, the DC Circuit Court of Appeals held in favor of the plaintiffs and vacated the universal proxy access rule. The amendments that allowed for the private provision of proxy access were not a subject of the litigation, and went into effect in September 2011.[50]

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directors; seeks to include a specific individual in the company's proxy materials for election to the board of directors; or otherwise could affect the outcome of the upcoming election of directors.

[50]These events are also documented extensively in Becker et al. (2013) and Jochem (2012).

Table A1: Sample Timeline

This timeline presents an example of the potential timing of key events related to the process of proposing and implementing proxy access for a hypothetical firm whose fiscal year end is in December.

Date	Event	Board Discretionary Actions	Shareholder Actions
Nov. 2012	Deadline to submit shareholder proposal		Proponent submits precatory proxy access proposal
Dec. 2012	Fiscal year-end		
Jan. 2013	Deadline to request no-action relief	Management seeks to exclude proposal, requests no-action relief from SEC staff	
Feb. 2013	SEC staff response: no-action relief not granted		
Feb. 2013	Annual financial disclosures on Form 10-K		
Mar. 2013	Definitive proxy statement distributed	Management includes proposal in proxy statement, provides rebuttal and recommends vote "against"	Shareholders can begin returning (or change) votes
May 2013	Annual meeting		End of vote submission
May 2013	Voting results disclosed on Form 8-K: **shareholder resolution on proxy access passes (but not binding)**		
Dec. 2013	Fiscal year-end		
Feb. 2014	Annual financial disclosures on Form 10-K		
Mar. 2014	Definitive proxy statement distributed	Management proposes bylaw amendment for proxy access	Shareholders can begin returning (or change) votes
May 2014	Annual meeting		End of vote submission
May 2014	Voting results disclosed on form 8-K: bylaw amendment on proxy access is ratified		
Nov. 2014	Deadline specified in new proxy access bylaw to provide nomination notice		A qualifying shareholder submits documents required to nominate one director via proxy access
Dec. 2014	Fiscal year-end		
Feb. 2015	Annual financial disclosures on Form 10-K		
Mar. 2015	Definitive proxy statement distributed	Management includes its own nominees for the board, together with the shareholder nominee	Shareholders can begin returning votes (or change votes)
May 2015	Annual meeting		End of vote submission
May 2015	Voting results revealed on form 8-K: **shareholder nominee is elected**		

B. Variable Definitions.

Source	Variable	Description
CRSP	Return at Stay Date	Raw return on Oct 4th, 2011 when the SEC unexpectedly stayed 14a-11.
Compustat	Size	log(PRCC_F * CSHO)
	Book-to-Market	(CEQ + TXDB) / (PRCC_F * CSHO)
	Book-to-Market$_{Ind.Adj.}$	Book to Market minus corresponding Fama-French 30 industry mean Book to Market.
	Cash	CHE / AT
	Leverage	LT / AT
	Dividend Payer	Equals 1 if DVPSX_F > 0
Execucomp	Insider Ownership	The aggregate percent holdings of all insiders in a given year. (SHROWN_EXCL_OPTS_PCT)
ISS	Classified Board	An indicator if the board has a classified or staggered structure.
	Board Independence	The percentage of the board of directors that qualifies as independent.
	Separate Chairman-CEO	An indicator if the Chairman and the CEO are not held by the same person.
DEF 14A	Previously Targeted	An indicator if the firm was previously targeted for proxy access.
	Binding Proposal	An indicator if the shareholder proposal is binding.
	Standard Proposal	An indicator if the shareholder proposal requires a nominator to hold three percent of the firm for three years.
	Conflicting Mgmt Proposal	An indicator if both a shareholder and a management proxy access proposal was presented on the firm's annual proxy statement.
No Action Letters	No Action Targeted	An indicator if the shareholder proposal was challenged through the No Action Process.
8-K	Vote Outcome	The number of votes "for" the proposal divided by the sum of votes "for" and votes "against" multipled by 100.
Thompson Reuters 13-F	Institutional Ownership	The percentage of shares held by institutional owners which file 13-Fs, measured in quarter preceding the targeting or voting outcome.
NYC Comptroller	BAP Targeted	An indicator if the firm was targeted as part of the Boardroom Accountability Project (BAP)
	Targeted Reason	The stated reason the firm was targeted.

C. Variable Timing Details.

The control variables in each of our tests are based on different time frames depending on the event to which the test relates. In particular, the proponent's targeting decision occurs before the fiscal year leading up to a shareholder meeting is complete, while the voting decision happens after the end of the fiscal year. For example, for a December fiscal year-end firm with a May 2013 annual meeting, the definitive proxy statement would usually be filed in March 2013. Proponents would generally need to submit any shareholder proposals for the 2013 meeting of such a firm by November 2012 in order to meet the procedural requirements.[51] Thus, when considering the proponent's decision to target the firm for proxy access, we use the trailing twelve month return as of seven months prior to the annual shareholder meeting. In contrast, when considering shareholders' voting decisions, we use the trailing return ending three months prior to the annual shareholder meeting. We require this three month buffer in order to collect a measure of stock performance leading up to the voting decision that is less likely to be skewed by any potential stock price impact of the news that a proxy access proposal is included in the proxy statement. For example, for a typical December fiscal year firm with May 2013 annual meeting we use the cumulative return for the period from November 2011 to October 2012 for analysis of the proponent's targeting decision and from March 2012 to February 2013 for the analysis of the shareholders' voting decisions.

Because of these timing considerations, we also measure the relevant firm accounting characteristics prior to each decision. When considering targeting decisions, we use the accounting variables as of the fiscal year-end prior to the fiscal year discussed in the annual meeting. For example, for a December fiscal year-end firm with a May 2013 annual meeting, the 2012 fiscal year financial statements would not have been available at the time a shareholder would have targeted a firm. We therefore use accounting information from the previous fiscal year, in this case fiscal year 2011, when considering the determinants of the proponent's targeting decision. For the analysis of shareholders' voting decisions we use the current year's accounting information, in this case for fiscal year 2012, because it would have been publicly available to the shareholders at the time they made their voting decisions. For the same reasons, when considering governance characteristics such as board independence, we use the prior year's governance characteristics for analysis of the proponent's targeting decision and the current year's governance characteristics with respect to shareholders' voting decisions.[52]

[51] More precisely, Rule 14a-8(e)(2) requires that proposals for a regularly scheduled annual meeting be received at the company's principal executive offices by a date not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting.

[52] We do not currently have updated ISS governance data for 2014 and as such we assume that the governance characteristics in 2014 are the same as they are in 2013.

Figure 1: Number of proposals submitted and number of proposals voted.

In this figure we present the frequency of proposals submitted and voted.

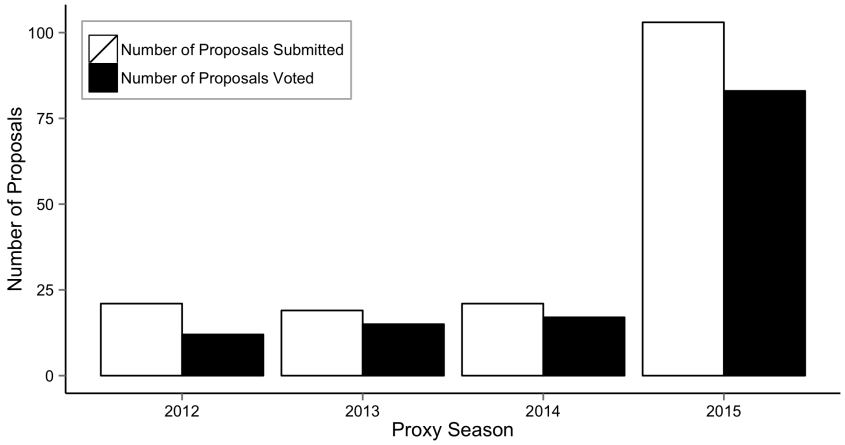


Figure 2: Return to Proxy Access Proposal vs. Return to Universal Proxy Access

This figure presents the average abnormal return to the targeted firms upon the announcement of the BAP initiative for each quintile of the distribution of returns of these firms on the date the SEC announced a stay of the universal proxy access rule and private ordering amendments. Abnormal returns upon the announcement of BAP are estimated in the GLS/SUR framework discussed in Table 4.

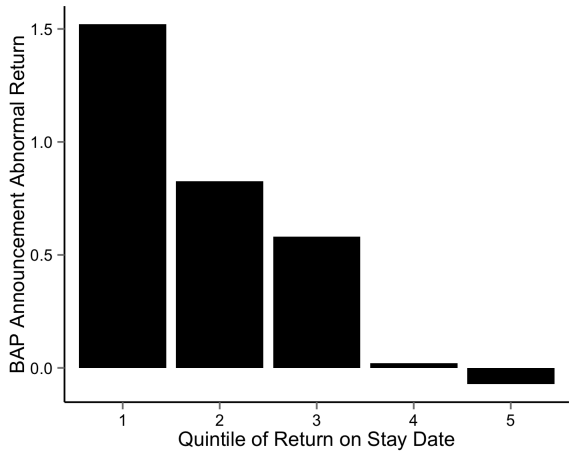
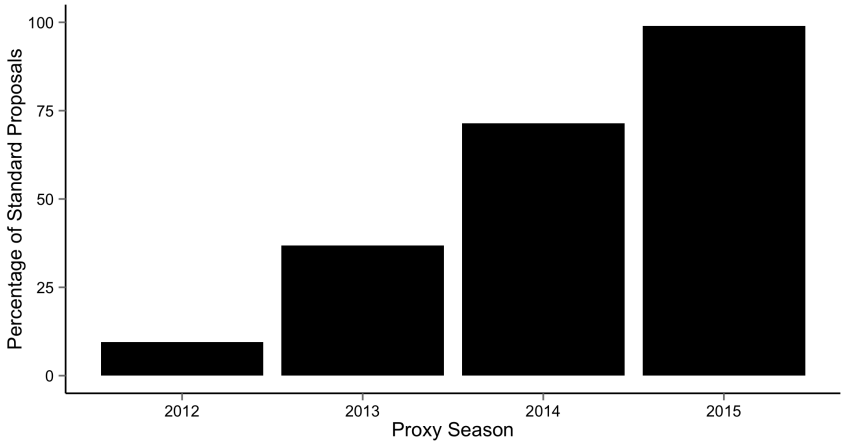


Figure 3: Standard and Non-Standard Proposals

In this figure we present the the percentage of proposals that apply an ownership threshold of three percent held for three years, as in the vacated SEC rule (subfigure (a)), and the shareholder support for proposals that apply an ownership threshold of three percent held for three years as well as the shareholder support for proposals with other ownership thresholds (subfigure (b)).

Subfigure (a): Percentage of proposals with three percent for three years ownership thresholds.



Subfigure (b): Shareholder votes in support of proposals.

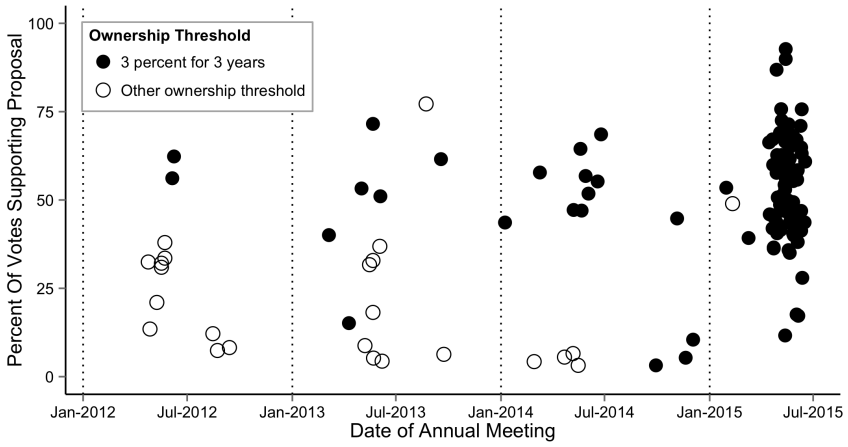
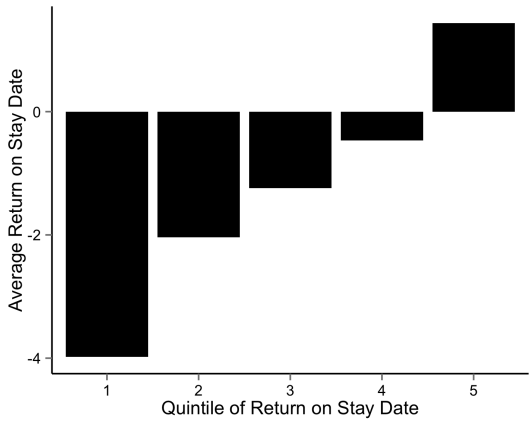


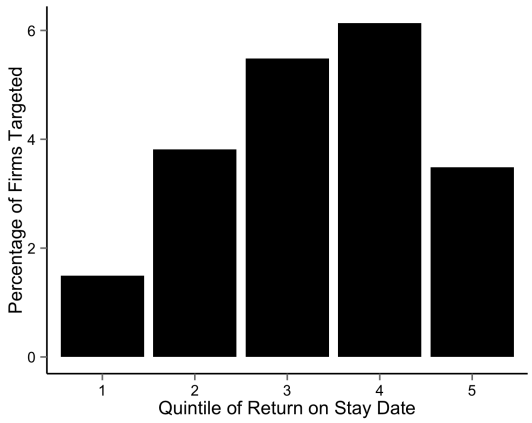
Figure 4: Targeting versus Return to Universal Proxy Access

In this figure we present the distribution of returns at the SEC announcement of the stay on the universal proxy access rule and private ordering amendments as well as the distribution of firms subsequently targeted for proxy access. In subfigure (a) we present the average return on the stay date for each quintile of the stay date distribution. In subfigure (b) we present the percentage of firms targeted in each quintile of the stay date return distribution. In subfigure (c) we present the percentage of firms targeted in 2012 or 2013 in each quintile of the stay date return distribution. In subfigure (d) we restrict our analysis to the largest twenty percent of firms and repeat the analysis presented in subfigure (b).

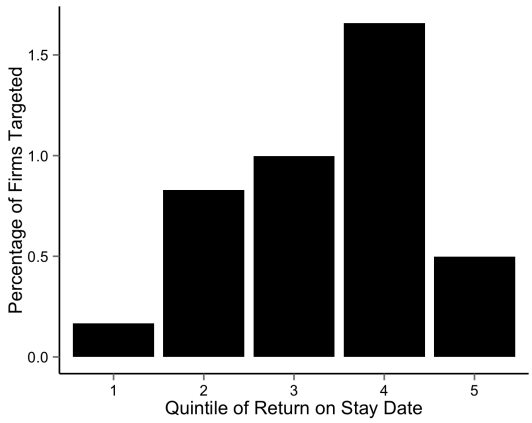
(a) Average Return on Stay Date



(b) Percentage of Firms Targeted (All Firms)



(c) Percentage of Firms Targeted (2012-2013)



(d) Percentage of Firms Targeted (Large Firms)

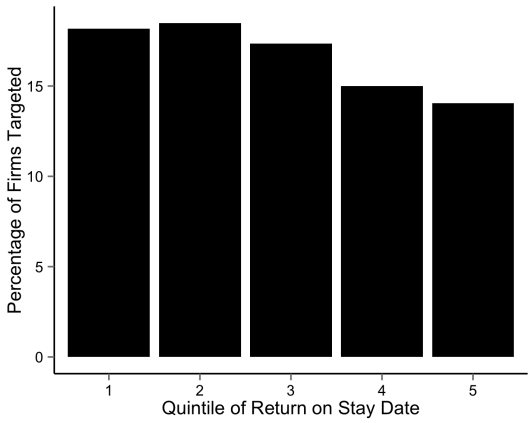


Table 1: Summary Statistics

This table presents summary statistics for the full sample of firms. The full sample spans the years 2012 through 2015. All variables are defined in Appendix B.

Variable	N	Mean	Median
Returns	13,856	16.56	11.62
Industry Adjusted Returns	13,856	-0.00	-4.05
ROA	13,888	-0.45	2.46
Book-to-Market	13,893	0.67	0.58
Classified Board	13,862	45.87	0
Board Independence	13,862	74.69	77.78
Separate Chairmain-CEO	13,862	53.88	100
Institutional Ownership	13,223	56.61	62.40
Market Cap	13,893	4,807	636
Cash	13,893	18.96	10.54
Leverage	13,893	54.78	54.35
Dividend Payer	13,893	44.62	0

Table 2: Univariate Analysis

This table presents univariate analysis of the sub-samples of firms targeted with proxy access proposals. Panel A presents a comparison of firms that were targeted outside of the BAP initiative and those that were not targeted. Panel B is restricted to the 2015 proxy season and presents a comparison of firms that were targeted by the BAP initiative and those that were not targeted in 2015. All variables are defined in Appendix B. p-values are in parentheses and are clustered at the firm level. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Panel A: Non-BAP Targeted versus Not Targeted

	Targeted		Not Targeted		
	N	Mean	N	Mean	Difference
Returns	83	5.28	13,698	16.65	-11.37***
$\text{Returns}_{Ind.Adj.}$	83	-11.97	13,698	0.01	-11.98***
ROA	83	5.03	13,730	-0.51	5.53***
Book-to-Market	83	0.69	13,735	0.67	0.02
Classified Board	83	26.51	13,704	46.02	-19.52***
Board Independence	83	80.64	13,704	74.62	6.01***
Separate Chairman-CEO	83	44.58	13,704	53.03	-9.45
Institutional Ownership	77	63.41	13,077	56.49	6.91**
Market Cap	83	57,180	13,735	4,371	52,808***
Cash	83	16.11	13,735	19.01	-2.90
Leverage	83	62.97	13,735	54.73	8.24***
Dividend Payer	83	72.29	13,735	44.35	27.94***

Panel B: BAP Targeted versus Not Targeted

	Targeted		Not Targeted		
	N	Mean	N	Mean	Difference
Returns	75	12.64	3,163	9.14	3.50
$\text{Returns}_{Ind.Adj.}$	75	10.90	3,163	-0.28	11.18***
ROA	75	4.25	3,169	-1.20	5.45***
Book-to-Market	75	0.56	3,169	0.56	0.01
Classified Board	75	38.67	3,164	46.21	-7.54
Board Independence	75	81.45	3,164	74.80	6.64***
Separate Chairman-CEO	75	37.33	3,164	55.66	-18.32***
Institutional Ownership	69	71.44	3,021	54.73	16.71***
Market Cap	75	26,628	3,169	5,245	21,383***
Cash	75	12.77	3,169	18.76	-5.99***
Leverage	75	55.85	3,169	55.41	0.44
Dividend Payer	75	62.67	3,169	48.06	14.61**

Table 3: Industry Distributions

This table presents the distribution of proxy access shareholder proposal events across the 30 Fama-French industries. Columns two and three tabulate the industry distributions of the firms that were targeted outside of the BAP initiative (Non-BAP) and the firms targeted as part of the BAP initiative (BAP).

	All Proposals	Non-BAP	BAP
Food Products	4	2	2
Recreation	6	4	2
Consumer Goods	1	0	1
Healthcare, Medical Equipment, Pharmaceutical Products	13	8	5
Chemicals	3	2	1
Construction and Construction Materials	1	0	1
Steel Works Etc	1	0	1
Fabricated Products and Machinery	1	1	0
Automobiles and Trucks	3	0	3
Aircraft, ships, and railroad equipment	1	1	0
Precious Metals, Non-Metallic, and Industrial Metal Mining	1	0	1
Coal	6	0	6
Petroleum and Natural Gas	26	6	20
Utilities	9	0	9
Communication	5	3	2
Personal and Business Services	11	6	5
Business Equipment	9	8	1
Transportation	3	2	1
Wholesale	2	2	0
Retail	15	11	4
Restaurants, Hotels, Motels	5	4	1
Banking, Insurance, Real Estate, Trading	29	23	6
Everything Else	3	0	3
Total	158	83	75

Table 4: BAP Announcement Returns

This table presents the estimated change in market value due to the announcement of being targeted as part of the Boardroom Accountability Project (BAP). Three approaches to estimating the change in market value are employed. The first approach estimates abnormal returns on a firm-by-firm basis and then estimates the mean abnormal return on the announcement date. A risk adjustment for each firm is performed using a Fama-French-Carhart four factor model with an additional firm specific industry factor. The firm specific industry factor is the equally weighted average return for all non-BAP firms within a BAP firm's Fama-French 30 industry classification. For the first approach the reported p-values are calculated to be robust to heteroskedasticity. The second approach forms an equally weighted portfolio of all targeted firms and estimates the abnormal return of the portfolio on the event day. A risk adjustment for the portfolio is done using a Fama-French-Carhart four factor model with an additional aggregated industry factor. The aggregated industry factor is the equally weighted average of all the firm specific industry factors described previously. For the second approach the reported p-values are calculated based on the standard error of the abnormal return and assumes a normally distributed test statistic. The third approach uses GLS estimation in a seemingly unrelated regression (SUR) framework based on a Fama-French-Carhart four factor model, a firm specific industry factor (constructed in the same method as the first approach), and an indicator for the event date. The estimated parameter on the event date indicator is the abnormal return for the firm from the announcement of being targeted as part of BAP. The average parameter estimate on the event date indicator is reported. Hypothesis testing is performed with a Wald test to test the mean firm specific abnormal return estimated in the SUR framework against zero. p values are reported in parentheses. Firms can be targeted for multiple reasons and therefore the sum of the subsamples is greater than the full sample. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Event Study Estimates of Change in Market Value

	N	Firm-by-Firm Mean Ab. Return	Portfolio Ab. Return	GLS/SUR Mean Ab. Return
Full Sample	70	0.53^{***}	0.48^{*}	0.53^{**}
		(0.003)	(0.10)	(0.04)
Targeted: Governance	6	1.25^{*}	1.44^{*}	1.38^{*}
		(0.08)	(0.08)	(0.08)
Targeted: Fossil Fuel	31	0.89^{***}	0.74	0.90^{*}
		(0.003)	(0.17)	(0.05)
Targeted: Diversity	21	0.47^{*}	0.50	0.51
		(0.09)	(0.15)	(0.12)
Targeted: Say on Pay	25	0.24	0.18	0.20
		(0.38)	(0.57)	(0.60)

Table 5: BAP Announcement Returns by Firm Characteristics

This table reports the estimates of the change in market value due to the announcement of being targeted as part of the Boardroom accountability Project (BAP), as estimated using GLS in a seemingly unrelated regression (SUR) framework, for subsamples of firms created by splitting the firms on a particular characteristic. The GLS estimation of the abnormal returns is based on a Fama-French-Carhart four factor model, a firm specific industry factor, and an indicator for the event date. The firm specific industry factor is the equally weighted average return for all non-BAP firms within a BAP firm's Fama-French 30 industry classification. The estimated parameter on the event date indicator is the abnormal return for the firm from the announcement of being targeted as part of BAP. The average parameter estimate on the event date indicator is reported. Firms are split based on the median firm characteristic. A Wald test is performed to test whether the mean difference between the estimates in the two resulting subsamples is statistically significant. Variable definitions are provided in Appendix B. p values are reported in parentheses. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Mean Abnormal Return by Firm Characteristics

Partitioning Characteristic:	Above Median		Below Median		
	N	Mean Ab. Return	N	Mean Ab. Return	Difference
Stay Announcement Return	33	0.15	34	0.94**	-0.80*
		(0.63)		(0.01)	(0.08)
Returns	35	-0.10	35	1.16***	-1.26**
		(0.71)		(0.01)	(0.01)
$\text{Returns}_{Ind.Adj.}$	35	0.40	35	0.65	-0.25
		(0.14)		(0.11)	(0.59)
Institutional Ownership	33	0.64*	33	0.53*	0.11
		(0.05)		(0.096)	(0.79)
Board Independence	35	0.41	35	0.65**	-0.24
		(0.16)		(0.04)	(0.45)
Classified Board	27	0.61	43	0.48*	0.13
		(0.11)		(0.09)	(0.75)
Separate Chair-CEO	26	0.52	44	0.54*	-0.02
		(0.11)		(0.08)	(0.96)
Size	35	0.52*	35	0.54	-0.02
		(0.06)		(0.17)	(0.96)
$\text{Book-to-Market}_{Ind.Adj.}$	35	0.44	35	0.62**	-0.17
		(0.16)		(0.04)	(0.62)
Previously Targeted	5	0.88	65	0.50*	0.38
		(0.34)		(0.07)	(0.14)

Table 6: Stay Date Returns Analysis

This table presents the results of a comparison of the stay date returns of firms that were eventually targeted for proxy access with the returns of firms that were not targeted for proxy access. Panel A presents the results of this comparison for all firms targeted. The first row tabulates the mean return on the stay date for all firms eventually targeted and compares it to the mean return of the full sample of untargeted firms. The second row presents the same analysis using a matched sample that is created by matching a targeted firm to the three firms nearest to its market capitalization. Panels B and C perform similar analysis but restrict the sample of targeted firms to either the firms targeted outside the BAP initiative (Panel B) or as part of the BAP initiative (Panel C). p-values are in parentheses and are clustered at the Fama-French 30 industry level for tests of a difference in means. p-values are calculated using Abadie-Imbens standard errors for the matched sample analysis. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Panel A: Targeted versus Not Targeted

	Targeted		Not Targeted		
	N	Mean Return	N	Mean Return	Difference
Mean Return	123	-0.91	2,891	-1.28	0.37***
					(0.01)
Mean Return (Size Matched)	123	-0.91	369	-0.93	0.02
					(0.98)

Panel B: Non-BAP Targeted versus Not Targeted

	Targeted		Not Targeted		
	N	Mean Return	N	Mean Return	Difference
Mean Return	52	-1.00	2,891	-1.28	0.28**
					(0.02)
Mean Return (Size Matched)	52	-1.00	156	-0.93	-0.07
					(0.69)

Panel C: BAP Targeted versus Not Targeted

	Targeted		Not Targeted		
	N	Mean Return	N	Mean Return	Difference
Mean Return	71	-0.84	2,891	-1.28	0.44**
					(0.04)
Mean Return (Size Matched)	71	-0.84	213	-0.89	0.05
					(0.78)

Table 7: Determinants of Company Selection

This table presents the coefficient estimates of a conditional logistic regression where an indicator for whether or not a company received a proxy access proposal is regressed on firm characteristics. Columns (1) and (2) use the full sample of proposals; columns (3) and (4) use just non-BAP proposals; columns (5) and (6) use just the BAP proposals received in proxy season 2015. Variable definitions are provided in Appendix B. Robust p-values are reported in parentheses. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

	Full Sample		Non-BAP Proposals		BAP Proposals	
	(1)	(2)	(3)	(4)	(5)	(6)
Book-to-Market$_{Ind.Adj.}$	0.598**	0.517**	0.646*	0.574***	0.312	-0.079
	(0.033)	(0.011)	(0.078)	(0.008)	(0.667)	(0.819)
Returns (Previous 12 Months)	-0.014***	-0.013***	-0.021***	-0.022***	-0.006	0.006
	(0.002)	(0.000)	(0.000)	(0.000)	(0.442)	(0.115)
Classified Board	0.128	0.166	-0.177	-0.171	0.443	0.574**
	(0.555)	(0.441)	(0.709)	(0.599)	(0.146)	(0.045)
Board Independence	0.005	0.005	0.002	0.003	0.013	0.007
	(0.560)	(0.587)	(0.907)	(0.826)	(0.263)	(0.560)
Separate Chairman-CEO	-0.314***	-0.343**	-0.224	-0.275	-0.438	-0.306
	(0.001)	(0.020)	(0.318)	(0.264)	(0.146)	(0.324)
Institutional Ownership	0.001	0.001	-0.003	-0.002	0.002	0.004
	(0.435)	(0.497)	(0.680)	(0.811)	(0.516)	(0.312)
Size	0.733***	0.728***	0.608***	0.609***	0.859***	0.945***
	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)
Cash	0.003	0.002	0.006	0.004	-0.006	-0.011
	(0.825)	(0.733)	(0.731)	(0.721)	(0.464)	(0.423)
Leverage	0.002	0.002	0.014***	0.015***	-0.014**	-0.016
	(0.765)	(0.693)	(0.000)	(0.000)	(0.046)	(0.163)
Dividend Payer	-0.220	-0.146	0.198	0.111	-0.587*	-0.897
	(0.322)	(0.696)	(0.313)	(0.736)	(0.059)	(0.109)
Previously Targeted	2.803***	2.980***	3.375***	3.552***	1.019	1.564
	(0.001)	(0.000)	(0.000)	(0.000)	(0.226)	(0.269)
Year FE	Y	N	Y	N	N/A	N/A
Industry-Year FE	N	Y	N	Y	N/A	N/A
Industry FE	N	N	N	N	N	Y
Observations	12,812	11,918	12,743	10,899	3,079	2,699

Table 8: Management Opposition

This table presents an analysis of the firms where management took some action to confound the shareholder proposal. Panel A compares the mean return on the stay date, or the mean abnormal return on the BAP announcement date, of firms that requested a no-action letter from the SEC on the basis of a conflicting proposal to the mean return of those firms which did not request a no-action letter. Similarily, Panel B compares the mean return on the stay date, or the mean abnormal return on the BAP announcement date, of firms that took some action to affect the outcome of the shareholder proposal to the mean return of those that did not. These actions include, adopting a version of proxy access more favorable to management, putting forth a conflicting shareholder proposal to vote, or promising to propose or adopt a version of proxy access in the future. Variable definitions are provided in Appendix B. p-values in parentheses and are calculated with standard errors clustered at the Fama-French 30 industry level. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Panel A: Mean Return if a No-Action Letter was Requested

	Requested		Not Requested		
	N	Mean Return	N	Mean Return	Difference
Stay Announcement Return	18	-1.38	53	-0.65	-0.73*
					(0.06)
BAP Announcement Return	16	1.12	54	0.35	0.76**
					(0.04)

Panel B: Mean Return if Management Attempted to Confound the Vote

	Confounded		Not Confounded		
	N	Mean Return	N	Mean Return	Difference
Stay Announcement Return	17	-1.38	80	-0.72	-0.66**
					(0.029)
BAP Announcement Return	13	1.04	57	0.41	0.63**
					(0.026)

Table 9: Vote Outcome and Announcement Returns

This table presents the mean stay announcement returns and BAP announcement returns for proxy access proposals that received the support of a majority of votes cast and those that failed to receive majority support. Votes cast exclude abstentions and broker non-votes. The sample is restricted to shareholder proposals that use three percent for three year ownership thresholds. Variable definitions are provided in Appendix B. p-values in parentheses. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

	Majority Support		Sub-Majority Support		
	N	Mean Return	N	Mean Return	Difference
Stay Announcement Return	55	-0.95	42	-0.79	-0.16
					(0.57)
BAP Announcement Return	40	0.92	22	0.55	0.37
					(0.41)

Table 10: Vote Outcome and Ownership Composition

This table presents the coefficients estimates of a linear regression where the percent voting support is regressed on firm ownership composition measures. *Institutional Ownership 0 to 1%* is the aggregate ownership for all institutions holding positions between 0 and 1% of the firm's equity (similarly defined for the 1 to 3%, 3 to 5%, and 5% Plus variables). The sample is restricted to shareholder proposals that apply an ownership threshold of three percent for three year. Variable definitions are provided in Appendix B. p-values in parentheses and clustered at the Fama-French 30 industry level. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

	For Votes as Percent of Cast Votes				
	(1)	(2)	(3)	(4)	(5)
Insider Ownership	-0.78**			-0.73*	-0.76*
	(0.041)			(0.058)	(0.093)
Institutional Ownership		0.21			
		(0.112)			
Institutional Ownership 0 to 1%			0.80***	0.64*	0.74**
			(0.005)	(0.057)	(0.010)
Institutional Ownership 1 to 3%			0.06	0.31*	0.04
			(0.682)	(0.087)	(0.795)
Institutional Ownership 3 to 5%			0.25	0.29	0.28
			(0.457)	(0.360)	(0.360)
Institutional Ownership 5% Plus			0.09	0.18	0.03
			(0.539)	(0.241)	(0.850)
Size	-2.17	-1.27	-2.83**		-2.95**
	(0.120)	(0.379)	(0.035)		(0.017)
Observations	86	86	86	86	86
R^2	0.07	0.05	0.08	0.08	0.11