

**Director Elections: Impact of regulatory changes and shareholder activism on the market for corporate leadership**

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*J. Cook, September 21, 2006*

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Public corporations in the US and Canada are led at the highest level by a group of individuals numbering somewhere between about five and twenty-five. Some are employed by the company as senior managers. These are called insiders. Some are not employed by the company presently, but have been in the past, or may have had, or continue to have, some other business arrangement with the company. Some may even be related to the CEO. These are called non-independent outsiders. Some have no such ties. These are called independent outside directors.

These individuals get to make the most important and far-reaching decisions in the company and are generally paid handsomely for this service. The diligence, competence, honesty and rigour with which they perform their duties on behalf of shareholders is the focus of corporate governance.

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Critics of the present system of corporate governance in the US ask how directors serving on the boards of corporations embroiled in accounting and governance scandals during the relevant periods continue to hold a number of board seats years later. Having failed to provide the oversight necessary to avoid these scandals, around 15 so-called 'scandal directors' associated with Adelphia, Global Crossing, Enron and Worldcom continued to serve on about 35 corporate boards in 2005; in five instances, appointed to the board after the scandals broke.

Critics continue to point to outrageous departures from the pay-for-performance principle that they consider to be a self-evident standard for CEO compensation as evidence of a broken system of corporate governance.

Critics ask how boards can continue to ignore shareholder calls for declassification.

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Staggered boards – boards where only a third of seats are up for election each year, effectively constitute a takeover defense and are widely considered to be a tool for entrenching incumbent management. Each year since 2001 30 or more shareholder resolutions calling for board declassification are voted on at shareholder meetings and each year the average shareholder support is well in excess of 50%. Each year only a minority of those receiving a majority support from shareholders are implemented.

**Board Declassification**

|      | Number of Proposals | Average Support (%) |
|------|---------------------|---------------------|
| 2004 | 34                  | 71                  |
| 2005 | 27                  | 62                  |
| 2006 | 42                  | 73                  |

*Why are boards able to ignore shareholder wishes?*

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The market for corporate leadership, variously referred to as the market for professional directors, the market for non-executive directors or the market for board seats, refers to the collection of mechanisms through which board positions are allocated among those willing to serve as corporate directors.

In a well-functioning market there would be strong competition among those willing to provide this service and strong competition among boards for the best candidates.

Lack of competition in the market for corporate leadership undermines the credible threat of replacement of board members for poor performance.

Without the credible threat of replacement boards are able to ignore shareholder wishes.

The formal mechanism through which board seats are allocated is director elections.

Therefore, I start from the position that shareholder franchise in director elections is necessary to good governance of public corporations, a point that Harvard Law Professor Lucian Bebchuk makes in his 2005 Harvard Law Review paper entitled "The case for increasing shareholder power".

Managerialist organizational theorists argue that many CEOs appoint their own board members. They characterize the CEO-board relationship as an ongoing attempt by the CEO to influence the board for his or her benefit.<sup>1</sup>

Sociologists who outline a class-based theory of inter-board connections consider the rolodexes of existing directors, or directors' social contacts, to be the source of new board appointments. They trace board appointments and CEO compensation levels to board co-memberships and common membership to the Augusta National Golf Club.

To the extent that director elections do not function to facilitate a competitive market for corporate leadership, boards may lose their independence or be replaced through the market for corporate control – through hostile takeover.

Hostile takeovers are a weak constraint for a number of reasons, not least of which because boards are able to adopt defensive measures against takeover that skew this market mechanism.

Today I expand on the position that director elections in the US do not function as an *effective* allocative mechanism to promote competition in the market for corporate leadership.

I then review recent shareholder and regulatory initiatives that might change this situation, at least to some extent.

Finally, I'll leave for the discussion period, if you're interested, considerations of how to leverage available information resources to inform shareholders' participation in director elections.

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<sup>1</sup> Zajac and Westphal (1996) suggest that there are active and passive boards and directors that serve on these boards are recognized as being more or less challenging to senior management. They find evidence to confirm that powerful management entrenches itself by selecting passive directors to their boards. Westphal and Khanna (2003) show that directors who participate in one of four actions recognized as challenging the power of entrenched management are less likely to be invited to participate in informal director meetings, and felt more socially excluded from participation in informal communications and formal board meetings following the action. Moreover, they found that the 'social distancing' from the 'circles of power' that make up the corporate elite functions as a deterrent to future challenging actions.

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*So what are the impediments to meaningful director elections?*

The present system in which board nominees run unopposed under a plurality voting system has been repeatedly referred to in the news media as ‘Soviet-style’ elections. At best it provides the board with a reading of their popularity. At worst, it’s a ceremony that masks the self-perpetuating and insular nature of many boards.

The default method of voting on director candidates in most states in the US, apart from a few, including Missouri and Illinois, is by a plurality of votes cast.

Under plurality voting, votes are cast votes ‘for’ candidates, but not against. The candidate with the most votes in favour wins the election even if this does not constitute a majority of votes cast. If there are five seats to be filled, these are allocated to the five candidates receiving the most support. Withhold votes effectively register shareholders’ objection to a nomination, but don’t count.

The Council of Institutional Investors, in their paper on majority voting “consider[s] plurality voting to be a fundamental weakness in the US corporate governance system”.

However, the plurality vote system is used widely in political elections and, with respect to board elections, dates back to a time when shareholdings were less dispersed and battles for control among competing shareholder factions might leave no candidate with a majority of support, resulting in a failed election.

Plurality voting works well in a contested election to reflect shareholder preference and ensure that all board seats are filled.

The problem with plurality voting as the default rule for director elections is that the overwhelming majority of director elections are not contested. Therefore, even the hypothetical case of one share in favour earns a nominee an election or re-election to the board.

The fundamental problem, therefore, is uncontested elections, not plurality voting.

*Why, then, do director elections go uncontested?*

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In fact, shareholders are legally able to contest elections – through a proxy contest. A proxy contest is a challenge from a dissident shareholder to try to get their candidates elected to the board by shareholder vote against management’s wishes.

However, under present SEC rules, contested elections can occur only at a huge expense to the shareholder proposing a dissident slate or partial slate of nominees. The regulated procedure for doing so stacks the odds against the dissident. The cost of sending proxy materials to shareholders and receiving proxies from them are reported to range between \$250,000 and \$500,000.

The incumbent board is able to fight back with corporate funds. It’s difficult to know exactly how much boards spend defending themselves against shareholder actions, but a rough estimate based on a review of contests during the most recent proxy season suggests a figure of about \$1,100,000.

Moreover, the potential for a proxy contest to result in board governance change is undermined further where boards are staggered (also known as classified boards) – where only a third of

board seats are voted on at each election, making it impossible for dissidents to change board control in one election.

So even if a shareholder dissident group had the funds to launch a proxy contest, they would be up against a well-organized, well-funded board and at best would be able to replace a small number of directors in the case of a staggered board.

Proxy contests are therefore extremely rare. Out of more than 7,000 public companies and around 30,000 to 40,000 directors up for election in a given year there are less than 20 proxy contests not related to hostile takeover. Most are at small companies and most are not successful. According to research by Bebchuk there were only two successful proxy contests at companies with a market cap of greater than \$200m between 1996 and 2003. This, he concludes, is not sufficient to represent a credible threat to under-performing boards.<sup>2</sup> This year's director elections at H.J. Heinz Co. saw two dissidents elected to the 12-person board from a partial dissident slate of 5 put to shareholders by a hedge fund, Trian Group. Heinz reportedly spent \$12 million fighting the contest.

Rarely do individual dissidents run for a board position on their own ticket. Shareholder activist Robert Monks did so in 1991 - attempting to gain a board seat at Sears Roebuck & Co. His strategy was two-fold. To gain a seat on the board of a poorly run company and to demonstrate the difficulties that a dissident faces in attempting to do so. He was successful in the latter. Sears spent \$5.5m on proxy solicitation that year. Monks spent \$250,000.<sup>3</sup>

Besides engaging in a proxy contest, Delaware Law allows shareholders to submit precatory, in other words non-binding, resolutions that ask the shareholder body to vote 'for' or 'against' certain directors, urging a board to 'remove' directors who fail to achieve a majority of votes in favour.

However, a recent attempt to take advantage of this route was disallowed by the SEC. Amalgamated Bank's LongView Collective Investment fund submitted a shareholder resolution to CA Inc., formerly Computer Associates International, asking shareholders to vote 'yes' or 'no' on two directors who had served prior to 2002, during a period of misconduct resulting in an accounting scandal at the company that wasn't investigated by the board until 2003. In seeking to keep the proposal off their proxy ballot CA invoked SEC Rule 14a-8. This rule, known as the "shareholder proposal rule", details the conditions under which shareholders may propose resolutions to be voted on at general shareholder meetings. The SEC allowed CA to keep the proposal off its proxy ballot on the grounds that shareholder proposals not be used as vehicles for changes in board composition and that proxy contests be used for this purpose instead.<sup>4</sup>

In fact, this rule is invoked regularly by boards in seeking 'no-action' letters from the SEC – these being official confirmation that they will not be challenged by the SEC for keeping certain shareholder proposals off the proxy ballot.

Another approach for dissatisfied investors is simply to encourage others to withhold support for certain candidates. Large institutions, such as The California Public Employees' Retirement System (CalPERS) and American Federation of State, County and Municipal Employees (AFSCME) have run 'withhold vote' campaigns in which they urge fellow shareholders to withhold their votes from certain board candidates as a show of dissatisfaction. They typically target compensation committee members over concerns about pay practices. Campaigns against the compensation committee members of Pfizer and Home Depot this year resulted in significantly lower average support for the targeted nominees compared to other board members. However these campaigns have no legal standing.

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<sup>2</sup> Bebchuk (2003).

<sup>3</sup> Rosenberg, H. (1999) *A Traitor to His Class: Robert A.J. Monks and the Battle to Change Corporate, America*, John Wiley & Sons Inc.

<sup>4</sup> Morgenson, G. "Finally, Shareholders Start Acting Like Owners", *New York Times*, June 11, 2006. Morgenson, G. "Soviet-Style Proxies, Made in the USA", *New York Times*, June 25, 2006.

Proxy contests are too costly and the administrative and legal effort required by dissidents is prohibitive. Alternative methods of challenge are ineffective.

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*What can be done to infuse real competition into the market for corporate leadership?*

One approach is to address the costs and complication of proxy contests. The prohibitive costs of mounting a proxy contest may be significantly reduced by new rules proposed by the SEC late last year (December 2005) for proxy materials to be made available by posting them on an internet website and providing shareholders with a notice of where they could access them (referred to as the "Notice and Access Model").<sup>5</sup>

Another approach is to allow shareholder-nominated candidates to run alongside board-nominees on the same proxy ballot in a contested election. The latter has become known as 'shareholder access'.

In 2003 AFSCME submitted a proposal to Citigroup asking that shareholders owning at least three percent of the company be afforded the right to have their nominee appear on the company's proxy card, together with a short biographical statement. The SEC allowed the company to keep this proposal off its proxy ballot.

However that year the SEC initiated a review of the rules governing the proxy process with attention to the nomination and election of directors (*review of the proxy rules on director nominations and elections*).<sup>6</sup>

The proposed 'Proxy Access Rule' which resulted from this review gave shareholders a glimmer of hope for achieving some say in board elections, albeit very limited. It would have given certain shareholders the right to nominate one or more candidates to the board following certain 'trigger' events. At the time, shareholder activists considered the trigger events to be unrealistic and argued that rule undermined the timeliness of an appropriate response. There was also dissatisfaction about shareholders only being able to nominate a minority of directors. But shareholder advocates were generally prepared to accept the compromise and were encouraged by the SEC's attention to this issue.<sup>7</sup>

Under strong industry lobbying and a change in SEC leadership, the SEC failed to proceed with implementing this rule in 2004.

Yet shareholders had already started to dream of meaningful participation in director elections. With the possibility of contested elections receding, large union pension funds turned on the plurality vote standard. Over the last two years they have targeted a large number of companies with a proposal calling for director elections to be subject to an affirmative vote of a majority of shares voted, and implemented in the company by-laws.

*This is where the latest chapter in the shareholder rights struggle begins.*

On June 9, 2005 the Council of Institutional Investors (CII), representing public, labor, and corporate pension funds in the US, conducted a letter campaign urging the largest corporations to

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<sup>5</sup> Securities and Exchange Commission (SEC) (2005) Proposed Rule: Internet Availability of Proxy Materials, File No. S7-10-05, <http://www.sec.gov/rules/proposed/34-52926.pdf>

<sup>6</sup> Securities and Exchange Commission (SEC) (2005) Proposed Rule: Security Holder Director Nominations, File No. S7-19-03 <http://www.sec.gov/rules/proposed/34-48626.htm>

<sup>7</sup> New York State Office of the Controller, "State Pension Officials Strongly Oppose Barriers In SEC's Proposed Proxy Access Rules", Press Release, October 2, 2003, <http://www.osc.state.ny.us/press/releases/oct03/100203.htm>

adopt the director elections majority vote standard as a company by-law where permissible under state law.<sup>8</sup>

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#### Director Election Majority Vote Standard

|      | Number of Proposals | Average Support (%) |
|------|---------------------|---------------------|
| 2004 | 13                  | 11                  |
| 2005 | 63                  | 45                  |
| 2006 | 97                  | 47                  |

As you can see, the director elections majority vote movement has been gaining momentum.

Under majority voting, voters cast a vote 'for' or 'against' each candidate. A candidate must achieve more 'for' than 'against' votes to be elected to a position. So, where plurality voting allows shareholders to vote 'for', but not 'against' board candidates, majority voting allows shareholders to indicate who they would not like to serve on the board.

Around 200 US public companies have so far adopted some version of the principle of majority voting in director elections – including just over 25% of the S&P 500. Two approaches may be distinguished, each named after the first company to adopt the respective model: Pfizer and Intel.

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Both formalize a director resignation procedure following the failure of a board nominee to achieve a majority of affirmative votes.

The Pfizer model, also called 'Modified Plurality' or 'Plurality Plus', continues to rely on plurality voting and requires only a change to the board's governance principles.

The Intel model allows shareholders to vote for or against board candidates and commits to the majority vote standard as a bylaw change. The distinction between a governance principle and a by-law is significant for shareholder activists as the former can be ignored or changed by the board, whereas the latter is legally enforceable by shareholders.

Initially most companies voluntarily adopting a majority vote standard for director elections followed the Pfizer model. However, with shareholder activists targeting even companies that adopted such a model this year – and getting good support, the latest companies to adopt the majority vote standard have opted for the bylaw change, carving out contested elections for plurality voting. These include Zimmer Holdings (adopted September 18, 2006), Williams Companies (adopted September 15, 2006), Kimberly-Clark (adopted September 14, 2006) and Home Depot (adopted August 30, 2006)

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Apparently more than 30 of Canada's 60 largest corporations have adopted a Pfizer-style policy. Here the reform has been driven by the Canadian Coalition for Good Governance (CCGG), a

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<sup>8</sup> CII Letter was sent to 1500 heads of major US Corporations urging adoption of majority vote standard, June 14, 2005: [http://www.cii.org/library/correspondence/061705\\_mvfordirectors.htm](http://www.cii.org/library/correspondence/061705_mvfordirectors.htm)

coalition of 48 large Canadian institutional shareholders rather than by shareholder resolutions. The coalition conducted a letter campaign similar to CII's, urging corporate leaders to adopt the majority vote standard. Two barriers to broader implementation of this election standard are the large number of dual class security structures and the widespread practice of putting the entire slate of nominees forward for an all or nothing vote rather than allowing shareholders to vote on individual nominees.<sup>9</sup>

Key legal impediments to the election of directors by a majority affirmative vote of shareholders have been dealt with in the US in recent months. While the plurality vote standard remains the default, the Model Business Corporation Act and Delaware General Corporation Law now enable shareholders to make binding changes to the bylaws of companies to install a majority voting system for the election of directors.<sup>10</sup>

It is very rare for a director not to achieve a majority of affirmative votes. In the US this is largely because management has been able to count on both broker non-votes, which are votes controlled by brokers where beneficial shareholders fail to provide voting instructions at least 10 days before an AGM, and on the routine support of large institutional investors.

Without some support from large institutions, shareholder campaigns are unlikely to ever receive a significant level of support. Since 2003 investment companies registered with the SEC have been required to disclose their voting records in annual filings.<sup>11</sup> It was hoped that this would lead to more meaningful exercise of voting rights by mutual funds. In fact, while funds' support for shareholder-sponsored corporate governance resolutions has increased, suggesting that they are ready to oppose management. Funds' support for board nominees in director elections, and for management-sponsored resolutions more generally, also increased over the 2004-2005 reporting period.

As for broker non-votes, a working group was set up to review the status of director elections as a routine matter. It is this status that makes it eligible for broker non-votes. In June this year the working group recommended to the NYSE that director elections be taken out of this category. With brokers typically controlling up to 20-25 percent of the vote, this would have a significant impact on the level of support for board nominees in director elections.<sup>12</sup>

While having the effect of focusing shareholders' attention on the quality of individual director candidates, the majority vote standard does not address the problem of lack of choice among board candidates, of non-contested elections.

The issue of shareholder access to the proxy ballot has not gone away now that shareholders are making inroads with the majority vote issue.

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<sup>9</sup> Kopinski, T.C. & Landis, R.L. (2006), [Banner Year for Majority Elections](http://www.issproxy.com/governance/publications/2006archived/175.jsp), ISS Governance Weekly, August 2006 <http://www.issproxy.com/governance/publications/2006archived/175.jsp>

<sup>10</sup> On the 20th of June, the American Bar Association's Committee on Corporate Laws adopted a change to the Model Business Corporation Act regarding Voting by Shareholders for the Election of Directors to enable boards or investors to vote to amend corporate bylaws to provide for a majority vote standard. On the 27th of June legislation amending the Delaware General Corporation Law, was enacted and will become effective from August 2006, giving shareholders the power to introduce changes to director elections bylaws allowing for the resignation of directors who fail to get a requisite number of votes.

<sup>11</sup> Securities and Exchange Commission (SEC) (2003) Final Rule: Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, File No. S7-36-02: <http://www.sec.gov/rules/final/33-8188.htm>

<sup>12</sup> However, strong lobbying from issuers led the NYSE to drop the proposal late in September 2006 and refer the matter to another working group, the Proxy Process and Communications Subcommittee, which is chaired by Exxon Mobil's counsel, James Parsons, and is therefore not expected to recommend proceeding with the rule change. (Global Proxy Watch, 22 September 2006, Vol 10 (34)).

The issue of shareholder access has not gone away.

One of the trigger events that would have allowed shareholders to nominate director candidates under the stalled Director Nomination Rule (or Proxy Access Rule) would have been a shareholder proposal requesting direct access to the proxy and which received more than 50% of the votes cast on that proposal at a shareholder meeting.<sup>13</sup> The SEC had indicated that, pending the enactment of the proxy access rule, shareholders could go ahead and file 'direct access' resolutions. However, when AFSCME tried to do this at Halliburton, Qwest, and Verizon last year, the SEC allowed the companies to keep the resolution off the proxy ballot, drawing criticism from shareholder activists for apparent equivocation on this issue.

Similar shareholder resolutions filed at Alaska Air Group and Nortel Networks did get published in the companies' proxies.

This year AFSCME filed a lawsuit against American International Group for excluding from its proxy a resolution that would have required the company to allow shareholders to nominate directors. AIG had sought, and was granted, permission from the SEC to do so under section (i)(8) of SEC Rule 14a-8. This is known as the "town meeting rule" and it allows companies to keep shareholder resolutions off the proxy ballot "if the proposal relates to an election for membership on the company's board of directors or analogous governing body".

The SEC's decision was upheld once in court, but an appeals court ruled earlier this month that AIG must include the proposal since the proposal had to do with elections in general, not targeting specific directors or attempting to change the outcome of a particular election. Armed with this ruling AFSCME has declared their intention to target corporate America with this resolution, achieving, one company at a time, what the SEC's Proxy Access rule might have delivered, had it been followed through with.

Within two days of the court ruling the SEC Chairman directed the Division of Corporation Finance to draft a rule to standardize nationwide application of the "town meeting rule". A rule will be proposed by October 18, 2006 and a final rule will be decided on in time for the 2007 proxy season.<sup>14 15 16</sup>

With proxy access still in the wings, other shareholder strategies have been tested: four resolutions voted on in 2004 called on boards to propose more nominees than there are available board seats. And a proposal submitted this year by Lucien Bebchuk at General Dynamics calls for the automatic disqualification from subsequent nominations of any director who failed to achieve majority support in the previous election and that this provision be written into the by-laws of the company.

Proxy contests are costly to run for the reasons outlined above. Yet, even if shareholder-nominees are able to run on the same proxy ballot as management's nominees there are likely to be substantial legal and administrative costs for shareholder proponents. Furthermore shareholder proponents will always be at a disadvantage relative to management who are able to apply corporate funds to promoting their candidates. Shareholder activists have recently focused on cost as a barrier to meaningful electoral challenge.

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<sup>13</sup> Securities and Exchange Commission (SEC) (2003) Proposed Rule: Security Holder Director Nominations, File No. S7-19-03: <http://www.sec.gov/rules/proposed/34-48626.htm>

<sup>14</sup> Baue, W. "Majority-Vote Director Election Shareowner Resolutions To Top 100, Dominate Proxy Season", January 10, 2006, Social Funds: <http://www.socialfunds.com/news/article.cgi/1902.html>

<sup>15</sup> Baue, W. "Court Affirms Shareowner Right to File Resolutions on Proxy Access for Nominating Directors", 14 September 2006, Social Funds: <http://www.socialfunds.com/news/article.cgi/2109.html>

<sup>16</sup> Securities and Exchange Commission (SEC) "Commission Calendars Proposed Amendment to Rule 14a-8 Governing Director Nominations by Shareholders", Sept. 7, 2006: <http://www.sec.gov/news/press/2006/2006-150.htm>

AFSCME filed resolutions at Citigroup, Bank of New York and American Express this year calling on boards to reimburse successful dissidents running partial slates of directors in proxy contests. A 2004 resolution at Alaska Air requests a cap on the amount that can be spent on a director elections campaign, regardless of who the proponent is.

So, a meaningful director elections process presenting a credible threat of replacement to poorly performing directors is a key component of good corporate governance.

However director elections as they are presently run in the US are not meaningful.

Certain shareholder initiatives target weaknesses in the director elections system and identify the regulatory initiatives that have followed.

An overarching evaluation of the combined effect of these initiatives is that, while the majority vote standard for director elections has had a fair amount of success – in that a large number of boards have adopted or are considering adopting this standard and shareholders have thrown their weight behind proposals calling for this standard to be implemented - the problem of uncontested elections remains. A key regulatory initiative to provide proxy access has failed and I don't believe that we are likely to see proxy access in whatever form in the next few years.

The majority vote standard applied to director elections is much less threatening to corporate boards than contested elections. It is very rare that a candidate achieves anywhere near 50% support. Average support for candidates nominated to S&P 500 boards this year is almost 96%. In fact, as the majority vote standard has gained momentum, average support for board nominees has *increased* by around 2% over the four years from 2003.

The main objection by boards to contested elections is that someone has to lose. Boards fear for good reason that they would not be able to attract valuable candidates if there was the possibility that they would lose. I don't think that this is all about concern over divided boards. Shareholders really do vote conservatively as a group and it's unlikely that loose cannons would be elected onto boards. Besides, some dissent makes for better group decision making.

No, a failure to be elected would be a very public affair and directors' human capital, more specifically, their reputational capital, would be revised downward when they are considered for future board appointments should they lose a contested election.

Proxy access is therefore likely to have a significant impact on the market for corporate leadership.

This is not to downplay the progress made on the majority vote front. With more at stake in director elections, shareholders are likely to participate more meaningfully. This would have the effect of focusing shareholder attention on the individuals comprising boards. Directors would feel more acutely the pressure to be accountable to shareholders. On this logic we might expect to see average levels of support for directors coming down as more board members subject themselves to the majority vote standard. We might also see shareholders becoming more discerning in their voting practices – evaluating each candidate on his or her own merits, rather than the board as a whole. Following this logic we might expect to see the average spread between the most and least supported candidates growing. So far this is not happening.

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Over the last four years average support for board nominees has increased year-on-year by around 2%. The average spread between the most and least supported board members for each board was lower this year than in any of the previous three years to 2003.

## Shareholder Support for Board Nominees in Director Elections

|      | Average Support (%) | Average Vote Spread (%) |
|------|---------------------|-------------------------|
| 2003 | 93.86               | 7.10                    |
| 2004 | 94.22               | 6.97                    |
| 2005 | 94.77               | 7.25                    |
| 2006 | 95.65               | 6.07                    |

Strengthening the focus on individual directors in director elections would have the effect of attaching more importance to individual directors' performance on other boards. With their individual reputations at stake, directors may feel more personal responsibility for board decision making – where diffused responsibility has often been blamed for previous failures in board oversight.

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