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August 17, 2009

Via email: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Attention: Elizabeth M. Murphy, Secretary

Re: File No. S7-10-09; Release Nos. 33-9046; 34-60089; IC-28765
Facilitating Shareholder Director Nominations (June 10, 2009)

Ladies and Gentlemen:

Simpson Thacher & Bartlett LLP welcomes the opportunity to comment on the amendments to the proxy rules under the Securities Exchange Act of 1934 (the "Exchange Act") that the Securities and Exchange Commission (the "Commission" or "SEC") has proposed in the referenced release (the "Current Proposal").

Overview

The SEC's proposed rules to require public companies to provide proxy access in accordance with SEC established standards is one of the most fundamental changes relating to corporate governance ever proposed by the SEC. The proposal implicates, as the SEC itself suggests, the traditional role of the states in regulating corporate governance.[1] When the SEC proposed proxy access in 2003 (the "2003 Proposal"), the

[1] Facilitating Shareholder Director Nominations, Securities Act Release No. 9046, Exchange Act Release No. 60,089, Investment Company Act Release No. 28,765, 74 Fed. Reg. 29,024, 29,025 (proposed June 10, 2009) [hereinafter *Current Proposal*].

former executive director of the Council of Institutional Investors referred to proxy access as "the biggest thing that has come out of the Commission in my 20-year career" and Patrick McGurn, executive vice-president and special counsel of RiskMetrics, called it the "Holy Grail of corporate governance."[2] The Current Proposal would have an even greater impact on corporate governance than the 2003 Proposal as it facilitates proxy access to a much greater degree.[3] The proposal is also highly complex as evidenced by the SEC itself raising over 500 questions in the Current Proposal and the fact that the 2003 Proposal received more than 17,000 comments (the most in SEC history as of that time).

Given the fundamental and complex nature of proxy access, we have serious reservations as to whether the evidence cited in the Current Proposal to support proxy access is sufficiently compelling to justify such a groundbreaking change at this time. To the contrary, the empirical evidence suggests that changes in corporate governance since 2003 have substantially addressed the factors that led the SEC to consider proxy access at that time. The Current Proposal cites to evidence from 2003 with respect to a lack of board accountability, but since that time directors are substantially more likely to be removed or otherwise held accountable through proxy contests, "withhold" votes and shareholder engagement. Although the Current Proposal notes that restrictions on election contest shareholder proposals under Rule 14a-8 have proven an impediment to board accountability, this can be directly addressed by modifying Rule 14a-8 to allow such proposals.

We also question the evidence to support the premise of the SEC's decision to revisit the issue of proxy access in light of the current economic crisis. The Current

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[2] Comment letter to Shareholder Proposals, Exchange Act No. 56,160, 72 Fed. Reg. 43,466 (proposed July 27, 2007) and Shareholder Proposals Relating to the Election of Directors, Exchange Act No. 56,161, 72 Fed. Reg. 43,488 (proposed July 27, 2007) from James McRitchie, Corporate Governance 3 (Oct. 1, 2007) (quoting Sarah Teslik, former executive director of the Council of Institutional Investors, and Patrick McGurn, executive vice-president and special counsel of proxy advisor RiskMetrics (formerly known as Institutional Shareholder Services), respectively).

[3] While the 2003 Proposal would have made access to company proxy materials available to security holders that beneficially owned more than 5% of a company's voting stock for more than two years only upon the occurrence of certain issuer-related triggering events, the Current Proposal would make such access available to shareholders that beneficially owned for one year as little as 1% of the company's voting stock, in the case of large accelerated filers, and eliminated the triggering event requirements. *See* Security Holder Director Nominations, Exchange Act Release No. 38,626, Investment Company Act No. 26,206, 68 Fed. Reg. 60,784, 60,794 (proposed Oct. 14, 2003); Current Proposal, *supra* at note 1, 29,035.

Proposal implicitly suggests that the inability of shareholders to hold boards accountable meaningfully contributed to the financial crisis. The empirical evidence suggests, however, that prior to the financial crisis, shareholders were not seeking to address the issues of risk management or the extent to which compensation structures encouraged excessive risk taking or short-termism. Indeed, the evidence suggests that a substantial percentage of election contests were directed towards achieving short-term financial objectives, including proposals to sell the company or a division or effect a buyback or special dividend.

Based on the foregoing, we would urge the SEC to adopt a more incremental approach and address the issue of board accountability by only adopting the proposed amendment to Rule 14a-8 at this time. Given the breadth of corporate governance changes since the 2003 Proposal, modifying Rule 14a-8 only, rather than also adopting proposed Rule 14a-11, would fairly balance the need for further improving the proxy process with the risks and costs of federally mandated proxy access.

Shareholder Nominations Have Substantially Increased Since the Date of the 2003 Proposal

The most cited reason by supporters of proxy access has been that the threat of potential removal of directors was remote. The Current Proposal cites to an article by Professor Lucian Bebchuk[4] to the effect that the number of contested solicitations, for those companies sourced by Georgeson Shareholder, only ranged between 28 and 40 per year during the period from 1996-2002.[5] During the period 2003-2008, however, the annual number of contested solicitations, sourced by Georgeson Shareholder, rose to a range of 37

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[4] *See* Current Proposal, *supra* note 1, at 29,028 n.56 (citing Lucian Arye Bebchuk, *The Case for Shareholder Access to the Ballot*, 59 BUS. LAW. 43, 46 (2003) [hereinafter *Bebchuk 2003*]).

[5] *Bebchuk 2003, supra* note 4, at 46 tbl.1 (using data from GEORGESON SHAREHOLDER, ANNUAL CORPORATE GOVERNANCE REVIEW listing of contested solicitations). Professor Bebchuk has suggested that the given number of contested solicitations overstates the threat of removal because it includes contests that do not relate to a rival slate seeking to run the target differently as a "stand alone" entity. Accordingly, he views contested solicitations as properly excluding contests over whether a merger should be approved or contests focusing on the sale or takeover of the company. *Id.* at 45. This distinction may reasonably be questioned as the former type of contest clearly holds boards accountable and the latter directly relates to removal. The issue of whether to sell the company is a fundamental decision that clearly relates to whether directors are properly accountable.

to 56 per year (an increase of 40% at the high end).[6] Similarly, an examination of data from SharkRepellent.net, which is broader than the universe sourced by Georgeson Shareholder, shows the number of proxy fights in the Russell 3000 increased from 75 in 2003 to 125 in 2008 (an increase of 66%).[7] This trend continued in 2009, with 121 proxy fights in the Russell 3000 through August 4, 2009.

Recent experience has also seen a parallel increase in the number of successful election contests. While in 2003 only 36% of proxy fights ended in a dissident win (dissident slate, split slate or settled), that percentage rose to 51% in 2008.[8] In addition, a 2008 study by Investor Responsibility Research Center (the "IRRC") indicates that from 2005-2008 the number of boards with shareholder nominated directors increased from 18 in 2005 to 45 in 2008—an increase of over 150% during the period.[9] We believe that these

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[6] *See* GEORGESON SHAREHOLDER, ANNUAL CORPORATE GOVERNANCE REVIEW, 46 fig.19 (2008) [hereinafter GEORGESON 2008], *available at* www.http://www.georgesonshareholder.com/usa/resources_research.php.

[7] *See* Dissident Proxy Contest Outcomes for Russell 3000, app. at A-1 fig.1 (based upon data from SharkRepellent.net). The lack of a greater number of proxy contests does not necessarily signify that the current proxy rules are impeding proxy contests that would reflect shareholder dissatisfaction. By way of analogy, the number of withhold recommendations from RiskMetrics Group (which has no impediments as to cost) has leveled off in recent years at about 6% of S&P 500 firms principally because, according to RiskMetrics Group, boards have become responsive to shareholder concerns. RISKMETRICS GROUP, 2008 POSTSEASON REPORT 33 (2008) [hereinafter RISKMETRICS 2008], *available at* http://www.riskmetrics.com/white_papers. As soon as a dissident publicly discloses it delivered formal notice to the company that it intends to solicit proxies from shareholders (e.g., notice it intends to solicit proxies for the election of its own slate of director nominees), it is considered a "proxy fight" in the SharkRepellent.net database. In contrast, Georgeson Shareholder defines "contested solicitations" as campaigns in which dissidents distributed a separate proxy card and materials were filed under Section 14 of the United States Securities Exchange Act of 1934.

[8] *See* Dissident Proxy Contest Outcomes for Russell 3000, app. at A-1 fig.1 (based upon data from SharkRepellent.net).

[9] CHRIS CERNICH ET AL., IRRC INSTITUTE, EFFECTIVENESS OF HYBRID BOARDS 13 (2009) [hereinafter IRRC], *available at* www.irrcinstitute.org/pdf/IRRC_05_09_ EffectiveHybridBoards.pdf. The IRRC study used a sample of 120 boards of directors where shareholder nominees were elected in connection with 156 election contests over the period between 2005-2008.

numbers understate the increase in the number of shareholder nominated directors because they do not take into account agreements by boards to include shareholder nominees on the company slate in order to avoid the commencement of a proxy contest.

The increase in proxy contests is undoubtedly due, in part, to changes to the proxy rules that permitted short slates,[10] lowered the cost of proxy solicitations through the use of the internet for distribution of materials[11] and allowed electronic shareholder forums.[12] The SEC and commentators have recognized the significance of these changes, particularly with respect to lowering the cost and difficulty of non-company solicitations.[13] We would expect this trend to continue given the enabling statutes that are being adopted by a number of states, including Delaware, with regard to proxy access and reimbursement of shareholders expenses incurred in connection with a proxy contest.[14] The impact of such

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[10] Regulation of Communications Among Shareholders, Exchange Act Release No. 31,326, Investment Company Act Release No. 19,031, 57 Fed. Reg. 48,276 (Oct. 16, 1992).

[11] Internet Availability of Proxy Materials, Exchange Act No. 55,146, Investment Company Act No. 27,671, 72 Fed. Reg. 4148 (Jan. 22, 2007).

[12] Electronic Shareholder Forums, Exchange Act No. 57,172, Investment Company Act No. 28,124, 73 Fed. Reg. 4450 (Jan. 18, 2008).

[13] Internet Availability of Proxy Materials, *supra* note 11, at 4163 ("We expect that the flexibility afforded to persons other than the issuer under the amendments will reduce the cost of engaging in proxy contests, thereby increasing the effectiveness and efficiency of proxy contests as a source of discipline in the corporate governance process."); Jeffrey N. Gordon, *Proxy Contests in an Era of Increasing Shareholder Power: Forget Issuer Proxy Access and Focus on E-Proxy*, 61 VAN. L. REV. 475, 475 ("The current debate over shareholder access to the issuer's proxy statement for the purpose of making director nominations is both overstated in its importance and misses the serious issue in question. The Securities and Exchange Commission's . . . new e-proxy rules, which permit reliance on proxy materials posted on a website, should substantially reduce the production and distribution cost differences between a meaningful contest waged via the issuer's proxy and a freestanding proxy solicitation.").

[14] *See* DEL. CODE. tit. 8, §§ 112, 113 (2009). In a related development, the committee responsible for drafting revisions to the Model Business Corporation Act (the "MBCA"), which has been adopted in whole or in part in over 30 states, has approved proposed amendments to the MBCA consistent with the new provisions of the Delaware corporate law.

enabling statutes will be particularly profound if the SEC amends Rule 14a-8 to eliminate the "election exclusion."

The Power of "Withhold" Votes

Since the time that the 2003 Proposal was considered, another significant governance change that has addressed board accountability has been the increase in "withhold" or "against" votes. As stated by Georgeson Shareholder in its 2008 report, "Recently . . . we have found that shareholders are now more comfortable withholding their votes from directors."[15] During the period 2004-2008, the number of S&P 500 companies who had at least one director with a 40% "withhold" or "against" vote rose from a low of 9 in 2004 to 24 in 2008, with a high of 29 in 2006.[16] Similarly, for the S&P 1500, "withhold" votes of 15% or greater rose from 474 directors in 2004 to 612 directors in 2008.[17] To be sure, the number of directors that fail to obtain a majority vote is small, but even that has increased with 32 directors at U.S. companies having received majority "withhold" votes in 2008 (compared with eight in 2006).[18] These numbers are, however, significantly understated because they do not take into account compensation and other governance changes made by boards of directors in order to avoid a "withhold" or "against" vote.

The extent of directors receiving "withhold" votes will likely increase in the next few years given the elimination of broker discretionary voting pursuant to the amendment of New York Stock Exchange Rule 452. The Council of Institutional Investors has suggested that the number of directors that would have failed to win majority support in 2007 would have jumped 91%, from 74 to 142 directors, if broker discretionary voting had not been available.[19]

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[15] GEORGESON 2008, *supra* note 6, at 8.

[16] S&P 500 Director Withhold Recommendations Resulting in 40% or Greater Withhold Vote, app. at A-2 fig.2 (based upon data from RiskMetrics Group).

[17] S&P 1500 Director Withhold Recommendations Resulting in 15% or Greater Withhold Vote, app. at A-3 fig.3 (based upon data from Georgeson Shareholder).

[18] Ted Allen, *A Momentous Day for Investors*, RISK & GOVERNANCE BLOG, July 2, 2009, http://blog.riskmetrics.com/2009/07/a_momentous_day_for _investors.html; s*ee also* RISKMETRICS 2008, *supra* note 7, at 33.

[19] *See* Comment letter to New York Stock Exchange's Proposal to Eliminate Broker Discretionary Voting for the Election of Directors (File No.: SR-NYSE-2006-92) from Jonathan D. Urick, Council of Institutional Investors 3 (Mar. 19, 2009).

A significant factor in the increase in the number of "withhold" votes is the influence of RiskMetrics and other proxy advisory firms. The recommendations of proxy advisory firms as to whether to "withhold" votes have been cited as influencing voting at a significant portion of mid-cap to large-cap corporations (e.g., 20% - 30% on average), although recent academic literature has suggested that the influence of proxy advisory firms is overstated.[20] RiskMetrics will recommend "withhold" votes for a number of reasons, but most notably for a board failing to implement a shareholder proposal that receives an affirmative vote, adoption of a rights plan without shareholder approval and poor pay practices.

The Current Proposal suggests that "withhold" votes or "vote no" campaigns may be limited in their effectiveness because some companies use plurality voting for board elections and therefore can be elected regardless of whether they receive more than 50% of the vote. We disagree with this contention for at least two reasons. First, a substantial majority of S&P 500 companies have majority voting and the percentage outside the S&P 500 continues to increase.[21] Second, and more importantly, the argument does not take into account how boards actually operate. In our experience, most boards of directors consider seriously changes to its governance and compensation practices in response to even the

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Broadridge [Financial Solutions] compiled the results of the election of 5,094 directors at the 924 NYSE-listed companies that had plurality voting in 2007 as if they had majority voting in place. *Id.*

[20] *See* William J. Holstein, *Is ISS Too Powerful? And Whose Interests Does It Serve?*, BNET, Feb. 7, 2008, http://blogs.bnet.com/ceo/?p=1100 (arguing that "ISS may control 30 percent of the vote in any proxy battle"). *But see* Stephen Choi et al., *Director Elections and the Influence of Proxy Advisors*, (NYU Law and Economics Research Paper No. 08-22, 3rd Annual Conference on Empirical Legal Studies Papers and Fordham Law Legal Studies Research Paper No. 1127282) 2009, *available at* http://ssrn.com/abstract=1127282 (arguing that the reported influence of ISS is substantially overstated).

[21] *See* RISKMETRICS 2008, *supra* note 7, at 25 (noting that according to Claudia Allen, chair of the corporate governance practice group at the law firm Neal, Gerber and Eisenberg, as of June 2008 the percentage of S&P 500 companies with majority voting was 72.8); s*ee also* Melissa Klein Aguilar, *Shareholder Voices Getting Louder, Stronger*, COMPLIANCE WEEK, Oct. 21, 2008, http://www.complianceweek.com/article/5113/shareholder-voices-getting-louder-stronger (quoting Claudia Allen, who "agrees that majority voting has 'become the *de facto* election standard among large public companies and is trickling down' to mid-cap and small-cap companies").

threat of a "withhold" or "against" vote recommendation. As stated by RiskMetrics, the low number of "withhold" recommendations evidences that "most U.S. companies are responding to investor concerns."[22]

Indeed, the suggestion in the Current Proposal that "withhold" votes are limited in their effectiveness is belied by the extent to which boards have responded to shareholder proposals.[23] For example, the response of boards to actual or anticipated "withhold" votes over the past few years has led to the significant dismantling of takeover defenses including the termination of rights plans, the repeal of classified boards and the elimination of supermajority provisions.[24]

Engagement Between Shareholders and Boards Has Substantially Increased in the Past Few Years

We also see evidence that is inconsistent with the comment that, "Engaging management in a dialogue may also not be an effective option for shareholders because company management may be unresponsive to investor concerns."[25] As stated by Martha Carter, head of RiskMetrics' global policy board, "What we saw from 2007 leading to 2008 can be summed up in two words: accountability and engagement . . . . We're hearing from proponents that they're not only able to get contact with the board and have discussions; they're telling us those discussions are very productive."[26] Similarly, Richard Ferlauto, director of corporate governance and pension investment at the American Federation of State, County and Municipal Employees at the time, commented that "Engagement is now part of the landscape."[27] The extent to which companies are more willing to engage with

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[22] RISKMETRICS 2008, *supra* note 7, at 33.

[23] GEORGESON 2008, *supra* note 6, at 4 ("[O]ver the past six years activists have been successful in producing changes when it comes to issues that have concerned them.").

[24] *Id.; see also* RISKMETRICS GROUP, BOARD PRACTICES 5 (2009) (regarding classified boards), *available at* http://www.riskmetrics.com/knowledge/2009bp.

[25] Current Proposal, *supra* note 1, at 29,028.

[26] Melissa Klein Aguilar, *ISS Voting Policies; Rule 144; CEO Star Power*, COMPLIANCE WEEK, Dec. 4, 2007, http://www.complianceweek.com/article/3816/iss-voting-policies-rule-144-ceo-star-power.

[27] RISKMETRICS GROUP, 2007 POSTSEASON REPORT 3 (2007) [hereinafter RISKMETRICS 2007], *available at* http://www.riskmetrics.com/white_papers

shareholders is evidenced by the fact that in 2008 investors withdrew nearly 48% of their proposals, including a majority of proposals relating to majority voting, linking pay to performance, rights plan redemptions and limits on SERPS.[28]

Activism Did Not Address Risks and Short-Term Incentives Pre-Financial Crisis

We also have reservations as to the perceived benefits of proxy access based on the record of shareholder activism preceding the financial crisis. The SEC acknowledges revisiting proxy access in the context of the economic crisis and suggests a lack of board accountability to shareholders may have contributed to the economic crisis. In reviewing the nature of activism prior to 2008, however, there is no evidentiary basis to suggest that shareholders were addressing the types of issues that might have contributed to the financial crisis. For example, of the over 100 contested solicitations in 2007, only three addressed risk management, leverage or the need to enhance the long-term nature of compensation. [29] In addition, a further review of the S&P 500 companies identified by RiskMetrics Group as having had significant withhold votes in 2007, revealed that none received withhold vote recommendations by RiskMetrics Group as a result of poor risk management and only two

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[28] GEORGESON 2008, *supra* note 6, at 5.

[29] This assertion is based on a review of 108 campaign synopses for proxy contests retrieved from SharkRepellent.net for 2007 Russell 3000 companies. *See* 2007 Campaign Themes for Russell 3000 Proxy Contests, app. at A-4 fig.4. Of the two proxy contests categorized as relating to "Risk Management" one dealt with lowering risk in the corporate strategy and the other dealt with deleveraging the balance sheet. *See* Letter to the board of Ceridian Corp. from dissident Pershing Square Capital Management L.P. (Jan. 18, 2007), *available at* http://www.sec.gov/Archives/edgar/data/1124887/000089183607000016/ex99-2.txt; Letter to the board of Oglebay Norton Company from dissident Harbinger Capital Partners (July 3, 2007), *available at* http://findarticles.com/p/articles/mi_m0EIN/is_2007_July_3/ai_n19332120/. Of the 12 compensation themed proxy contests identified, only one criticized the company's poor "long-term incentive compensation" (although there is no linkage to excessive risk taking or short-termism). *See* Letter to the board of iPass Inc. from dissident Ken Denman (May 16, 2006), *available at* http://www.sec.gov/Archives/edgar/data/1053374/000119312506114031/dex9.htm.

companies received withhold vote recommendations as a result of poor CEO "long-term incentive" pay structures.[30]

Indeed, a review of the previously cited IRRC report demonstrates that the objectives of successful dissidents were often short-term in nature.[31] For example, in 2008 a sale of the company was a strategic objective of 40% of affected contests and other strategic changes—including divestitures, restructurings, share buybacks and special dividends—constituted 49% of affected contests.[32] With respect to the contests resulting in shareholder nominated directors being elected to boards in 2007, 42% of those boards subsequently announced buybacks or special dividends.[33] The degree to which the subject companies focused on short-term financial objectives is not surprising given the extent of hedge fund engagement in activism in recent years.[34] In connection with the risks associated with facilitating greater activism, the IRRC report also suggests that companies with dissidents on their board perform better than their peers over a one-year period, but that they perform worse over a three-year period.[35]

Conclusion

We would urge the SEC to be cautious in implementing Rule 14a-11 given that significant governance changes since 2003 have addressed many of the concerns that led the SEC to consider proxy access in the first place. Moreover, there is the risk that facilitating the opportunity for shareholders to remove directors may lead to the kind of excesses that prompted the SEC to revisit proxy access in the wake of the financial crisis. Given that the most significant impediment to greater accountability is currently the fact that Rule 14a-8 is not available for director elections, we believe that the most prudent approach would be to amend Rule 14a-8 and defer consideration of Rule 14a-11 at this time.

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[30] *See* 2007 Withhold Votes Against S&P 500 Directors on Compensation Issues, app. at A-5 fig.5. For the full list of 2007 Withhold Votes Against S&P Directors identified by RiskMetrics Group see RISKMETRICS 2007, *supra* note 27, at 27 chart 7.

[31] IRRC, *supra* note 9, at 18 exh.5.

[32] *Id.* at 18.

[33] *Id.* at 22 exh.9.

[34] *Id.* at 12 (reporting that hedge funds initiated 89% of the contests and were by far the largest dissent type).

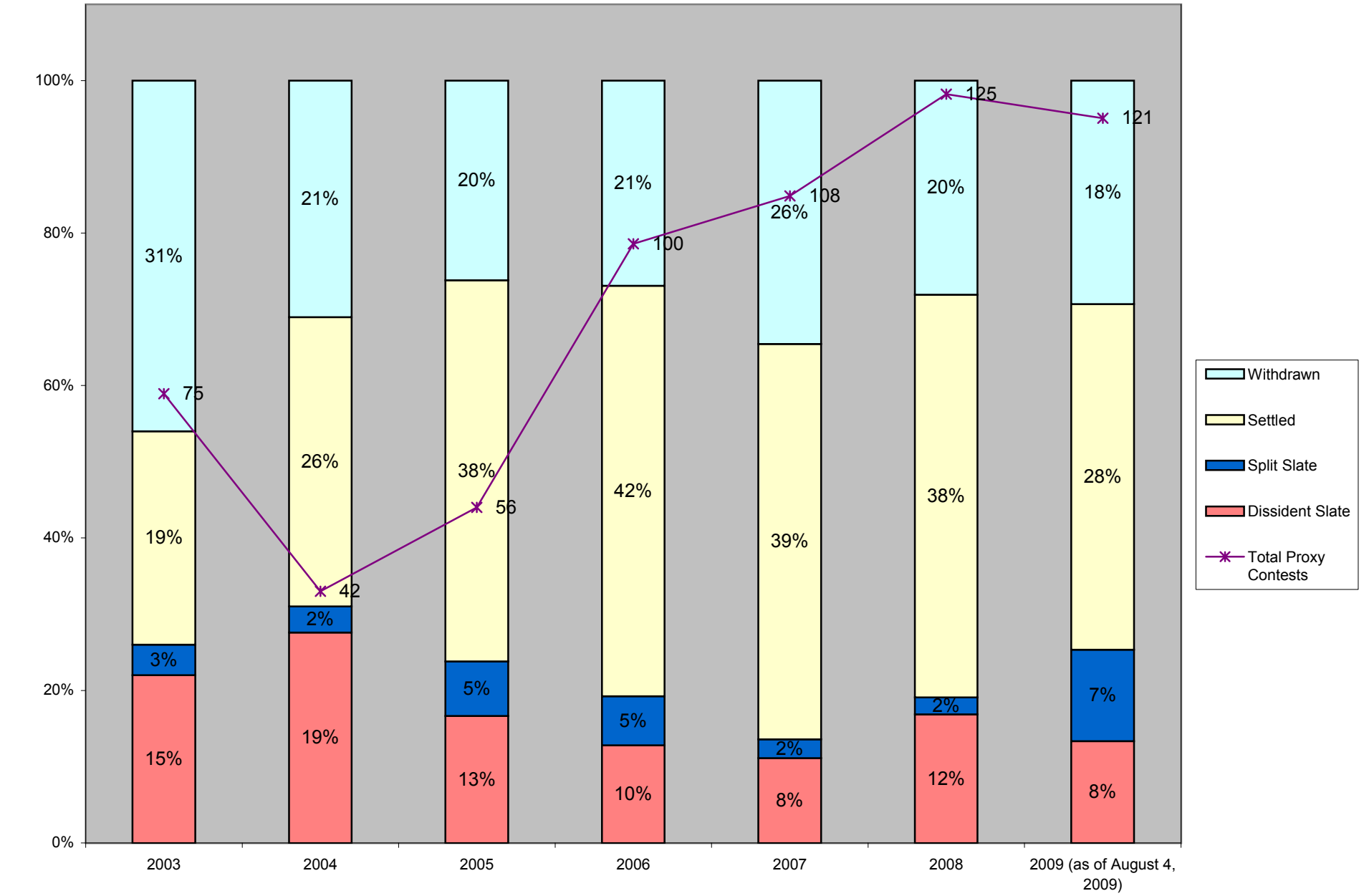
[35] *Id.* at 27 exh.12.

We appreciate the opportunity to submit, and the SEC's consideration of, our comments on the proposed proxy access rules. We ask the SEC to contact John G. Finley at (212) 455-2583 should it have any questions.

Very truly yours,

Figure 1

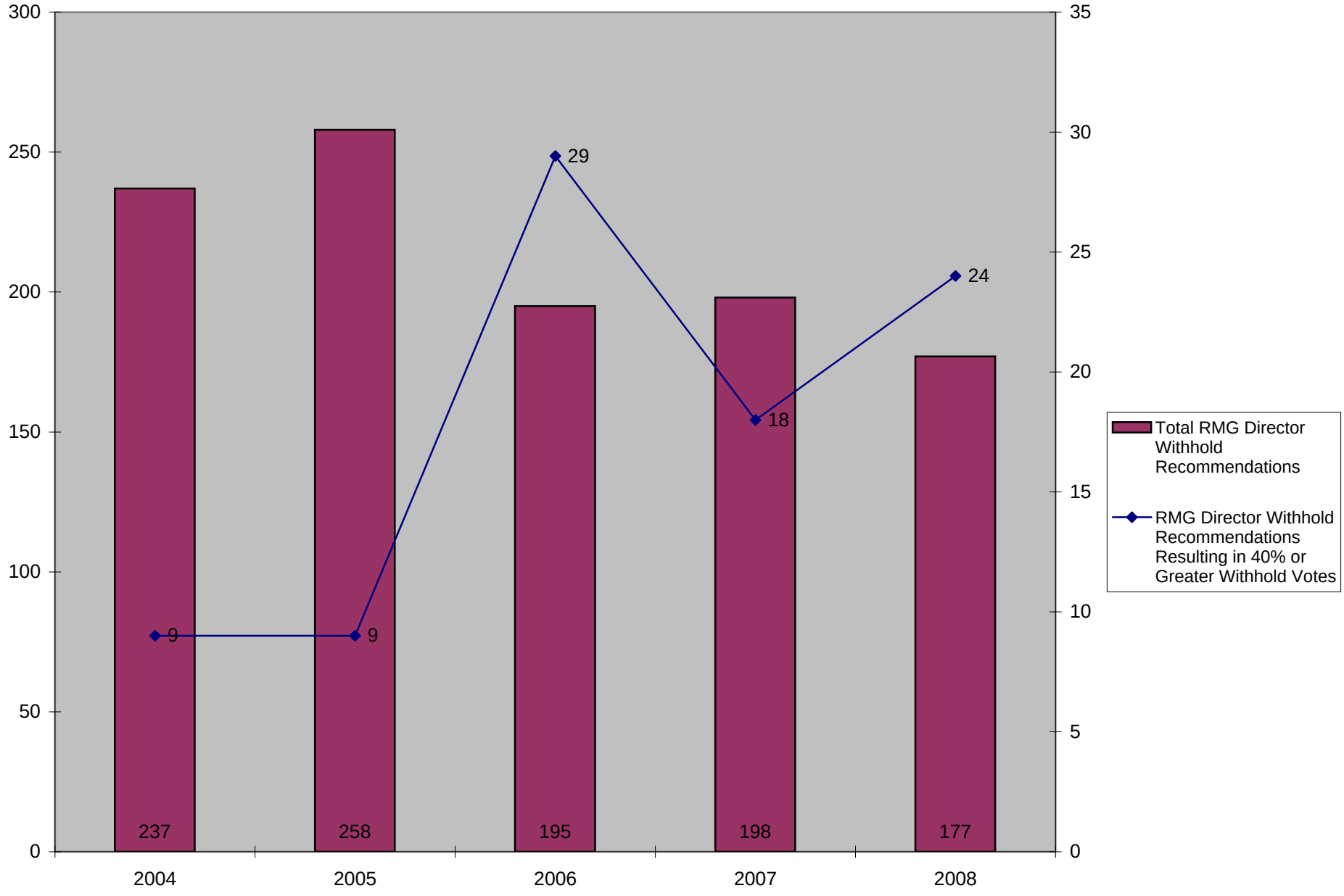
Dissident Proxy Contest Outcomes for Russell 3000 2003 - 2009



Source: Sharkrepellent.net

Figure 2

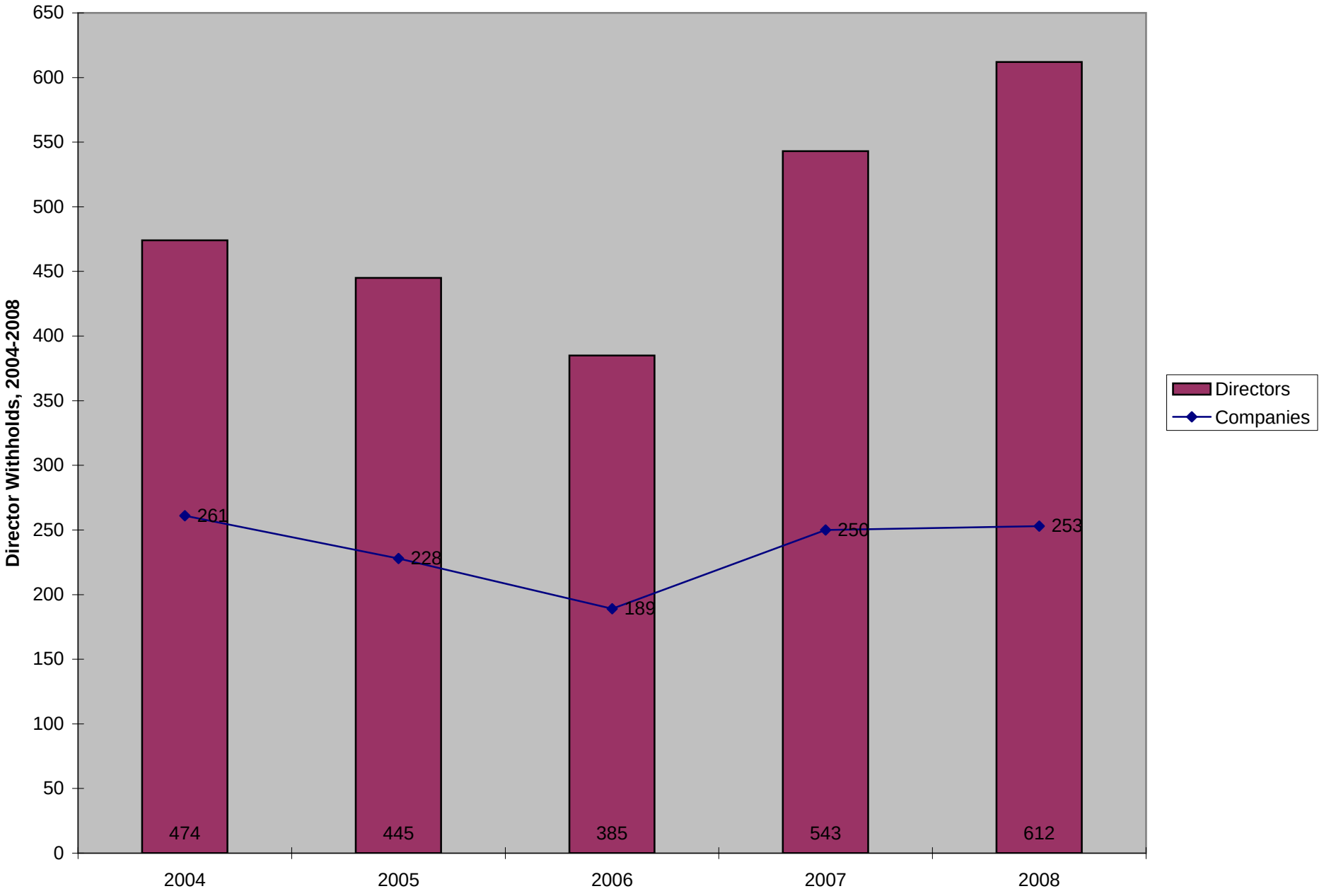
S&P 500 Director Withhold Recommendations Resulting in 40% or Greater Withhold Vote



Source: RiskMetrics

Figure 3

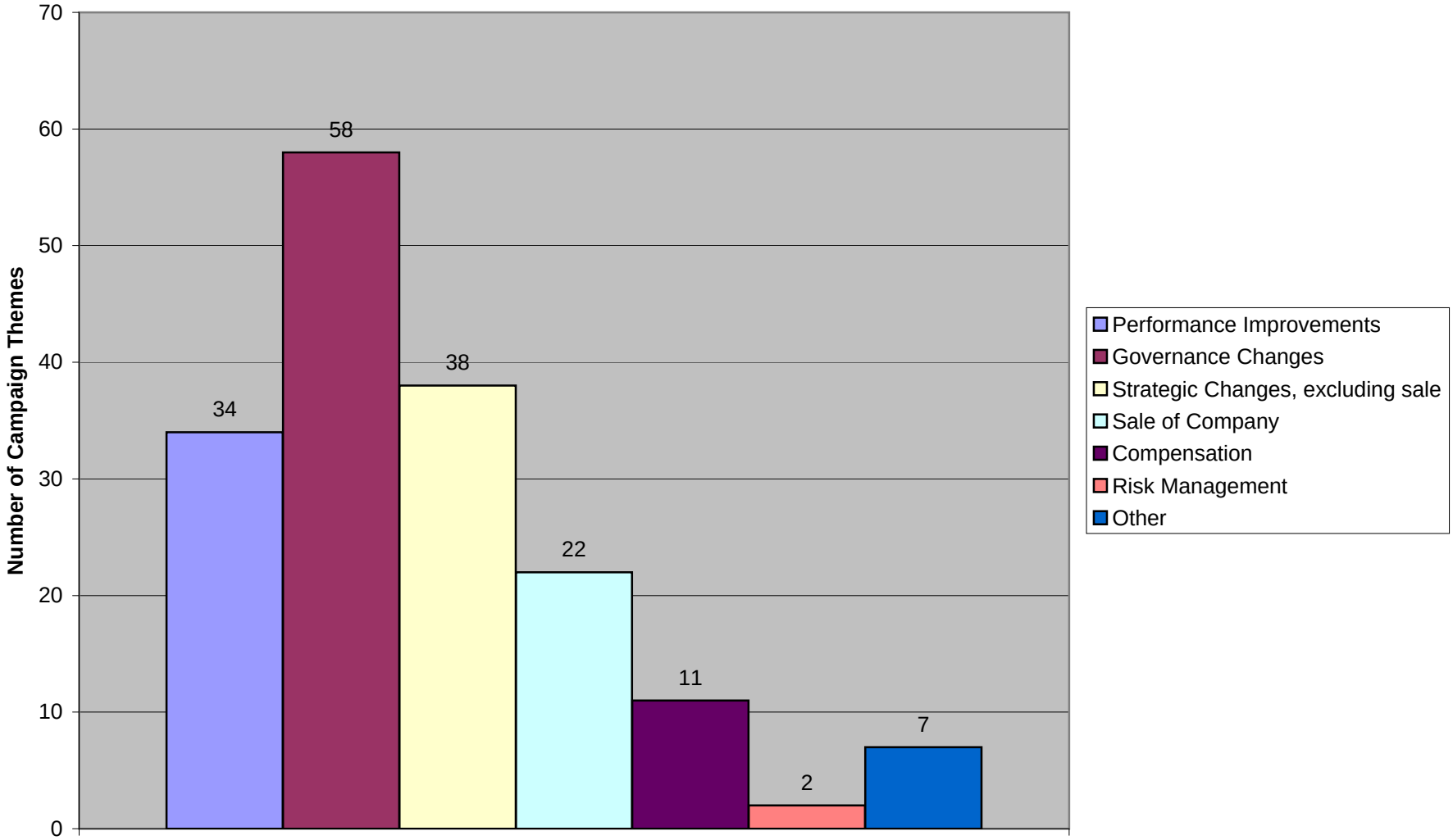
S&P 1500 Withhold Votes - 15% or Greater



Source: Georgeson 2008 Annual Corporate Governance

Figure 4

2007 Campaign Themes for Russell 3000 Proxy Contests



Source: SharkRepellent.net
Sample: 108 companies (a dissident campaign against a single company often had more than one theme)

Figure 5

2007 Withhold Votes Against S&P 500 Directors	
Withhold %	**Issue**
50% or above	
Starwood Hotels	Attendance
40-50%	
Barr Pharmaceuticals	Affiliated outsider on key committee
Boston Properties	Ignored majority vote on shareholder proposal
CVS/Caremark	Compensation - option backdating /oversight issues related to merger
Consol Energy	Affiliated outsider on key committee
Kimco Realty	Failed to establish majority independent board
New York Times Co.	Unresponsive to shareholder concerns about dual-class structure
Newell Rubbermaid	Ignored majority vote on shareholder proposal
30-40%	
Affiliated Computer	Compensation - Excessive Compensation
Air Products & Chemicals	Attendance
Apple	Compensation - Option backdating
Centerpoint Energy	Ignored majority vote on shareholder proposal
FirstEnergy	Ignored majority vote on shareholder proposal
Home Depot	Compensation - Option backdating
International Paper	Ignored majority vote on shareholder proposal
King Pharmaceuticals	Compensation - Option backdating
Lockheed-Martin	Ignored majority vote on shareholder proposal
McGraw-Hill	Ignored majority vote on shareholder proposal
Occidental Petroleum	Compensation - Excessive compensation
ProLogis	Over-boarded
SanDisk	Failed to bring poison pill to an investor vote
Southwest Airlines	Failed to establish majority independent board

Source: RiskMetrics Group

2007 Withhold Votes Against S&P 500 Directors	
Textron	Compensation - Egregious employment contracts
The Stanley Works	Ignored majority vote on shareholder proposal
Wells Fargo	Affiliated outsider on key committee
Yahoo!	Compensation - Excessive Compensation
20-30%	
Apache	Affiliated outsider on key committee
Ball Corp.	Ignored majority vote on shareholder proposal
Corning	Ignored majority vote on shareholder proposal
Exelon	Over-boarded
FPL Group	Over-boarded
General Electric	Over-boarded
Gilead Sciences	Over-boarded
HESS	Compensation - Excessive compensation
Intel	Affiliated outsider on key committee
Jones Apparel Group	Over-boarded
Laboratory Corp. of America	Over-boarded
Monster Worldwide	Compensation - Option backdating
Morgan Stanley	Over-boarded
Newmont Mining	Compensation - Poor CEO long-term incentive pay structure
Pactiv	Over-boarded
Peabody Energy	Ignored majority vote on shareholder proposal
Pulte Homes	Ignored majority vote on shareholder proposal
Solectron	Compensation - Poor CEO long-term incentive pay structure
Toll Brothers	Compensation - Excessive compensation
United States Steel	Over-boarded
UnitedHealth Group	Compensation - Option backdating

Source: RiskMetrics Group

2007 Withhold Votes Against S&P 500 Directors	
Valero Energy	Over-boarded
Weyerhaeuser	Ignored majority vote on shareholder proposal
Xcel Energy	Attendance
10-20%	
Caterpillar	Over-boarded
Coca-Cola	Over-boarded
Emerson Electric	Over-boarded
Genuine Parts	Over-boarded
IAC (InterActive Corp.)	Failed to establish independent nominating committee
KB Home	Compensation - Option backdating
M&T Bank	Over-boarded
Simon Property Group	Affiliated outsider on key committee
SunTrust Banks	Over-boarded
Tenet Healthcare	Compensation - Pay for poor performance
Texas Instruments	Compensation - Pay for poor performance
Tyson Foods	Failed to establish majority independent board
Qwest Communications	Over-boarded
Verizon Communications	Compensation - Pay for poor performance

Source: RiskMetrics Group