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SHAREHOLDER VOTES OPPOSING DIRECTOR NOMINEES SHOW SHARP INCREASE IN 2009 PROXY SEASON, COULD RISE FURTHER IN 2010 DUE TO REGULATORY CHANGE AFFECTING BROKER VOTING

Voting data for the first eight months of 2009 show a sharp rise in the percentage of director nominees that received high levels of opposition votes. Although the vast majority of director nominees continue to be elected with little opposition, through August 2009, 9.8 percent of unopposed director nominees had at least 20 percent of shares voted against them or withheld, up from 5.5 percent in 2008. As shown in Table 1 below, this trend was apparent at other threshold levels as well, with the percentage of directors having at least 40 percent of shares voted in opposition doubling from 1.0 percent in 2008 to 2.1 percent in 2009, and the percentage of directors failing to attain support from a majority of shares cast tripling to 0.6 percent in 2009 from 0.2 percent in 2008.

Table 1: Percentage of Directors Receiving High Percentages of Votes in Opposition (2007 – 2009)

	2007	2008	2009¹
20%+ opposition vote	4.8 %	5.5 %	9.8 %
30%+ opposition vote	2.2 %	2.5 %	5.0 %
40%+ opposition vote	0.8 %	1.0 %	2.1 %
Majority opposition vote	0.2 %	0.2 %	0.6 %

¹ Based on 2,441 meetings held with voting results available through Aug. 31, 2009. Results for 2007 and 2008 are for full calendar year.

Despite fewer organized “Vote No” campaigns against directors in 2009, at least 84 directors at 48 companies failed to attain majority support from shareholders through August 2009 at more than 2,400 companies where voting results were available. Southwestern Energy Co., Price International, Cablevision Systems Corp., Pulte Homes Inc., Southwest Airlines, Massey Energy Co. and Kansas City Southern were among the larger companies where at least one director failed to achieve a majority vote. A list of the 48 companies where such votes occurred in 2009 (through Aug. 31) is shown in Table 2. High profile “Vote No” campaigns aimed at unseating directors at financial firms such as Bank of America and Citibank had mixed results – while virtually all directors targeted in such campaigns were re-elected, several targeted directors at Bank of America later resigned.

The level of opposition to director candidates is expected to increase next year as a number of existing and proposed regulatory changes related to proxy voting come into play. Beginning in 2010, under a rule adopted by the New York Stock Exchange and approved by the Securities and Exchange Commission, discretionary voting by brokers will no longer be allowed in director elections. Because brokers control up to 20 percent of the vote at many companies and almost always vote with management's recommendations in uncontested director elections, the new rules could result in many more directors failing to achieve majority support. For example, out of PROXY Governance's universe of director votes through August 2009, there were 284 director nominees who were elected with less than 60 percent of shares cast in support and 473 nominees elected with less than 65 percent support of the shares cast. Many of these directors would likely not have received majority support if broker discretionary votes had not been counted.

Moreover, in addition to the impact of the new rule change on broker discretionary voting, legislation in Congress mandating annual elections under a majority voting system in uncontested elections, as well as a new proposed SEC rule granting large shareholders access to the corporate proxy for purposes of nominating directors, could also have a significant impact on the director election process starting next year.

Table 2: Companies Where At Least One Director Nominee Failed to Achieve Majority Support in 2009

ACI WORLDWIDE INC	MEDNAX INC.
ADVANCED ANALOGIC TECH	MENTOR GRAPHICS CORP
ANIXTER INTL INC	NATCO GROUP INC
ASSOCIATED ESTATES RLTY CORP	NBTY INC
ASSURANT INC	NV ENERGY INC
CABLEVISION SYS CORP -CL A	PLEXUS CORP
CATALYST HEALTH SOLUTIONS	PRIDE INTERNATIONAL INC
CHECKPOINT SYSTEMS INC	PULTE HOMES INC
CIRCOR INTL INC	RED ROBIN GOURMET BURGERS
COGNEX CORP	SKYWEST INC
COMPUTER PROGRAMS & SYSTEMS	SOUTHWEST AIRLINES
DIGI INTERNATIONAL INC	SOUTHWESTERN ENERGY CO
DOLLAR TREE INC	SPSS INC
ESSEX PROPERTY TRUST	SWIFT ENERGY CO
FIRST MERCURY FINANCIAL CORP	SYNIVERSE HOLDINGS INC
FIRSTENERGY CORP	TENNANT CO
HEALTHCARE SERVICES GROUP	TETRA TECHNOLOGIES INC/DE
HMS HOLDINGS CORP	THORATEC CORP
INTERLINE BRANDS INC	TRIQUINT SEMICONDUCTOR INC
KANSAS CITY SOUTHERN	UNITED ONLINE INC
LAYNE CHRISTENSEN CO	UNITED THERAPEUTICS CORP
LIFEPOINT HOSPITALS INC	VALUECLICK INC
MARINER ENERGY INC	ZAPATA CORP
MASSEY ENERGY CO	ZOLL MEDICAL CORP

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