

## Corporate Elections and Shareholder Proposal Rights: from Case Studies in South Korea

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*The idea of whether or not the shareholders of public firms should obtain access to the firms' proxy materials has been controversial in the United States. The continual disagreements surrounding proxy access reforms demand the necessity of looking at other countries that already allow shareholder access to a company's proxy. This article aims to explore the concerns and issues of shareholder proposal rights for corporate elections and shareholder access in South Korea and to provide considerations for an improved regime. Towards this end, this author conducted a case study of the shareholder proposals of public firms listed on the Korea Exchange over the periods 2007 through 2009. The analysis of the data suggests that shareholder proposals for director nominations have seldom been exercised for large public firms, especially chaebols—the large, family-controlled Korean corporate groups. Consequently, the current standards for a graduated shareholder eligibility requirement should be reconsidered, thus enabling shareholder nomination rights to function as an effective*

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*means to control agency problems in large public firms. Having cumulative voting systems and voting restrictions in auditor elections entail greater risks that directors or auditors representing special interests may be elected through shareholder nominations. In particular, considering the relatively large number of unsupported auditor nominations, a stricter requirement for auditor candidate nominations might mitigate the disadvantages of frivolous auditor nominations. In terms of nominating purposes, more than half of shareholder proposals were found to be utilized for the purpose of pursuing takeovers of control rights in South Korea, where there is no limitation on the number or qualification of directors to be nominated by shareholder proposal rights. This invites a reexamination of the proper scopes of shareholder nomination rights in conjunction with shareholder proxy access, depending upon the size of nomination. On the other hand, the fact that nominating shareholders frequently conduct a separate proxy solicitation shows that the current regime does not provide a sufficiently effective method for nominating shareholders. Future studies should include the effects of the exercise of shareholder nominations on enhancing corporate governance of the firms.*

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## I. INTRODUCTION

This paper will explore the status and problems of shareholder proposal rights that enable shareholders to nominate director and auditor candidates in South Korea. In the process of examining the question of shareholder rights in South Korea, some consideration will be given to the potential implications of the Korean system for the debate on shareholder proposal and proxy access in the United States.

After dropping proxy access reform twice in 2003 and 2006, the United States Securities and Exchange Commission (the SEC) again proposed an amendment to the Federal proxy rules in June 2009, and finally adopted new proxy rules and amendments to facilitate shareholder director nominations in August 2010—or the “2010 election contest rule.”<sup>1</sup> The SEC took this action as part of corporate governance reform after the financial crisis in order to expedite the exercise of shareholders’ rights to nominate and elect company boards of directors. The 2010 election contest rule aimed to empower qualified shareholders with the

<sup>1</sup> Facilitating Shareholder Director Nominations, 75 Fed. Reg. 56,668, 56,668–69 (Sept. 16, 2010) (codified at 17 C.F.R. pts. 200, 232, 240 & 249) [hereinafter SEC Release: Facilitating Shareholder Director Nominations].

right to require a company to include the disclosure of shareholders' nominees for director in its proxy statement as well as the names of those nominees on the company proxy card. However, Rule 14a-11 was vacated by United States Court of Appeals for the District of Columbia Circuit in 2011, although the amendment to Rule 14a-8—or the “changed election contest rule”—remains unchallenged.<sup>2</sup>

Allowing shareholders to nominate candidates at a shareholder meeting and obtain access to the company's proxy statement and card gives shareholders the power to facilitate their franchise in order to choose their own agents.<sup>3</sup> However, there has been controversy between groups of institutional investors and the business community in the U.S. over the benefits of the shareholder proxy access rule.<sup>4</sup> In particular, members of the business community have been concerned that the proposed rule might encourage “expensive, highly contentious, and distracting proxy contests.”<sup>5</sup> Such concerns resulted in a petition for review of the newly adopted Exchange Act Rule 14a-11.<sup>6</sup> In contrast, many institutional investors supported the proposed election contest rule because it facilitated shareholders' ability to exercise their fundamental right to nominate directors.<sup>7</sup>

While controversial, this disagreement provides impetus to look at other countries that already allow shareholder access to a company's proxy and evaluate the advantages and disadvantages of this type of system. In this regard, it is worthwhile to take a look at the status of shareholder proposal rights and shareholder access in South Korea, to help predict possible changes that may arise from allowing shareholders some degree of access rights.

This article reviews the cases of shareholder proposal rights being

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<sup>2</sup> Facilitating Shareholder Director Nominations, 76 Fed. Reg. 58,100 (Sept. 20, 2011) (codified at 17 C.F.R. pts. 200, 232, 240 & 249).

<sup>3</sup> See Lucian A. Bebchuk, *The Myth of the Shareholder Franchise*, 93 VA. L. REV. 694, 696 (2007).

<sup>4</sup> See generally SEC Release: Facilitating Shareholder Director Nominations, *supra* note 1.

<sup>5</sup> Letter from Business Roundtable to the SEC (Aug. 17, 2009), available at [http://www.businessroundtable.org/letters/business\\_roundtable\\_letter\\_sec\\_facilitating\\_shareholder\\_director\\_nominations](http://www.businessroundtable.org/letters/business_roundtable_letter_sec_facilitating_shareholder_director_nominations). See generally SEC Release: Facilitating Shareholder Director Nominations, *supra* note 1, at 56,670–74 (summarizing various comments opposed to the SEC proposal and the argument that the proposal imposes the same rule for all companies regardless of recent corporate governance developments and individual circumstances of each firm and presenting certain opinions and conclusions about them).

<sup>6</sup> See Facilitating Shareholder Director Nominations, *supra* note 2.

<sup>7</sup> See, e.g., SEC Release: Facilitating Shareholder Director Nomination, *supra* note 1, at 56,670–71. See also Letter from Council of Institutional Investors to Elizabeth Murphy, Secretary of the SEC (Aug. 4, 2009), available at <http://www.cii.org/correspondenceArchive2009>; Letter from International Corporate Governance Network to Elizabeth Murphy, Secretary of the SEC, ICGN Support for “Facilitating Shareholder Director Nominations” (Aug. 17, 2009), available at [http://www.icgn.org/letters/letter\\_to\\_sec\\_august\\_17\\_2009\\_-file\\_no\\_s7-10-09.pdf](http://www.icgn.org/letters/letter_to_sec_august_17_2009_-file_no_s7-10-09.pdf).

exercised with respect to the election of directors and/or auditors of public firms whose shares are listed (i) on the Stock Market Division, or (ii) on the KOSDAQ Market Division of the Korea Exchange,<sup>8</sup> a unified national stock exchange (hereinafter the KRX), and which in 2007, 2008, and 2009 made disclosure of their public notice to convene a shareholder meeting (which time period also constituted the research period for this article).

In terms of duties, in South Korea, a statutory auditor inspects the directors' performance of duties, conducts important surveillance over the board of directors and individual directors' performance of their duties, and audits company accounts. Considering the range of invested authority and the role of the auditor itself, one cannot overlook auditors when evaluating the status of shareholder proposal rights for corporate elections. For this reason, the scope of this article also includes cases where a nominating shareholder proposed an auditor candidate.

This paper analyzes data hand-collected by the author from annual, semi-annual and quarterly reports, proxy statements, and public disclosure of the results of shareholder meetings. These data are available both on the Korean Data Analysis, Retrieval, and Transfer System (DART)<sup>9</sup>—an equivalent to the U.S. EDGAR and operated by the Korean Financial Supervisory Service—and the Korea Investor's Network for Disclosure System (KIND)<sup>10</sup>—operated by the KRX. In situations where the data available on DART or KIND were insufficient to yield relevant information, the author verified the contents, circumstances, and results of shareholder proposals by using the other aforementioned sources and media resources such as news articles.

Based on the problems listed above, this article makes suggestions for enhancing the shareholder franchise and mitigating some of the problems that arise as a result of allowing shareholder proposal rights and shareholder access.

Part II discusses the corporate elections procedure in South Korea, including the requirements and procedures of shareholder proposal rights for shareholders to nominate their candidate(s) at a shareholder meeting as

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<sup>8</sup> The KOSDAQ Market is a trading board of the KRX, which was established to create a liquidity market, mainly for venture capital firms as well as small- and medium-sized businesses and the IT industry. *See* KRX History 1956–2010, KRX KOREA EXCHANGE, [http://eng.krx.co.kr/m9/m9\\_1/m9\\_1\\_3/UHPENG09001\\_03.html](http://eng.krx.co.kr/m9/m9_1/m9_1_3/UHPENG09001_03.html) (describing the history of the KRX). The Korean Securities Dealers Automated Quotations or KOSDAQ was established in 1996 by benchmarking the NASDAQ in the U.S. However, the KOSDAQ Market became one of three market divisions of the KRX in January 2005 as a result of the merger among the former securities and futures markets, including the KOSDAQ. *Id.*

<sup>9</sup> DAEHANMINKUK KIUPJUNGBOEUI CHANG, DART [REPOSITORY OF KOREA'S CORPORATE FILINGS, DART], <http://dart.fss.or.kr/> (last visited May 6, 2012).

<sup>10</sup> SANGJANGKONGSI SYSTEM [KIND, KOREA INVESTOR'S NETWORK FOR DISCLOSURE SYSTEM], <http://kind.krx.co.kr/main.do?method=loadInitPage&scrnmode=1> (last visited May 6, 2012).

well as shareholder access to a company proxy. This discussion includes an explanation of how corporate elections proceed in South Korea, and proceeds to point out some of the major differences between the U.S. and South Korea in shareholder proposal procedures for corporate elections for public companies.

Part III examines cases that have been made available through public disclosure of shareholders who exercised their proposal rights for nominating director and/or auditor candidates at public corporations in South Korea. In particular, this section reviews which types of shareholders have tended to take advantage of shareholder proposals and for what purpose, whether they have conducted their proxy solicitations separately, whether their proposals have been successful, and what obstacles such shareholders have faced. Efforts are made to find out whether the ownership structure and the size of public companies have had an important effect on shareholders' exercise of shareholder proposal rights, as well as on the results of these shareholder proposals.

Part IV then discusses actions that should be taken to facilitate adopting shareholder proposal rights to enhance shareholders' voting rights in corporate elections. In addition, some deliberations are extracted from these findings that could be helpful in the course of discussing the corporate election rule in the U.S.

## II. OVERVIEW OF SHAREHOLDER PROPOSAL RIGHTS AND CORPORATE ELECTIONS

### A. *Shareholder Proposal Rights in South Korea*

On January 13, 1997, in order to empower shareholders to put their own agenda to a vote at shareholder meetings and to mitigate minority shareholders' indifference and isolation, shareholder proposal rights were first adopted for public firms in South Korea.<sup>11</sup> Similarly, on December 28, 1998, South Korea enacted an additional provision to give shareholders of private and public firms the right to exercise shareholder proposal rights.<sup>12</sup> As a result of the adoption of shareholder proposal rights, shareholders became entitled to present their director and auditor candidates at shareholder meetings.

In South Korea, directors of a corporation are elected by receiving

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<sup>11</sup> JAECHONGKYUNGJEWIWONHOI [COMM. OF FIN. AND ECON.], JEUNGKwonKEOLAEBOB JUNG KAEJUNGBEOBYULAHN SIMSABOKOSEO [REVIEW REPORT ON THE AMENDMENT TO THE SECURITIES AND EXCHANGE ACT] 113 (1996); JEUNGKwonKEOLAEBOB [Securities and Exchange Act], Act. No. 972, Jan. 15, 1962, *amended by* Act No. 5254, Jan. 13, 1997, art. 191-14 (S. Kor.) (repealed 2009).

<sup>12</sup> Sangbeob [Commercial Act], Act No. 1000, Jan. 20, 1962 [hereinafter KCC], *amended by* Act No. 5591, Dec. 28, 1998, art. 363-2 (S. Kor.).

a majority of the voting shares present or represented at a shareholder meeting in addition to a quarter or more of the total number of issued shares with voting rights, unless otherwise prescribed in that corporation's articles of incorporation.<sup>13</sup> Auditors are also selected by majority approval of the voting shares at a shareholder meeting and a quarter or more of the total number of voting shares.<sup>14</sup> However, shareholders who hold more than 3% of all of the voting shares may not exercise their voting rights corresponding to the portion exceeding 3%.<sup>15</sup> In addition, if the largest shareholder of a public firm and its "specially-related" persons hold, in the aggregate, more than 3% of the entire number of all voting shares, the largest shareholder and those specially-related persons all together may not exercise voting rights exceeding 3%.<sup>16</sup>

In principle, shareholders may vote in person or by proxy representation.<sup>17</sup> Shareholders not attending the meeting may exercise their voting rights in writing, as long as the articles of incorporation allow it.<sup>18</sup> Beginning from May 29, 2010, electronic voting is permitted, provided that the board of directors resolves to adopt it in advance of each shareholder meeting.<sup>19</sup>

As a general practice, directors are elected mainly from the pool of candidates nominated by the board of directors of a corporation.<sup>20</sup> Prior to the adoption of shareholder proposal rights, a shareholder or a group of shareholders holding five percent or more of the aggregate voting shares of a company could ask the board of directors to call a shareholder meeting to put his or her agenda to a vote.<sup>21</sup> However, because of the complicated and burdensome procedure that it requires, the minority shareholder's right to call a shareholder meeting has been criticized for discouraging dissatisfied shareholders from effectively proposing their

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<sup>13</sup> KCC amended by Act No. 5053, Dec. 29, 1995, art. 368, para. 1 (S. Kor.); KCC art. 382, para. 1 (S. Kor.).

<sup>14</sup> KCC amended by Act No. 5053, Dec. 29, 1995, art. 368, para. 1 (S. Kor.); KCC art. 409, para. 1 (S. Kor.).

<sup>15</sup> KCC amended by Act No. 3724, Apr. 10, 1984, art. 409, para. 2 (S. Kor.).

<sup>16</sup> KCC amended by Act No. 9362, Jan. 30, 2009, art. 542-12, para. 4 (S. Kor.).

<sup>17</sup> KCC art. 368, para. 3 (S. Kor.).

<sup>18</sup> KCC amended by Act No. 6086, Dec. 31, 1999, art. 368-3 (S. Kor.).

<sup>19</sup> KCC amended by Act No. 9746, May 28, 2009, art. 368-4 (S. Kor.).

<sup>20</sup> KCC art. 362 (S. Kor.). See Joon-Woo Chung, *Jujuheahnkwoneui Hangsayokeonkwa Moonjejeom* [Requirements for and Problems of Exercising Shareholder Proposal Rights], 21 SAANGSAHBEOB YEONKOO [STUDY OF COMMERCIAL LAWS] 285, 286-87 (2002) (stating that, before the adoption of shareholder proposal rights, it was practically impossible for shareholders to propose their own agenda to a shareholder meeting without the cooperation of the board of directors).

<sup>21</sup> KCC art. 366 (S. Kor.). Now the minimum ownership threshold has been lowered to 3% and, in the case of public firms, further to 1.5%, together with a six-month minimum holding requirement.



director candidates or other agendas at shareholder meetings.<sup>22</sup>

According to shareholder proposal rights, a shareholder or a group of shareholders holding three percent or more of the total number of issued shares with voting rights may propose the inclusion of certain matters in the agenda of a shareholders' meeting, among them, nominating director and auditor candidates.<sup>23</sup> This will be referred to as a "general shareholder proposal right," to differentiate it from the shareholder proposal right described below.

In the case of a public company, a shareholder proposal right applies specifically to a shareholder or group of shareholders holding 1% or 0.5% of the company's issued and voting shares, depending upon the size of its paid-in capital as of the end of the immediately preceding fiscal year, i.e. whether or not it exceeds KRW 100 billion.<sup>24</sup> For shareholders to take advantage of the shareholder proposal rights at public firms that allow a more generous minimum ownership threshold requirement, such shareholders must have held the shares of the company continuously for at least six months at the time of their exercising shareholder proposal rights.<sup>25</sup> This holding requirement is said to be necessary to prevent shareholders from abusing this shareholder proposal right, such as by acquiring voting shares for the sole purpose of exercising shareholder proposal rights.<sup>26</sup> This will be referred to as a "special shareholder proposal right," to distinguish it from a general shareholder proposal right.

As a result of the co-existence of a general shareholder proposal right and a special shareholder proposal right, shareholders of a public firm may choose to exercise shareholder proposal rights under either one, depending on which requirements they can satisfy. As explained above, a general shareholder proposal right requires a higher minimum ownership threshold, but does not require a minimum holding period. Conversely, a special shareholder proposal right calls for a lower minimum equity requirement, but demands a minimum holding period of six months. The shareholders of public firms may choose to exercise either of these two types of shareholder proposal rights, depending upon the requirements they meet.

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<sup>22</sup> See Chung, *supra* note 20, at 286–87 (stating that the minimum shareholding threshold requirement for calling a shareholder meeting was so stringent as to effectively discourage minority shareholders from calling such meetings, and arguing that shareholders should have a right to promote their own agenda at shareholder meetings, distinct from the right to call the shareholder meeting itself).

<sup>23</sup> KCC amended by Act No. 5591, Dec. 28, 1998, art. 363-2 (S. Kor.).

<sup>24</sup> KCC amended by Act No. 9362, Jan. 30, 2009, art. 542-6, para. 2 (S. Kor.). According to the base foreign exchange rate as of December 30, 2011 (i.e. USD 1 = KRW 1,153.30), KRW 100 billion amounts to about USD 86.7 million. *Id.*

<sup>25</sup> KCC amended by Act No. 9362, Jan. 30, 2009, art. 542-6, para. 2 (S. Kor.).

<sup>26</sup> See Chung, *supra* note 20, at 289–90 (stating that the shareholding requirement is prescribed in order to prevent the abuse of shareholder proposal rights).

To exercise a shareholder proposal right, the law requires a qualified shareholder, or a group of shareholders, to propose the inclusion of certain matters (such as the agenda) in a written document at least six weeks before a scheduled shareholder meeting, or, in the case of an annual shareholder meeting, six weeks before the date of the annual shareholder meeting in the immediately-preceding fiscal year.<sup>27</sup>

The law stipulates that the director receiving a shareholder proposal must report to the board of directors, and the board has to include the shareholder proposal among the objectives of the meeting unless the proposal runs in contravention of law or the articles of incorporation, or unless it falls under other specific circumstances prescribed under the Presidential Decree of the Korean Commercial Code.<sup>28</sup> Since the rules generally do not allow the exclusion of shareholder proposals relating to corporate elections, a qualified shareholder or group of shareholders may propose a set of their own candidates to the board.<sup>29</sup>

The shareholder may demand that the sum and substance of their proposals be included with the notice and with public notice to convene the shareholder's meeting.<sup>30</sup> Moreover, if the proposing shareholder demands an opportunity to explain the proposal at the shareholders' meeting, he or she must be given the chance to do so.<sup>31</sup>

### *B. Proxy Access in South Korea*

If a person intends to solicit a proxy from a shareholder of a public company to exercise voting rights on the listed shares held by the solicitee, the solicitor has to comply with the prescribed requirements

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<sup>27</sup> KCC amended by Act No. 9362, Jan. 30, 2009, art. 363-2, para. 1 (S. Kor.).

<sup>28</sup> KCC amended by Act No. 9362, Jan. 30, 2009, art. 363-2, para. 3 (S. Kor.).

<sup>29</sup> See Chung, *supra* note 20, at 297 (indicating that a shareholder proposal right allows a shareholder to nominate his or her director candidates and request review and resolution of agendas pertaining to the electing of directors); KCC amended by Act No. 9362, Jan. 30, 2009, art. 363-2, para. 3; Sangbeob Sihangyeong [The Enforcement Decree of the KCC] No. 11485, Aug. 16, 1986 amended by Presidential Decree No. 21288, Feb. 3, 2009 [hereinafter the Presidential Decree of the KCC], art. 5. Article 5 of the Presidential Decree of the KCC lists the items excluded from a shareholder proposal right. These items include cases in which: (i) a shareholder proposes the same agenda which was rejected at a prior shareholder meeting held within the past three years, which failed on account of not obtaining support of at least 10 percent of all voting shares; (ii) a shareholder proposal relates to the private problem of a shareholder; (iii) a shareholder proposes the removal of an incumbent director or auditor from his or her office before the expiry of his or her term (only for public firms); and (iv) a shareholder proposal is impossible for a company to achieve, or the grounds for a shareholder proposal are self-evidently false or relate to defaming a particular person. *Id.*

<sup>30</sup> KCC amended by Act No. 9362, Jan. 30, 2009, art. 363-2, para. 2 (S. Kor.).

<sup>31</sup> KCC amended by Act No. 9362, Jan. 30, 2009, art. 363-2, para. 3 (S. Kor.).

under the applicable laws and regulations.<sup>32</sup>

A solicitor must submit a copy of its proxy statement and proxy form to the Financial Services Commission (hereinafter the FSC)<sup>33</sup> and the KRX at least five business days before the date on which the solicitor forwards the proxy statement and proxy form to the solicitee.<sup>34</sup> The solicitor must send the proxy statement and proxy form to the solicitee by hand delivery, mail or fax, or by an electronic transmission (this last method is permissible only if the solicitee expresses his or her desire to receive these documents in electronic form).<sup>35</sup> In the case where the solicitor is the public firm itself, the solicitor may send the proxy statement and proxy form to the solicitee together with the notice of a shareholder meeting.<sup>36</sup> The law also requires the solicitor to keep the proxy statement and proxy form at a designated place, such as the head office and branch of the public firm in question, the FSC, the KRX, or an office of the relevant transfer agent.<sup>37</sup>

The proxy statement has to lay out the agenda for the relevant general shareholders' meeting of the public firm in addition to other detailed information regarding the solicitor and its agent.<sup>38</sup> In addition, the proxy form needs to be formatted in such a way to enable the solicitee to state clearly whether the solicitee is for or against a particular agenda. If a certain agenda is changed or revised, the solicitee also has to state

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<sup>32</sup> During the research period of this article, the Securities and Exchange Act was repealed by the Financial Investment Services and Capital Markets Act, which took effect as of February 4, 2009. The Financial Investment Services and Capital Markets Act is a law comprehensively governing the securities markets, enacted to consolidate the then-existing Securities and Exchange Act, the Future Trading Act, the Indirect Investment Asset Management Business Act, the Trust Business Act, the Merchant Banks Act, and the Korea Securities and Futures Exchange Act. The new law has not implemented significant changes affecting shareholder proposal rights and proxy access rights. If there are any noteworthy differences between the old and new regulatory regimes, these will be specifically identified.

<sup>33</sup> The Financial Services Commission (FSC) is a supervisory regulator in South Korea equivalent to the SEC.

<sup>34</sup> Jabonsijangkwa Keumyoongtoojaupae Kwanhan Beobyul [The Financial Investment Services and Capital Markets Act] *amended* by Act No. 8852, Feb. 29, 2008, art. 153 (S. Kor.) [hereinafter the FISCMA]. The former Securities and Exchange Act required two days' prior notice.

<sup>35</sup> Jabonsijangkwa Keumyoongtoojaupae Kwanhan Beobyul Sihangyeong [The Enforcement Decree of the Financial Investment Services and Capital Markets Act], Presidential Decree No. 20947, Jul. 29, 2008 [hereinafter the Presidential Decree of the FISCMA], art. 160 (S. Kor.). The method of electronic transmission has been available since February 4, 2009.

<sup>36</sup> *Id.*

<sup>37</sup> Jabonsijangkwa Keumyoongtoojaupae Kwanhan Beobyul Sihangkyuchik [The Enforcement Rule of the Financial Investment Services and Capital Markets Act] *amended* by Ordinance of the Prime Minister No. 973, Mar. 2, 2012, art. 18 (S. Kor.).

<sup>38</sup> The FISCMA, Act No. 8635, Aug. 3, 2007, art. 152, para. 6 (S. Kor.); The Presidential Decree of the FISCMA, art. 163, paras. 1 & 2 (S. Kor.).

whether or not he or she will use a proxy for that agenda, as well as any instructions for voting his or her shares in that case.<sup>39</sup> The solicitor must exercise the voting rights as instructed by the solicitee on the proxy form.

The applicable statute and regulations on proxy solicitations do not have any specific provisions with respect to whether or not a shareholder has a right to ask a company to place his or her director or auditor candidates in a company's proxy material for a vote at a shareholder meeting, if the shareholder has successfully made a proposal to the board. Since a proxy solicitor is required to include all the items to be resolved during a shareholder meeting in its proxy card and proxy statement, public firms include agendas proposed by shareholders as well as those proposed by their own board of directors in their proxy cards when the public firms do proxy solicitations. As a result, a shareholder of public companies in South Korea has been able to take advantage of a company's ballot to seek the approval of other shareholders on his or her own nominees when the companies conduct proxy solicitations, regardless of whether shareholders have requested firms to do so or not.

Since there is no explicit provision relating to shareholder access to a company's proxy materials, the law does not require the proxy statement to include much information about the nominating shareholders or the nominating shareholder group, their relationship to nominees, and the purpose of their nomination. While a company must include the information regarding the name, principal occupation, profile, and the contents of transactions between either a director or auditor candidate and the public company, information regarding the nominating shareholders and other details relating to shareholder proposals does not need to be included in a proxy statement.

### *C. Comparison of Shareholder Proposal Rights between the U.S. and South Korea*

From the perspective of corporate elections, the most outstanding difference between the U.S. and South Korea, with regard to current shareholder proposal rights and proxy access, is whether or not the board can exclude shareholder proposals relating to corporate elections.

In the U.S., the changed election contest rule allows a public firm to exclude certain shareholder proposals, such as those requesting inclusion of a specific individual nominee.<sup>40</sup> Thus, a company may exclude a shareholder proposal in cases where the proposal relates to a nomination or an election for membership on the company's board of

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<sup>39</sup> The FISCMA, Act No. 8635, Aug. 3, 2007, art. 152, para. 4 (S. Kor.); The Presidential Decree of the FISCMA, art. 163, para. 1 (S. Kor.). This provision was added by the Presidential Decree of the FISCMA, and did not exist in the Securities and Exchange Act.

<sup>40</sup> 17 C.F.R. § 240.14a-8(i)(8) (2008).

directors or analogous governing body, unless the company's governing documents require the inclusion of shareholder director nominees in its proxy material. On the other hand, shareholder proposals seeking to establish within a company's governing documents a procedure for requesting shareholder director nominee(s) are required to be included in the company's proxy materials, if proposed. The 2010 election contest rule instead required companies to place certain information about nominating shareholders and shareholder director nominees in their proxy materials, under certain circumstances, as long as the shareholders sought to acquire a small number of seats on the board. By contrast, in South Korea an eligible shareholder or a group of shareholders of a public firm may nominate their director or auditor candidates, and a public company is required to put the shareholder nominees in a company's proxy materials if it does its own proxy solicitation.

A chart of the major differences in shareholder proposal rights and shareholder access between South Korea and the U.S., if the 2010 election contest rule in the U.S. had come into effect, can be found in Table 1 below.

**Table 1.** *Comparison of Shareholder Suffrage Between the U.S. and South Korea (under the 2010 election contest rule)*

Contents	U.S.	South Korea	
		(General)	(Special)
Eligible Shareholder or Shareholder Group	1. Minimum ownership threshold (3% of voting power)	1. Minimum ownership threshold (3% of voting power)	1. Minimum ownership threshold (1% of voting power in the case of public firms with paid-in capital of less than KRW 100 billion; 0.5% in the case of public firms with assets of KRW 100 billion or more)

Contents	U.S.	South Korea	
		(General)	(Special)
	2. Minimum holding period (three years)	2. Holding period is not required	2. Minimum holding period (six months)
Post-Holding Requirement	Yes (through the date of the shareholder meeting)	No explicit provision	No explicit provision
Number of Shareholder Nominees	1. Up to the greater of (i) one, or (ii) 25% of the board of directors  2. If there are multiple nominating shareholders or shareholder groups, only the nominee(s) of the nominating shareholder or shareholder group with the highest percentage of the voting power shall be included in a company's proxy materials.	No limitation	No limitation
Qualification of Nominees	Independent director	No restriction	No restriction
Deadline for Nominating Shareholder Candidates	No earlier than 150 days prior to the anniversary of the mailing of the prior year's proxy statement	No later than six weeks before a scheduled shareholder meeting (in case of annual	No later than six weeks before a scheduled shareholder meeting (in case of annual

Contents	U.S.	South Korea	
		(General)	(Special)
	and no later than 120 days prior to this date	shareholder meeting, six weeks before the date of the shareholder meeting in the prior year)	shareholder meeting, six weeks before the date of the shareholder meeting in the prior year)
Nominating Shareholder's Filing its Notice to the Public Company Nominating Director Candidate	Required	Not required	Not required
Information Included in Proxy Materials	Nominating shareholder, nominee and their relationship, etc.	Not specified (usually the name of nominees)	Not specified (usually the name of nominees)
Whether or not the Governing Documents of Public Firms may Prohibit their Shareholders from Nominating a Candidate	Allowed	Not allowed	Not allowed

There is a wide range of differences in shareholder rights for corporate elections and shareholder access between South Korea and the U.S. (under the 2010 election contest rule). As a result of the rule in South Korea, a shareholder or a shareholder group qualified for exercising shareholder proposal rights may take advantage of access to a company ballot, and incumbent directors or managers or controlling shareholders may not initiate the amendment of the governing documents to prevent shareholders from proposing their own director or auditor candidates.

Shareholder proposal rights in South Korea do not limit their implementation to cases where shareholders are trying to send one or a small number of members to the board. An eligible shareholder or shareholder group may propose the election of multiple directors, the total number of which may exceed the number of incumbent directors, unless there is a limitation on the number of directors in the company's articles of incorporation. In addition, shareholder nominees do not necessarily have to be independent directors.

This nomination right, unrestricted in terms of number and qualification, may affect the purpose of exercising shareholder proposal rights in South Korea. That is, it will tend to increase the possibility that shareholders will rely on shareholder proposal rights for corporate elections, often for the purpose of pursuing takeovers of control rights, as well as to enhance monitoring of incumbent directors and managers. In this connection, as indicated above, this article will look at the purposes of exercising shareholder proposal rights and the types of directors nominated by shareholders in South Korea.

### III. ANALYSIS OF SHAREHOLDER PROPOSALS FOR CORPORATE ELECTIONS

#### A. *Data*

This paper uses data collected from public disclosures on corporate elections where shareholders of public firms have nominated their own director or auditor candidates. These data are available first on DART and KIND and include annual, semi-annual and quarterly reports, proxy statements, and reports on the results of shareholder meetings. In addition, in those cases where the data available on DART and KIND was lacking, the author collected information from other media sources to verify the contents and circumstances of shareholder proposal rights and their results at the relevant meeting.

This article reviews cases of shareholder proposal rights exercised to nominate director or auditor candidates of public firms listed on the KRX; these were firms whose public notices to convene a shareholder meeting were disclosed during the research period. During the research period, 6,969 public notices for convening a shareholder meeting posted on DART were reviewed to search for shareholder proposals including shareholders' nominations of director or auditor candidates based on a shareholder proposal right. The public notices on DART usually indicate who recommended relevant director and auditor candidates, especially the general type of recommender. When those public notices did not clearly state whether pertinent candidates were recommended by either the board of directors or nominating shareholders—based on their shareholder



proposal right—or others, reference was made instead to public disclosures regarding the result of the particular shareholder meeting, and to news media, to figure out whether or not shareholder proposals were made to nominate director or auditor candidates.

This initial research reveals that 110 shareholder proposals nominated director and/or auditor candidates. The collected information on the 110 shareholder proposals for corporate elections in which a shareholder or a group of shareholders nominated their own director or auditor candidates is provided in the Appendix, in Table 2 (in the case of public firms listed on the Stock Market Division of the KRX) and Table 3 (in the case of public firms listed on the KOSDAQ Market Division of the KRX) respectively. For detailed information about how the information was collected and organized, see the explanation provided in the notes to Tables 2 and 3 in the Appendix.

The data in the following tables (Tables 4 to 17) in Part III were derived from Tables 2 and 3.

#### *B. Overview of Shareholder Proposals for Corporate Elections*

During the research period, 6,969 public notices convening shareholder meetings were posted. Careful review of the agenda of each public notice revealed that 110 cases included shareholder proposals to nominate shareholders' director or auditor candidates, and that among them, twenty-eight shareholder proposals were approved at a shareholder meeting as shown in Table 4 below. [The shareholder proposals for corporate elections in question were categorized into years 2007, 2008, and 2009, depending on the date of the relevant shareholder meeting, instead of the date of a pertinent notice of the shareholder meeting. Hereinafter the same categorization method shall apply.]

**Table 4.** *Frequency of Exercising Shareholder Proposal Rights for Corporate Elections*

	2007	2008	2009	Total
<b>Number of Public Firms Posting a Notice (1)</b>	1,641	1,707	1,742	—
<b>Stock Market (1-1)</b>	679	686	707	—
<b>KOSDAQ (1-2)</b>	962	1,021	1,035	—

	2007	2008	2009	Total
<b>Number of Public Firms where Shareholder Proposals were Exercised (2)</b> (2/1%)	25 (1.5%)	38 (2.2%)	28 (1.6%)	91
<b>Stock Market (2-1)</b> (2-1/1-1%)	10 (1.5%)	14 (2.0%)	11 (1.6%)	35
<b>KOSDAQ (2-2)</b> (2-2/1-2%)	15 (1.6%)	24 (2.4%)	17 (1.6%)	56
<b>Number of Shareholder Proposals Exercised (3)</b>	31	47	32	110
<b>Stock Market (3-1)</b>	11	15	11	37
<b>KOSDAQ (3-2)</b>	20	32	21	73
<b>Number of Shareholder Proposals Approved (4) (4/3%)</b>	9 (29.0%)	15 (31.9%)	4 (12.5%)	28 (25.5%)
<b>Stock Market (4-1)</b> (4-1/3-1%)	4 (36.4%)	1 (6.7%)	0 (0%)	5 (13.5%)
<b>KOSDAQ (4-2)</b> (4-2/3-2%)	5 (25.0%)	14 (43.8%)	4 (19.1%)	23 (31.5%)

Notes to Table 4:

1. The number of public firms is based on the information as of the end of the year immediately preceding the relevant date of the shareholder meeting, provided by the KRX.<sup>41</sup> Foreign companies, special purpose vehicles such as general investment companies, real estate investment companies, and ship investment companies are excluded from this research.

2. Even if only a portion of the shareholder nominees were elected at a

<sup>41</sup> THE KOREA EXCHANGE, <http://kind.krx.co.kr/corpgeneral/listedIssueStatus.do?method=loadInitPage> (last visited Feb. 5, 2011).

shareholder meeting, such proposals are counted as approved. In addition, the approved proposals also include cases where the insiders agreed to the election of shareholder nominees after the exercise of shareholder proposal rights, but before the shareholder meeting.

\* \* \*

The percentage of public firms actually exercising shareholder proposals is around one to two percent of all public firms listed in South Korea.

Traditionally, the stakeholders of Asian corporations have been known to prefer informal remedies outside the public eye to deal with their dissatisfaction.<sup>42</sup> The number of exercised shareholder proposals alone, however, does not provide sufficient evidence to determine whether the adoption of shareholder proposal rights has caused a decrease in shareholders' reluctance to take formal measures in South Korea. Nevertheless, the number of shareholder proposals for corporate elections under shareholder proxy access to a company's proxy materials may be compared to the number of contested proxy solicitations without shareholder proxy access in the U.S., to at least roughly assess the frequency of shareholder proposals for corporate elections in South Korea.

According to the empirical study by Buchanan, Netter and Yang, in each year from 2000 to 2006, forty-one, forty-three, thirty-eight, thirty-six, twenty-seven, twenty-two and forty-two public firms, respectively, were subject to contested proxy solicitations in the U.S.<sup>43</sup> On the other hand, Table 4 shows that in each year from 2007 to 2009, twenty-five, thirty-eight, and twenty-eight public firms, respectively, were subject to shareholder proposals for corporate elections. While the period of study is different, and the items compared are not the same (i.e. the number of contested proxy solicitations in one study, versus the number of shareholder proposals for corporate elections in the other), the studies indicate that public firms in South Korea seem to be exposed to shareholder proposals for corporate elections quite often, especially given that the U.S. has more than three times the number of public firms listed in South Korea.<sup>44</sup>

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<sup>42</sup> See ORGANIZATION FOR ECONOMIC CO-OPERATION, WHITE PAPER ON CORPORATE GOVERNANCE IN ASIA 11–12, 30 (2003), *available at* <http://www.oecd.org/dataoecd/48/55/25778905.pdf> (noting that Asian businesses 'often prefer quiet, informal dispute resolution as a way for all parties involved to 'save face' and to keep their business affairs out of the public eye').

<sup>43</sup> Bonnie Buchanan, Jeffrey M. Netter & Tina Yang, Proxy Rules and Proxy Practices: An Empirical Study of US and UK Shareholder Proposals 47 (Sept. 15, 2009) (unpublished manuscript), *available at* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1474062](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1474062).

<sup>44</sup> According to the World Bank Group Database, the number of listed domestic companies in the U.S. and South Korea, respectively, in the years 2000–08 inclusive, is as below:

Public firms listed on the KOSDAQ Market Division might be expected to be subject to shareholder proposals for corporate elections more frequently than those listed on the Stock Market Division, since relatively more firms listed on the KOSDAQ Market Division are known to have been involved in a number of corporate scandals.<sup>45</sup> Additionally, shareholders have an easier time acquiring an eligible amount of voting rights for exercising shareholder proposal rights due to the relatively smaller size of these firms' market capitalization as compared to public firms on the Stock Market Division.<sup>46</sup> Despite expectations to the contrary, there is no noticeable difference between the two markets in terms of the frequency with which shareholder proposal rights are exercised.

### C. Firm Size and Shareholder Proposal Rights

For shareholders to nominate their own director or auditor candidates in South Korea, they have to meet a minimum ownership threshold. While a general shareholder proposal right requires 3% or more of the aggregate voting shares, a special shareholder right sets forth a different holding requirement, depending on the size of the public firm's paid-in capital. That is, shareholders of public firms are usually required to hold, in the aggregate, 1% or more of the total number of issued shares with voting rights to be able to make shareholder proposals. However, as aforementioned, in the case of public firms whose paid-in capital is KRW 100 billion or more, the shareholders may exercise shareholder proposal rights by holding 0.5% or more of the aggregate voting shares, as long as

	'00	'01	'02	'03	'04	'05	'06	'07	'08
U.S.	7,524	6,355	5,685	5,295	5,231	5,143	5,133	5,130	5,603
South Korea	1,308	1,409	1,518	1,563	1,573	1,620	1,694	1,767	1,798

Listed Domestic Companies, THE WORLD BANK, <http://data.worldbank.org/indicator/CM.MKT.LDOM.NO> (last visited May 6, 2012).

<sup>45</sup> See Soon Suk Yoon, *A Comparison of Earnings Management Between KSE Firms and KOSDAQ Firms*, 32 J. BUS. FIN. & ACCT. 1347, 1366–68 (2005) (finding that KOSDAQ firms generally tend to manipulate their earnings more actively than KSE firms); Pil-Soo Jeon, Seong-Ho Kim & Hye-Young Jeon, *Jakjeon Jeokbaltamada 'KOSDAQ Buhwal' Chanmool [A Chilling Effect on the Revival of the KOSDAQ Market, Whenever Manipulations are Made]*, MONEY TODAY, Apr. 24, 2007, <http://www.mt.co.kr/view/mtview.php?type=1&no=2007042314460157154&outlink=1> (citing the need to reform the Korean market monitoring system in light of some firms' ability to manipulate stock prices).

<sup>46</sup> See Yoon, *supra* note 45, at 1348 (noting that KOSDAQ firms are generally much smaller than KSE firms).

they have held<sup>47</sup> the eligible shares for at least six months. In this regard, Table 5 below shows the frequency with which shareholder proposal rights were exercised, according to the size of the paid-in capital of the relevant public firms.

**Table 5.** *Frequency of Exercising Shareholder Proposal Rights Depending on the Size of Firms' Paid-in Capital*

<b>Paid-in Capital</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>100 or more</b> <i>(in BB KRW)</i>	2 (6.5%)	2 (4.3%)	0 (0.0%)	4 (3.6%)
<b>Less than 100</b> <i>(in BB KRW)</i>	29 (93.6%)	45 (95.7%)	32 (100.0%)	106 (96.4%)
<b>Total Number</b> <b>Instances / Year</b>	31	47	32	110

Table 5 reveals that almost all shareholder proposals (106 out of 110) were made in public firms whose paid-in capital was less than KRW 100 billion. Out of the four other shareholder proposals, two were exercised by labor unions against the same company and one was exercised by way of a control contest. Only one shareholder proposal was raised by an institutional investor, which required the election of one auditor.

This difference in frequency of shareholder proposals between the two groups indicates that the graduated eligibility requirements for nominating shareholders between public firms with a paid-in capital of KRW 100 billion or less and public firms with a paid-in capital of more than KRW 100 billion does not seem to be effective in facilitating the exercise of shareholder proposals for large firms.

Table 6 illustrates the frequency with which shareholder proposal rights are exercised in corporate elections, listed by a public firm's corporate asset size, in descending order.

<sup>47</sup> In this context, "holding" means owning, being delegated with exercising a shareholder's powers on behalf of that shareholder, or acting in concert for the purpose of exercising a shareholder right together. KCC amended by Act No. 9362, Jan. 30, 2009, art. 542-6, para. 8 (S. Kor.).

**Table 6.** *Frequency of Exercising Shareholder Proposal Rights Depending on Firms' Asset Size*

<b>Asset Size (in MM USD)</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>Greater than 1,000</b>	1 (3.2%)	2 (4.3%)	0 (0.0%)	3 (2.7%)
<i>(Elected)</i>	0 (0.0%)	0 (0.0%)	0 (-)	0 (0.0%)
<b>900 – 1,000</b>	0 (0.0%)	1 (2.1%)	0 (0.0%)	1 (0.9%)
<i>(Elected)</i>	0 (-)	0 (0.0%)	0 (-)	0 (0.0%)
<b>800 – 900</b>	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
<i>(Elected)</i>	0 (-)	0 (-)	0 (-)	0 (-)
<b>700 – 800</b>	1 (3.2%)	0 (0.0%)	0 (0.0%)	1 (0.9%)
<i>(Elected)</i>	0 (0.0%)	0 (-)	0 (-)	0 (0.0%)
<b>600 – 700</b>	2 (6.5%)	3 (6.4%)	0 (0.0%)	5 (4.6%)
<i>(Elected)</i>	1 (50.0%)	0 (0.0%)	0 (-)	1 (20.0%)
<b>500 – 600</b>	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
<i>(Elected)</i>	0 (-)	0 (-)	0 (-)	0 (-)
<b>400 – 500</b>	0 (0.0%)	1 (2.1%)	2 (6.3%)	3 (2.7%)
<i>(Elected)</i>	0 (-)	1 (100.0%)	0 (0.0%)	1 (33.3%)
<b>300 – 400</b>	2 (6.5%)	1 (2.1%)	2 (6.3%)	5 (4.6%)
<i>(Elected)</i>	0 (0.0%)	0 (0.0%)	1 (50.0%)	1 (20.0%)
<b>200 – 300</b>	0 (0.0%)	3 (6.4%)	2 (6.3%)	5 (4.6%)
<i>(Elected)</i>	0	0	0	0

<b>Asset Size (in MM USD)</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
	(-)	(0.0%)	(0.0%)	(0.0%)
<b>100 – 200</b>	2 (6.5%)	8 (17.0%)	5 (15.6%)	15 (13.6%)
<i>(Elected)</i>	1 (50.0%)	1 (12.5%)	1 (20.0%)	3 (20.0%)
<b>Less than 100</b>	23 (74.2%)	28 (59.6%)	21 (65.6%)	72 (65.5%)
<i>(Elected)</i>	7 (30.4%)	13 (46.4%)	3 (14.3%)	23 (31.9%)
<b>Total</b>	31	47	32	110

Notes to Table 6:

*Conversion Rate Assumption* — The base foreign exchange rate as of the end of an immediately preceding year is applied (i.e., 1 USD = KRW 929.6 for 2007, KRW 938.2 for 2008, and KRW 1,257.5 for 2009, respectively).

\* \* \*

It is noteworthy that most shareholder proposals were made for small public firms with assets valued at less than USD 100 million. In particular, there were only three shareholder proposals for two public firms with assets exceeding USD 1 billion during the entire research period. Out of the three proposals, two shareholder proposals were made for the same firm by its labor union. Shareholder proposal rights for public firms with USD 200 million or less of total assets constituted about seventy-nine percent of all shareholder proposals for corporate elections exercised during the research period.

Furthermore, of the public firms belonging to what the Korean Fair Trade Commission—the equivalent of the U.S. Fair Trade Commission—designated on April 1, 2010 as the fifty-three largest business groups, only one public company was subject to shareholder proposal rights during the research period. Even in that case, the company's labor unions initiated shareholder proposals twice for corporate elections in order to elect labor-friendly nominees to the board of directors (see Appendix, Table 2). Both times, however, labor unions did not obtain support from other shareholders. This result indicates that shareholder proposal rights are not an effective method for addressing the dissatisfaction of general shareholders of large public firms, especially in

the so-called *chaebols*,<sup>48</sup> which are large Korean corporate groups controlled by family members.

Table 7 below shows the frequency with which shareholder proposal rights were exercised, depending on the size of the relevant public firms' net assets.

**Table 7.** *Frequency of Exercising Shareholder Proposal Rights Depending on Firms' Net Asset Size*

Net Asset Size (in MM USD)	2007	2008	2009	Total
<b>Greater than 1,000</b>	1 (3.2%)	1 (2.1%)	0 (0.0%)	2 (1.8%)
<i>(Elected)</i>	0 (0.0%)	0 (0.0%)	0 (-)	0 (0.0%)
<b>600 – 1,000</b>	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
<i>(Elected)</i>	0 (-)	0 (-)	0 (-)	0 (-)
<b>500 – 600</b>	0 (0.0%)	2 (4.3%)	0 (0.0%)	2 (1.8%)
<i>(Elected)</i>	0 (-)	0 (0.0%)	0 (-)	0 (0.0%)
<b>400 – 500</b>	0 (0.0%)	1 (2.1%)	0 (0.0%)	1 (0.9%)
<i>(Elected)</i>	0 (-)	1 (100.0%)	0 (-)	1 (100.0%)
<b>300 – 400</b>	2 (6.5%)	2 (4.3%)	1 (3.1%)	5 (4.6%)
<i>(Elected)</i>	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
<b>200 – 300</b>	1 (3.2%)	2 (4.3%)	0 (0.0%)	3 (2.7%)
<i>(Elected)</i>	0 (0.0%)	0 (0.0%)	0 (-)	0 (0.0%)

<sup>48</sup> The definition and scope of *chaebols* is not entirely clear. For a general description of a chaebol, see Jeong-Pyo Choi & Thomas G. Cowling, *Diversification, Concentration and Economic Performance: Korean Business Groups*, 21 REV. INDUS. ORG. 271, 273–75 (2002).



<b>Net Asset Size (in MM USD)</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>100 – 200</b>	3 (9.7%)	10 (21.3%)	6 (18.8%)	19 (17.3%)
<i>(Elected)</i>	1 (33.3%)	1 (10.0%)	1 (16.7%)	3 (15.8%)
<b>Less than 100</b>	24 (77.4%)	29 (61.7%)	25 (78.1%)	78 (70.9%)
<i>(Elected)</i>	8 (33.3%)	13 (44.8%)	3 (12.0%)	24 (30.8%)
<b>Total</b>	31	47	32	110

Notes to Table 7:

*Conversion Rate Assumption* — The foreign exchange rate as of the end of an immediately preceding year of the date when a relevant shareholder meeting takes place is applied (i.e., 1 USD = KRW 929.6 for the shareholder proposals at a shareholder meeting in 2007, KRW 938.2 for 2008, and KRW 1,257.5 for 2009, respectively).

\* \* \*

When one views the distribution of shareholder proposals based on a firm's net asset size, one notices that firms with smaller net assets have also tended to receive considerably more shareholder proposals for corporate elections. For example, approximately eighty-eight percent of all shareholder proposals were made for public firms with net assets of USD 200 million or less.

There are several possible explanations for this concentration of shareholder proposals in small public companies. First, perhaps the 3% or 1% ownership threshold<sup>49</sup> remains too low to deter unnecessary exercise of shareholder proposal rights, especially for small companies.<sup>50</sup> Shareholders may hold the minimum shares required to exercise

<sup>49</sup> Public disclosures on DART and KIND do not usually show whether shareholder proposals were exercised based upon a general shareholder proposal right or a special shareholder proposal right.

<sup>50</sup> See Letter from Professors at Harvard Law School and Harvard Business School to Elizabeth Murphy, Secretary of the SEC, on Facilitating Shareholder Director Nominations (Aug. 13, 2009), available at <http://www.sec.gov/comments/s7-10-09/s71009-164.pdf> (asserting that '[t]he 1% threshold for share owners of large companies is too low,' as it would allow for excessive contests for corporate elections, which would in turn 'distract boards from the real work of leading their companies').

shareholder proposal rights relatively more easily, and may also find it easier to recruit other shareholders to make aggregate shareholding reach the minimum ownership requirement.

In this regard, the election rate of shareholder proposals for public firms whose assets value less than USD 100 million ranks second to that for firms with assets of USD 400 million or more, but less than that for firms with USD 500 million or more in both cases. Since shareholder proposals converge abnormally on small public firms, it is difficult to compare the election rates of public firms of different sizes directly to one another. Nonetheless, the relatively high success rate of shareholder proposals for small firms also prevents one from reaching the conclusion that shareholder proposals for small firms were made more frequently without reasonable grounds in a disproportionately excessive way than for larger public firms.

Second, small-sized firms may have relatively bad corporate governance or incompetent and/or dishonest directors. This may increase the necessity of raising shareholder proposals in smaller firms instead of relatively larger firms. It resonates with the research of the Corporate Governance Service in 2009, which found that public firms having more assets tended to have better-quality corporate governance.<sup>51</sup> From another angle, given that the statute itself writes stricter corporate governance requirements for public firms with larger assets, the Corporate Governance Service research does not necessarily mean that larger firms have far less corporate governance issues creating dissatisfaction among shareholders.

These two different possible explanations will lead to different policy choices in considering appropriate eligibility requirements.

#### *D. Cumulative Voting and Shareholder Proposal Rights*

Under the cumulative voting system, if two or more directors are scheduled to be elected at a shareholder meeting, each shareholder has the number of votes equal to the number of shares he or she owns times the number of directorships to be filled.<sup>52</sup> Shareholders can distribute those votes among one or more candidates in any way they would like. In South

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<sup>51</sup> See 2009 *nyun Sangjangbeobin Jibaekoojo Pyungkakyulkwa Mit Deungkeupkongpyo* [The Announcement of the Evaluation of Governance of Public Firms and their Corporate Governance Ratings in 2009], CORP. GOVERNANCE REV., Sept. 2009, at 106, available at [http://www.cgs.or.kr/main/CGS\\_mainEBookIdx.asp?rPType=REV&rDType=LIST&rNo=61&rPublicDate=20120304](http://www.cgs.or.kr/main/CGS_mainEBookIdx.asp?rPType=REV&rDType=LIST&rNo=61&rPublicDate=20120304) (comparing governance scores of public firms and finding that these vary substantially depending on a firm's asset size; for firms with assets valued at less than KRW one trillion, governance scores averaged 34.98%; for firms with assets valued at between KRW one and two trillion, 41.78%; and for firms whose assets valued over KRW two trillion, the score was 55.31%).

<sup>52</sup> KCC amended by Act No. 5591, Dec. 28, 1998, art. 382-2, para. 3 (S. Kor.).

Korea, cumulative voting is presumed unless opted out in the articles of incorporation of a pertinent company.<sup>53</sup>

In cases where the articles of incorporation of a company do not exclude cumulative voting, any shareholder or group of shareholders who owns 3% or more of total outstanding voting shares may request that the company elect its directors by means of cumulative voting at a shareholder meeting if that shareholder meeting is convened for the purpose of electing two or more directors.<sup>54</sup> Furthermore, shareholders of public firms with total assets valued at KRW 2 trillion or more may request cumulative voting by holding at least 1% of the total outstanding voting shares, instead of 3%.<sup>55</sup>

Shareholders in public firms with a cumulative voting system will have a much greater chance of getting their own nominees successfully elected to the board. Thus, it can be expected that shareholders of public firms adopting a cumulative voting system will be more likely to exercise shareholder proposal rights. As such, the exclusion of a cumulative voting system may affect the exercise of shareholder proposals.

Table 8 describes the ratio of public firms with a cumulative voting system subject to shareholder proposal rights for corporate elections. Since a cumulative voting system only applies to the election of directors, shareholder proposals that nominate only auditor candidates are excluded from the scope of this analysis.

**Table 8.** *Cumulative Voting and Shareholder Proposal Rights* (excluding proposals which included only an auditor candidate)

<b>Cumulative Voting</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>Adopted</b>	1 (3.6%)	6 (18.8%)	0 (0%)	7 (7.8%)
<i>(Elected)</i>	0 (0.0%)	3 (50.0%)	0 (-)	3 (42.9%)
<b>Excluded</b>	27 (96.4%)	26 (81.3%)	30 (100%)	83 (92.2%)
<i>(Elected)</i>	9 (33.3%)	9 (34.6%)	4 (13.3%)	22 (26.5%)

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at para. 1.

<sup>55</sup> KCC amended by Act No. 9362, Jan. 30, 2009, art. 542-7, para. 2 (S. Kor.); the Presidential Decree of the KCC, art. 12 (S. Kor.).

<b>Cumulative Voting</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>Total</b>	28	32	30	90

One study from the Economic Reform Research Institute reveals that only 124 of 1,678 public firms (7.39%) had not excluded cumulative voting systems as of the end of November 2008.<sup>56</sup> Assuming that the ratio of public firms that do not opt out from cumulative voting to those that do remained similar to that reported in a study by the Economic Reform Research Institute (taking place between 2007 and 2009), the result in Table 8 does not show that public firms with cumulative voting experienced any noticeably-greater number of shareholder proposals.

Moreover, considering the varying frequency of shareholder proposals for public firms with cumulative voting systems over the research period, one would have difficulty concluding that the adoption of cumulative voting had a large influence on the decision of whether or not to make a shareholder proposal. In particular, only one shareholder proposal was exercised for a public firm with cumulative voting in 2007, and none in 2009. Furthermore, all of the public firms on the Stock Market Division for which shareholder proposal rights were exercised during the research period were firms that had excluded the cumulative voting system (See Table 2).<sup>57</sup>

In contrast to the weak relationship between the adoption of a cumulative voting system and the frequency of shareholder proposals, once shareholder candidates were nominated, such nominees enjoyed a higher rate of success in being elected (i.e. 42.9% vs. 26.5%).

<sup>56</sup> See KYUNGJEAHEHYUCKYEONKOOSO [ECONOMIC REFORM RESEARCH INSTITUTE], JIBJOONGTOOPYOJEEUI SHILHYOSUNG BOONSUK [THE ANALYSIS OF EFFECTIVENESS OF CUMULATIVE VOTING SYSTEMS] 3 (2009), available at [http://www.eri.or.kr/report/report\\_view.php?code=issue&rpt\\_seq=62](http://www.eri.or.kr/report/report_view.php?code=issue&rpt_seq=62) (stating that the Institute classified public firms that excluded cumulative voting systems at an annual shareholder meeting in 2009 as public firms without a cumulative voting system).

<sup>57</sup> More public firms on the KOSDAQ Market Division tend not to exclude the cumulative voting system than is the case with those on the Stock Market Division. See *id.* at 4 (stating that out of 117 public firms with cumulative voting systems, seventy-two firms (or 61.5%) are listed on the KOSDAQ market, which by far exceeds the number of firms—forty-five (or 38.5%)—that are listed on the Stock Market Division).

*E. Purpose of Exercising Shareholder Proposal Rights*

**1. Usage of Shareholder Proposals Depending on Different Purposes**

Table 9 below classifies shareholder proposals for corporate elections exercised during the research period according to their purpose.

**Table 9.** *Purpose of Exercising Shareholder Proposal Rights*

<b>Purpose</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>Control Contests</b>	22 (71.0%)	23 (48.9%)	15 (46.9%)	60 (54.6%)
<i>(General)</i>	20 (64.5%)	23 (48.9%)	15 (46.9%)	58 (52.7%)
<i>(Family Dispute)</i>	2 (6.5%)	0 (0.0%)	0 (0.0%)	2 (1.8%)
<b>Nominating a Small Slate of Director(s)/Auditor(s)</b>	8 (25.8%)	23 (48.9%)	17 (53.1%)	48 (43.6%)
<i>(Institutional Investor)</i>	2 (6.5%)	16 (34.0%)	7 (21.9%)	25 (22.7%)
<i>(Corporate Shareholder)</i>	0 (0.0%)	0 (0.0%)	2 (6.25%)	2 (1.8%)
<i>(Individual Shareholder)</i>	2 (6.5%)	5 (10.6%)	6 (18.8%)	13 (11.8%)
<i>(Unknown)</i>	4 (12.9%)	2 (4.3%)	2 (6.3%)	8 (7.3%)
<b>Labor Union</b>	1 (3.2%)	1 (2.1%)	0 (0.0%)	2 (1.8%)
<b>Total</b>	31	47	32	110

Notes to Table 9:

The percentage in parentheses indicates the ratio of shareholder proposals to the entire number of shareholder proposals for each year (organized in columns labeled “2007”, “2008” and “2009”) and, in the far right-hand column, to the entire number of shareholder proposals during the whole research period.

\* \* \*

Table 9 above shows that most shareholder proposal rights were mainly exercised for control contests, or for the nomination of a small

slate of director or auditor candidates. In particular, a majority of shareholder proposal rights involved cases where nominating shareholders proposed their own nominees, ultimately to gain control power over public companies. More specifically, in 2007 the ratio of shareholder proposals made in the context of control disputes amounted to seventy-one percent of all shareholder proposals. The proportion of proposals where shareholders nominated a small slate of director or auditor candidates remained small compared to the proportion which related to attempts to take over corporate control during the same period, which was 25.8%.

It should be noted in shareholder proposals for corporate elections in South Korea that individual shareholders take a highly visible role in demanding the improvement of corporate governance or poor management (e.g., see thirteen shareholder proposals in Table 9). This is also reflected in the phenomenon that minority individual shareholders often will form a club via the Internet dedicated to enhancing shareholder value at a specific public firm, where they exchange information and their opinions about the firm, and meet the management to ask that their requests be implemented.<sup>58</sup>

In connection with the above ratio, Table 10 below sets forth data relating to whether or not public companies at issue, along with nominating shareholders, actually conducted proxy solicitations. The table also shows whether or not nominating shareholders actually relied on the company's proxy materials, or whether they initiated their own proxy solicitations despite having access the company's proxy card. The information in Table 10 is based on the data available on DART, attained by checking whether the relevant companies and nominating shareholders filed their own proxy statements or not.

**Table 10. Shareholder Proposal Right and Proxy Solicitation**

<b>Who Conducted Proxy</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>Both</b>	8 (25.8%)	18 (38.3%)	10 (31.3%)	36 (32.7%)
<b>Company only</b>	6 (19.4%)	6 (12.8%)	9 (28.1%)	21 (19.1%)
<b>Shareholder only</b>	4 (12.9%)	3 (6.4%)	2 (6.3%)	9 (8.2%)

<sup>58</sup> See, e.g., Man Ho Ahn, Soaekjujueui Him . . . Juchongahnkeon Noko Kyungyoungjinkwa Pyodaekyeol [Minority Shareholder Power . . . in a Voting Contest as to the Agendas of a Shareholder Meeting], FN NEWS, Mar. 4, 2008, [http://www.fnnews.com/view?ra=Sent0701m\\_View&corp=fnnews&arcid=080303222800&cDateYear=2008&cDateMonth=03&cDateDay=04](http://www.fnnews.com/view?ra=Sent0701m_View&corp=fnnews&arcid=080303222800&cDateYear=2008&cDateMonth=03&cDateDay=04) (noting that minority shareholders are increasingly tending to engage in collective action, especially online).

Who Conducted Proxy	2007	2008	2009	Total
None	13 (41.9%)	20 (42.6%)	11 (34.4%)	44 (40.0%)
<b>Total</b>	31	47	32	110

Notes to Table 10:

The percentage in parentheses indicates the ratio of shareholder proposals to the entire number of shareholder proposals for each year (organized in columns labeled “2007”, “2008” and “2009”) and, in the far right-hand column, to the entire number of shareholder proposals during the whole research period.

\* \* \*

Table 10 indicates that even though the candidates nominated through shareholder proposals are required to be included on a company’s proxy card, a large number of nominating shareholders filed their own proxy statement and conducted their own separate proxy solicitation. In thirty-six out of fifty-seven cases (63.2%) where a company filed its own proxy statement, nominating shareholders also filed their own proxy statement. Cases where the public company at issue solely filed its own proxy statement constituted only 19.1% of the total number of shareholder proposals exercised during the research period.

Table 9 and Table 10 raise the following issues about the current shareholder access system: (1) the appropriateness of empowering nominating shareholders who seek control of the target company in order to take advantage of the company’s proxy card, and (2) whether or not current shareholder access efficiently serves the interests of dissatisfied shareholders who try to elect a small slate of directors (or auditors) to enhance the monitoring of incumbent directors or senior managers.

## 2. Shareholder Proposals for Control Contests

Shareholder proposal rights for corporate elections in South Korea do not limit the number of director candidates who can be nominated by shareholders.<sup>59</sup> Beyond that, nominating shareholders can propose

<sup>59</sup> See *supra* note 29; Hyung Woong Song, *Jujujeahnkwonhangsaeui Je Moonje [Problems in Exercising a Shareholder Proposal]*, 27 BUS. FIN. & L. 51, 56–57 (2008) (stating that a shareholder proposal for a corporate election is inappropriate where there has been a violation of presidential decrees, laws, or articles of incorporation of a company). Unlike the 2010 election contest rule, the KCC does not specify any restrictions on the number or eligibility of director candidates nominated by shareholder proposals.

director nominees who are not independent from the company, their insiders, or major shareholders.<sup>60</sup>

As a consequence of the aforementioned factors, unless the articles of incorporation of a public firm state otherwise, a nominating shareholder may propose a full slate of director candidates constituting a majority of the board.<sup>61</sup> This allows those involved in hostile takeovers, as well as shareholders who want to elect only one or two of their nominees, to take advantage of a company's proxy card in order to ask for votes for their own nominees. This frequent usage of shareholder proposals for the purpose of control contests begs the question of whether nominating shareholders who want to obtain control should be excluded from the opportunity to access a company's proxy card.

According to the legislative materials relating to shareholder proposal rights that are publicly available in the Korean National Assembly archives, the legislature did not pay much attention to whether shareholder proposal rights being used for the purpose of effecting change in control power should receive different treatment in connection with a firm's proxy solicitations at the time of their enactment. In contrast, the 2010 election contest rule in the U.S. limited the scope of nominating shareholders' rights only to require a company to include the greater of (i) one shareholder nominee, or (ii) the number of nominees that represents twenty-five percent of the company's board of directors for the purpose of preventing shareholder proxy access from being used by shareholders to pursue a change of control.<sup>62</sup>

In this regard, Table 11 below shows whether or not target companies or nominating shareholders engaged in proxy solicitations in the context of a control contest at the time that the shareholder proposals were made.

**Table 11.** *Proxy Solicitation in the Case of Control Contests*

<b>Who Conducted Proxy</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>Both Company and Shareholder</b>	6 (27.3%)	10 (43.5%)	6 (40.0%)	22 (36.7%)
<i>(KOSPI)</i>	3	1	3	7
<i>(KOSDAQ)</i>	3	9	3	15

<sup>60</sup> Song, *supra* note 59, at 56–57.

<sup>61</sup> Song, *supra* note 59, at 56–57.

<sup>62</sup> SEC Release: Facilitating Shareholder Director Nominations, *supra* note 1, at 26.



<b>Who Conducted Proxy</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>Company only</b>	4 (18.2%)	0 (0%)	3 (20.0%)	7 (11.7%)
(KOSPI)	0	0	1	1
(KOSDAQ)	4	0	2	6
<b>Shareholder only</b>	4 (18.2%)	2 (8.7%)	1 (6.7%)	7 (11.7%)
(KOSPI)	2	0	0	2
(KOSDAQ)	2	2	1	5
<b>None</b>	8 (36.4%)	11 (47.8%)	5 (33.3%)	24 (40.0%)
(KOSPI)	1	2	1	4
(KOSDAQ)	7	9	4	20
<b>Total</b>	22	23	15	60
(KOSPI)	6	3	5	14
(KOSDAQ)	16	20	10	46

Notes to Table 11:

The percentage in parentheses indicates the ratio of shareholder proposals to the entire number of shareholder proposals for each year (organized in columns labeled “2007”, “2008” and “2009”) and, in the far right-hand column, to the entire number of shareholder proposals during the whole research period.

\* \* \*

In the case of control contests, about one half of nominating shareholders filed their own proxy statements. Of all cases where shareholder proposal rights were exercised for the purpose of control contests, cases where only the target companies filed proxy statements constituted approximately twelve percent of all of the cases. On the other hand, Table 10 shows that 19.1% of nominating shareholders in general relied solely on the company’s proxy card to ask for other shareholders’ votes. Nominating shareholders did their own proxy solicitations more frequently for the purpose of control contests (i.e., 48.3% in Table 11), as compared to the entire number of shareholder proposals involving shareholders’ own proxy solicitation regardless of their purpose(s) (i.e., 40.9% in Table 10). This result suggests that nominating shareholders

tended to conduct their own proxy solicitations more frequently when pursuing acquisition of management controlling power.

The above phenomenon may result from nominating shareholders contacting other shareholders individually to persuade them to vote for their nominees. Without their own proxy solicitation, nominating shareholders may not engage in soliciting delegation of voting rights to themselves or to their designees on their own. When seeking to obtain management controlling power, serious nominating shareholders usually are more willing to spend additional resources to try to get support from other shareholders in corporate elections.

Shareholders probably further need to obtain proxy cards delegated to themselves or to their designees, instead of the pro-company people designated in a company's proxy card, in order to deal with unexpected changes at a shareholder meeting.

While a shareholder meeting may not resolve any agenda not specifically included in the notices convening the meeting,<sup>63</sup> specific items on which to vote under a notified agenda are generally understood to be able to be amended by the board of directors after notices of the meeting have gone out, but earlier than the shareholder meeting itself—or than shareholders' approval at a shareholder meeting. For example, if a notice about holding a shareholder meeting includes electing directors or auditors on the agenda, specific candidates for directors or auditors can be changed prior to or at a shareholder meeting.<sup>64</sup> A company also may try to adjourn a shareholder meeting or conduct other procedural matters at a shareholder meeting with shareholders' approval.

To that end, a proxy card usually includes language to authorize proxies to vote at their reasonable discretion in cases where new or amended items are put to a vote. Consequently, shareholders in pursuit of

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<sup>63</sup> KCC amended by Act No. 9746, May 28, 2009, art. 363, paras. 2 and 3 (S. Kor.); Supreme Court [S. Ct.], 79Da9, Mar. 27, 1979 (S. Kor.) (deciding that a shareholder meeting can review and resolve only the agendas indicated when it was convened); KON SIK KIM ET AL., HOESABEOB [CORPORATE LAW] 96–97 (Pak Young Sa ed., 2010) (stating that a shareholder meeting can review and resolve only the agendas included in its convening notice).

<sup>64</sup> The permissibility of changing specific items may lead to surprising resolutions that absent shareholders may not have expected. Permissibility of these changes can be especially problematic in electing directors and auditors, considering the importance of the identities of specific directors or auditors in corporate elections. Chang Won Lee, Dong Kon Lee & Yi Jin Yoon, *Kyungyoungkwon Datoomkwa Kwanlyeonhan Wiimjangdaekyeolaeseoeui Shilmoosang Je Moonje* [Practical Problems in Conducting Proxy Fights in Connection with Control Contests] 27 BUS. FIN. & L. 32, 45–47 (2008). To mitigate this problem in corporate elections, the KCC was amended to stipulate that public firms be required to elect directors or auditors only from the candidates included in the notices or public announcements made in convening the shareholder meeting, which amendment has been effective as of February 4, 2009. KCC amended by Act No. 9362, Jan. 30, 2009, art. 542-5 (S. Kor.).

taking over the control power often like to conduct their own proxy solicitation regardless of whether there is access to a company's proxy solicitation.

### 3. Shareholders Nominating a Small Slate of Director or Auditor Candidates

Beyond the issue of frequent shareholder access for the purpose of control contests, the shareholders that nominated only a small slate of director or auditor candidates also turned out to conduct their own proxy solicitations separately for the purpose of asking other shareholders to delegate voting power to them, in many cases.

**Table 12.** *Proxy Solicitation in the Case of Nominating a Small Slate of Director or Auditor Candidates*

<b>Who Conducted Proxy</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>Both</b>	2 (25.0%)	7 (30.4%)	4 (23.5%)	13 (27.1%)
<i>(Institutional)</i>	1 (50.0%)	6 (37.5%)	3 (42.9%)	10 (40.0%)
<i>(Individual)</i>	1 (50.0%)	1 (20.0%)	1 (16.7%)	3 (23.1%)
<b>Company only</b>	1 (12.5%)	6 (26.1%)	6 (35.3%)	13 (27.1%)
<i>(Institutional)</i>	0 (0.0%)	5 (31.3%)	2 (28.6%)	7 (28.0%)
<i>(Individual)</i>	0 (0.0%)	0 (0%)	3 (50.0%)	3 (23.1%)
<b>Shareholder only</b>	0 (0.0%)	1 (4.4%)	1 (5.9%)	2 (4.2%)
<i>(Institutional)</i>	0 (0.0%)	1 (6.3%)	1 (14.3%)	2 (8.0%)
<i>(Individual)</i>	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0%)

<b>Who Conducted Proxy</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>None</b>	5 (62.5%)	9 (39.1%)	6 (35.3%)	20 (41.7%)
<i>(Institutional)</i>	1 (50.0%)	4 (25.0%)	1 (14.3%)	6 (24.0%)
<i>(Individual)</i>	1 (20.0%)	4 (80.0%)	2 (33.3%)	7 (53.9%)
<b>Total</b>	8	23	17	48
<i>(Institutional)</i>	2	16	7	25
<i>(Individual)</i>	2	5	6	13

Notes to Table 12:

The percentage in parentheses indicates the ratio of shareholder proposals to the entire number of shareholder proposals for each year (organized in columns labeled “2007”, “2008” and “2009”) and, in the far right-hand column, to the entire number of shareholder proposals during the whole research period. The percentages in parentheses for “Institutional” or “Individual” rows are the ratios of shareholder proposals involving proxy solicitations, to shareholder proposals exercised by institutional shareholders or individual shareholders.

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Table 12 shows that, even in the case of nominating a small slate of director or auditor candidates, many shareholders solicited proxies separately, although that percentage (i.e., 31.3%) is lower than that of shareholders’ proposals for control contests (or 48.3% in Table 11). In particular, institutional shareholders pursued their own proxy solicitation in forty-eight percent of the total shareholder proposals that they initiated for the purpose of nominating a small slate of director or auditor candidates. Even when a target company made its proxy solicitation, nominating institutional investors initiated their own proxy solicitation in half of all cases (thirteen out of twenty-six).

In the case of shareholder proposals exercised by individual shareholders, neither target companies nor nominating shareholders made proxy solicitations in a majority of cases (53.9%). Nonetheless, nominating shareholders still commonly do not solely rely on proxy access to a company’s proxy card. Individual investors also submitted

their own proxy materials in half of all cases (three out of six), even when target companies made proxy solicitations.

This result naturally is followed by the question of why nominating shareholders feel the strong necessity to file their proxy statements and send their proxy cards to other shareholders separately, when seeking the election of a small slate of directors or auditors. As in the case of control contests, nominating shareholders may want to contact other shareholders individually to persuade them to vote for their nominees and to obtain proxies directed to the people designated by nominating shareholders themselves.

This leads to another question: whether or not the current shareholder access to a company proxy card should be reconsidered, to further facilitate the shareholder franchise by reducing the necessity of separately engaging in proxy solicitation, especially for shareholder proposals to nominate merely a small number of directors or auditors.

From a different point of view, these statistics may imply that the costs of proxy solicitations in South Korea are relatively more bearable than in the United States. One article refers to a 2001 Bloomberg Markets research report noting that in the United States, shareholder-sponsored proxy contests cost around USD 6.2 million on average.<sup>65</sup> While it is recognized that proxy solicitations also place burdensome costs on solicitors in South Korea,<sup>66</sup> it is difficult to find relevant information about the resulting costs that *shareholders* bear.<sup>67</sup> While not confirmed, one would guess that the costs may be lower in South Korea than in the United States, considering that even individual minority shareholders have engaged in their own proxy solicitations for nominating a small slate of directors or an auditor in a few cases.

#### F. Types of Directors Nominated by Shareholders

Unlike the 2010 election contest rule in the U.S., the shareholder proposal and shareholder access system in South Korea does not restrict the qualification of nominees. Thus, shareholders may nominate a non-

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<sup>65</sup> Stephen J. Choi & Jill E. Fisch, *How to Fix Wall Street: A Voucher Financing Proposal for Securities Intermediaries*, 113 YALE L.J. 269, 300 (2003).

<sup>66</sup> See KON SIK KIM & SUN SEOP JUNG, JABONSHIJANGBEOB [THE FISCMA] 261 (Doo Sung Sha ed., 2009) (pointing out that proxy solicitations incur considerable costs, including those associated with preparing, printing and delivering proxy statements and proxy cards).

<sup>67</sup> Hwa-Jin Kim, *Kieup Kyungyoungkwon Shijangkwa Hedge Fund [The Market for Corporate Control and the Hedge Fund]*, 48 SEOUL NAT'L U. BUB-HAK 236, 257 (2007) (pointing out that there has not been serious discussion about the costs of proxy solicitation in South Korea, and indicating that there have been no known cases where any shareholder has argued to be reimbursed for the costs he or she incurred to conduct a proxy solicitation).

outside director as well as an outside director or an auditor.<sup>68</sup>

Table 13 below shows the types of directors and auditors nominated through shareholder proposals. Given the auditor's role of surveillance over the board of directors and the individual directors' performance as well as audits of company accounts, auditors are classified in the same way as outside directors.

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<sup>68</sup> An outside director is a statutory term for a director who is not involved in the day-to-day business of a company and meets additional requirements with respect to their independence under the KCC. KCC *amended by* Act No. 9362, Jan. 30, 2009, art. 542-8, para. 2 (S. Kor.) enumerates specific cases that disqualify an individual from serving as outside director of a public firm, including: (1) a person who is a full-time director or employee of the company or who has worked as a full-time director, auditor or employee for the company within the preceding two years; (2) in the case where the largest shareholder is a natural person, the largest shareholder of the company and his or her spouse and lineal ascendant and descendant; (3) in the case where the largest shareholder is a corporate entity, a director, an auditor or an employee of the entity; (4) the spouse and lineal ascendant and descendant of a director or an auditor of the company; (5) a director, auditor or employee of a parent company or a subsidiary of the company; (6) a director, auditor or employee of a corporation that has an important business relationship with the company; (7) a director, auditor or employee of a corporation in which a director or an employee of the company is a director; (8) a minor, an incompetent person or a quasi-incompetent person; (9) a bankrupt person who has not been reinstated; (10) a person who has been sentenced to imprisonment-without-prison-labor or heavier punishment, where two years have not elapsed since the conclusion of the execution of such punishment or since a final judgment was rendered directing that the punishment on such person not be executed; (11) a person who was discharged or dismissed from a public firm for violating the FISCMA and other specific laws, where two years have not elapsed since the date of such discharge or dismissal; (12) the largest shareholder of the company, and any person having a special relationship with the largest shareholder; (13) a major shareholder (i.e. a person who virtually owns 10% or more of the outstanding shares with voting rights—regardless of under which name the shares have been registered—or a person who has de facto control over the major business matters of the company) of a company and that person's spouse and lineal ascendant and descendant; (14) a person who is a full-time director or employee of the company or its affiliate, or who worked as a full-time director or employee for the company or its affiliate within the preceding two years; (15) a spouse or lineal ascendant and descendant of a full-time director of the company; (16) a person who is a full-time director or employee of a corporation that has an important business relationship with the company, or a competitive or cooperative relationship with the company, or who was a full-time officer or employee for such corporation within the preceding two years; (17) a full-time director or employee of a corporation in which a full-time director or employee of the company is a non-standing director; (18) a person who holds the office of an outside director, non-standing director, or non-standing auditor of two or more other public firms; (19) an attorney-at-law, certified public accountant, certified tax accountant, or other professional who is providing professional services to the company based on relevant agreements; (20) a person who holds one percent or more of the total number of shares issued by the company; or (21) a person whose balance of transactions with the company is KRW 100 million or more (except for standardized transactions conducted on the basis of general terms and conditions).

**Table 13.** *Types of Directors or Auditors Nominated by Shareholder Proposals*

<b>Types of Nominated Directors</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>Outside Director/Auditor Only</b>	6 (19.4%)	24 (51.1%)	10 (31.3%)	40 (36.4%)
<b>Including Non-Outside Director</b>	25 (80.7%)	23 (48.9%)	22 (68.8%)	70 (63.6%)
<b>Total</b>	31	47	32	110

Somewhat in line with the frequent use of shareholder proposal rights for the purpose of control contests, a majority of shareholder proposals included the nomination of non-outside directors. Whether the inclusion of a non-outside director candidate is appropriate should be discussed in conjunction with the permissibility of shareholder access in the case of control contests.

#### *G. Stock Ownership and Shareholder Proposal Rights*

While the election of directors and auditors in principle requires consent of a majority of voting shares present at a shareholder meeting, and a quarter or more of the total number of the voting shares, shareholder proposals were exercised even in public firms that have a controlling shareholder who possesses more than a majority of voting shares (see Table 14 below).

**Table 14.** *Frequency of Exercising Shareholder Proposal Rights Depending on Shareholder Ownership Structure of Target Firms*

<b>Largest Shareholder Group Ownership</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>50 – 100%</b>	1 (3.2%)	6 (12.8%)	2 (6.3%)	9 (8.2%)
<b>40 – 50%</b>	4 (12.9%)	3 (6.4%)	2 (6.3%)	9 (8.2%)

<b>Largest Shareholder Group Ownership</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>30 – 40%</b>	6 (19.4%)	6 (12.8%)	8 (25.0%)	20 (18.2%)
<b>20 – 30%</b>	7 (22.6%)	14 (29.8%)	7 (21.9%)	28 (25.5%)
<b>10 – 20%</b>	8 (25.8%)	16 (34.0%)	10 (31.3%)	34 (30.9%)
<b>0 – 10%</b>	5 (16.1%)	2 (4.3%)	3 (9.4%)	10 (9.1%)
<b>Total</b>	<b>31</b>	<b>47</b>	<b>32</b>	<b>110</b>

The fact that shareholder proposals were exercised even in public firms having a controlling shareholder seems to largely result from certain voting restrictions on electing an auditor, namely, that: (i) no shareholder may exercise his or her voting rights over 3%, and (ii) the largest shareholder of a public firm and its specially-related persons may only exercise their voting rights up to 3% in the aggregate.<sup>69</sup>

Table 15 below shows the frequency of shareholder proposals for corporate elections, which excludes shareholder proposals containing only an auditor candidate. This reveals that shareholder proposals other than those for nomination solely of auditor candidates were hardly exercised in public firms that have controlling shareholders (only two during the research period). On the other hand, the statutory restriction on the voting rights of major shareholders appears, to some extent, to effectively encourage minority shareholders to nominate their auditor candidates in spite of the existence of a controlling shareholder.

<sup>69</sup> KCC amended by Act No. 3724, Apr. 10, 1984, art. 409, para. 2 (S. Kor.); KCC amended by Act No. 9362, Jan. 30, 2009, art. 542-12, para. 3 (S. Kor.). Public firms with total assets valued at KRW 2 trillion or more have to establish audit committees. KCC amended by Act No. 9362, Jan. 30, 2009, art. 542-11, para. 1 (S. Kor.); the Presidential Decree of the KCC, art. 16, para. 1 (S. Kor.). There are similar restrictions on voting rights for electing directors who are supposed to be members of their audit committees. KCC amended by Act No. 9362, Jan. 30, 2009, art. 542-12, paras. 3–4 (S. Kor.). However, considering the size of total assets of public firms that were subject to shareholder proposals for corporate elections (see Table 6), the influence of such voting restrictions might not be substantial.



**Table 15.** *Frequency of Exercising Shareholder Proposal Rights Depending on Shareholder Ownership Structure of Target Firms (excluding shareholder proposals nominating only an auditor candidate)*

<b>Largest Shareholder Group Ownership</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>50% – 100%</b>	0 (0%)	0 (0%)	2 (6.7%)	2 (2.2%)
<b>40% – 50%</b>	3 (10.7%)	1 (3.1%)	1 (3.3%)	5 (5.6%)
<b>30% – 40%</b>	6 (21.4%)	4 (12.5%)	7 (23.3%)	17 (18.9%)
<b>20% – 30%</b>	6 (21.4%)	12 (37.5%)	7 (23.3%)	25 (27.8%)
<b>10% – 20%</b>	8 (28.6%)	13 (40.6%)	10 (33.3%)	31 (34.4%)
<b>0% – 10%</b>	5 (17.9%)	2 (6.3%)	3 (10.0%)	10 (11.1%)
<b>Total</b>	28	32	30	90

Table 16 below shows the frequency and success rate of shareholder proposals submitting auditor candidates (including proposals nominating both director and auditor candidates).

**Table 16.** *Shareholder Proposals for an Auditor Election Depending on Shareholder Ownership Structure*

<b>Largest Shareholder Group Ownership</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>50% – 100%</b>	1	6	0	7
<i>(elected)</i>	0 (0.0%)	1 (16.7%)	0 (-)	1 (14.3%)
<b>40% – 50%</b>	3	2	2	7

<b>Largest Shareholder Group Ownership</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<i>(elected)</i>	0 (0.0%)	1 (50.0%)	0 (0.0%)	1 (14.3%)
<b>30% – 40%</b>	2	3	4	9
<i>(elected)</i>	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
<b>20% – 30%</b>	2	5	3	10
<i>(elected)</i>	1 (50.0%)	0 (0.0%)	0 (0.0%)	1 (10.0%)
<b>10% – 20%</b>	5	10	7	22
<i>(elected)</i>	2 (40.0%)	2 (20.0%)	1 (14.3%)	5 (22.7%)
<b>0% – 10%</b>	2	1	2	5
<i>(elected)</i>	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
<b>Total</b>	15	27	18	60
<i>(elected)</i>	3 (20.0%)	4 (14.8%)	1 (5.6%)	8 (13.3%)

Notes to Table 16:

The election ratio is calculated based on cases where shareholder auditor candidates were elected, regardless of whether shareholder director candidates were chosen.

\* \* \*

Out of 110 shareholder proposals, sixty proposals included one or more auditor candidates, but only eight proposals for auditor candidates

(13.3%) were approved at a shareholder meeting. This success rate is much lower than the rate of the election of nominated directors or auditors as a whole (25.5%) (see Table 17 below).

**Table 17.** *Success Rate of Shareholder Proposals Depending on Shareholder Ownership Structure*

<b>Largest Shareholder Group Ownership</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
<b>Greater than 50%</b>	0.0% (0/1)	16.7% (1/6)	0.0% (0/2)	11.1% (1/9)
<b>40% – 50%</b>	25.0% (1/4)	66.7% (2/3)	0.0% (0/2)	33.3% (3/9)
<b>30% – 40%</b>	16.7% (1/6)	33.3% (2/6)	12.5% (1/8)	20.0% (4/20)
<b>20% – 30%</b>	28.6% (2/7)	28.6% (4/14)	0.0% (0/7)	21.4% (6/28)
<b>10% – 20%</b>	62.5% (5/8)	31.3% (5/16)	20.0% (2/10)	35.3% (12/34)
<b>Less than 10%</b>	0.0% (0/5)	50.0% (1/2)	33.3% (1/3)	20.0% (2/10)
<b>Total</b>	29.0% (9/31)	31.9% (15/47)	12.5% (4/32)	25.5% (28/110)

Minority shareholders usually exercise greater influence on the election of auditors due to the voting restriction on block-holding shareholders stated above. For this reason, minority shareholders should have a better chance of electing their own auditor candidates, even in public firms that have controlling shareholders, if those minority shareholders get sufficient support from other shareholders.

On the other hand, that each minority shareholder will also be subject to a 3% voting right restriction can be a deterring factor that prevents minority shareholders from exercising greater voting rights by purchasing large blocks of voting shares. Minority shareholders (i.e., who are not the largest shareholder) may, however, get around the voting right restriction by acquiring voting shares through a separate entity, since the voting restriction on members of an affiliated shareholder group, who are

taken altogether, only applies to the largest shareholder and its affiliates. Consequently, this lower success rate of shareholder proposals for an auditor election creates the suspicion that shareholder proposal rights for an auditor election, in conjunction with the voting restriction, generate excessive shareholder proposals, thereby causing excessive managerial distraction.

#### IV. RETHINKING THE CURRENT SHAREHOLDER PROPOSAL RIGHTS AND PROXY ACCESS

##### A. *Adjusting Eligibility Requirements for Shareholder Proposals and Access*

###### 1. **Questions Regarding the Current Eligibility Requirements**

The fact that frequency of shareholder proposals is dependent on the size of paid-in capital, total assets, or net assets (see Tables 5, 6 and 7) and the concentration of stock ownership (see Tables 14 and 15) together show that the size of target companies matters more than the degree of ownership concentration in accounting for whether or not shareholders decide to make shareholder proposals. Furthermore, the current two-layer shareholding requirement based on the size of the paid-in capital of public firms under the special shareholder proposal right does not seem to work effectively to encourage shareholders of large public firms to nominate their own candidates in order to improve their monitoring power.

While the reason for a higher concentration of shareholder proposals in small public firms as compared to large public firms is not entirely clear, this finding casts doubt on whether the current minimum shareholding requirement in South Korea sets an unduly high threshold for large public firms or an unduly low threshold for small public firms.

###### 2. **The Standard for Gradated Shareholding Requirements**

A special shareholder proposal right requires a different degree of minimum ownership threshold according to the size of a public firm's paid-in capital. This varying shareholder requirement seems to take into account that the shareholders of large public firms will have relatively greater difficulty satisfying a minimum shareholder threshold than shareholders of small public firms.

The differences in the level of minimum thresholds aside, the paid-in capital amount does not seem to be an appropriate yardstick for setting different levels for a minimum shareholder requirement. Paid-in capital is calculated by multiplying the number of total issued shares by

the face value of those shares.<sup>70</sup> Thus, the amount of paid-in capital remains the same regardless of the change in market price of the share of a public firm or other indicators of the entire shareholders' value of a company. Accordingly, paid-in capital is not an appropriate barometer for representing the difficulties that shareholders of public firms face in trying to meet the minimum ownership threshold to qualify for exercising their shareholder proposal rights.

The size of market capitalization or net assets may be a better standard than paid-in capital for setting graduated minimum shareholding requirements. While market capitalization can be a more accurate mark of how shareholders value a company, it is influenced by various other factors, including the general market situation, or even rumors that shareholder proposals will be exercised. The size of net assets seems to provide a more proper basis for setting divergent eligibility requirements for exercising shareholder proposals. Given the distribution of shareholder proposals shown in Table 7, the size of net assets of KRW 100 billion and/or KRW 200 billion could be possible divergent points for setting different minimum shareholding thresholds.

### 3. The Size of a Minimum Shareholding Threshold

Answering the question of how to set the most desirable level of a minimum ownership threshold involves various considerations. It raises concerns about whether or not a minimum ownership threshold for shareholder proposal rights for corporate elections is low enough to motivate dissatisfied shareholders to nominate their own candidates and high enough to discourage trivial shareholder proposals that may not garner sufficient support from other shareholders.<sup>71</sup>

The subject of acceptable minimum ownership also demands some thought as to what level of minimum shareholding threshold will send a real warning to an inefficient board, and at the same time, lead dissatisfied shareholders to achieve real progress or resolution with the incumbent board, regardless of the actual result of a shareholder meeting.<sup>72</sup> Some shareholder proposals during the research period showed the threatening effect of shareholder proposals, inducing incumbent directors to accept shareholder nominees before shareholder proposals actually were even put to a vote at a shareholder meeting (for example, see

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<sup>70</sup> Regardless of whether a corporation issues various types of shares, all the shares issued by one corporation shall have the same face value, determined by each company's articles of incorporation.

<sup>71</sup> *The Harvard Law School Proxy Access Roundtable 67* (Harvard John M. Olin Ctr. for Law, Econ., and Bus., Discussion Paper No. 661, 2010), available at <http://ssrn.com/abstract=1539027> (illustrating the debate as to where to set the minimum threshold for shareholder proposal rights).

<sup>72</sup> *Id.* at 67–68.

No. 31 Dong-A Pharmaceutical case and No. 32 Aiins case in Table 2, and No. 86 Dongwon Development case in Table 3 in the Appendix).

It is difficult to decide the proper level of a minimum shareholding threshold without investigating how shareholder proposal rights are actually being used. Whether or not the current minimum shareholding threshold is serving the above-mentioned purposes should be reviewed based on the actual usage of shareholder proposals for corporate elections.

The current eligibility requirements for shareholder proposals seem to favor the exercise of shareholder proposal rights in small firms. The frequent exercise of shareholder proposal rights without substantial grounds can be very costly to small firms, since it may force them to spend considerable resources to deal with proposals. Given smaller firms' relatively limited resources, the more frequent exercise of shareholder proposal rights at such firms may significantly impede their ordinary business operations.

It is difficult to conclude, however, that the current 3% requirement (for the general shareholder proposal right) or the 1% requirement (for the special shareholder proposal right) for small public firms have produced an abusive exercise of shareholder proposals, without first further studying whether or not public firms subject to shareholder proposals were actually suffering from managerial problems around the time that shareholder proposals were exercised. Some firms were already known to have experienced serious problems, which led them to be delisted.<sup>73</sup>

The scarcer exercise of shareholder proposal rights at large public firms, in contrast, raises the question of whether or not the current 3% (a general shareholder proposal right) or 0.5% (a special shareholder proposal right) requirement for shareholders of large public firms may be too high to facilitate the shareholder franchise at such firms. The discussion over allowing a more generous minimum shareholding requirement in the case of large public firms will stir up additional controversy about the advantages and disadvantages of shareholder proposals.

A suspicion may further arise regarding the effectiveness of shareholder proposals as a measure of improvement of corporate governance in large public firms in South Korea. Out of the thirty largest corporate groups designated by the Korea Fair Trade Commission as of April 1, 2010, twenty have controlling family shareholders, i.e., *chaebol*

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<sup>73</sup> For relevant information about these firms, see *infra* notes 85, 98, 99, 101, 105, 109, 111, 113, 114, 117, 120, 121, 122, 127, 128, 132, 136, 137, and 139 in Tables 2 and 3 in the appendix.

families.<sup>74</sup> Out of the remaining corporate groups, three belonged to *chaebol* groups in the past, but became controlled by a group of financial institutions through debt-equity swaps during the Asian financial crisis. The other seven corporate groups are state-owned firms or former state-owned firms. Given that the exercise of shareholder proposals in those seven current or former state-owned firms may incur more political and social scrutiny, shareholders would be reluctant to make shareholder proposals at those firms.

Taking into account the ownership structure of large public firms, one may argue that shareholder proposals are not exercised for large public firms not because the current minimum shareholding threshold is too high, but because shareholder proposals and proxy access are not effective in addressing the problems of corporate governance of large public firms in South Korea. If a large public firm has a controlling shareholder, an activist shareholder may have less incentive to engage in the making of shareholder proposals, since the chance of their director nominee(s) being elected is low and the role of minority directors they nominate may be expected to be limited, even if elected (via a cumulative voting system or otherwise). The deliberation of an appropriate minimum shareholding threshold for large public firms calls for further research of the ownership structure at such firms.

#### *B. Cumulative Voting and Shareholder Proposal Rights*

A nominating shareholder or group of shareholders who can request the application of a cumulative voting system—in other words, a shareholder or group of shareholders holding 3% or more of total outstanding voting shares, in the case of public firms with total assets of less than KRW 2 trillion—in putting forward their own director candidates will have much better chances of getting their own nominees successfully elected to the board.<sup>75</sup> This advantage of minority shareholders in corporate elections might be partly reflected in the difference between election rates of shareholders' nominees at public firms with cumulative voting systems (42.9%) and at public firms without cumulative voting systems (26.5%) (see Table 8 above).

A cumulative voting system allows minority shareholders to elect their own director candidates to the board without satisfying an ordinary election requirement (in principle, a majority of the voting shares present or represented at a shareholder meeting and a fourth or more of the total

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<sup>74</sup> Designation Status of Korean Corporate Groups, THE KOREAN FAIR TRADE COMMISSION, [http://groupopni.ftc.go.kr/ogroup/guide/guide\\_01.jsp?muduCount=menu\\_01](http://groupopni.ftc.go.kr/ogroup/guide/guide_01.jsp?muduCount=menu_01) (follow link to “Jijunghyunhwang”—or, “the Status of Designation”).

<sup>75</sup> See *supra* Section III.D.

number of issued shares with voting rights).<sup>76</sup> This lessened voting requirement for corporate elections in cumulative voting systems increases the risk that some director nominees representing special interests can be elected to the board.

The advantages and disadvantages of the cumulative voting system in supporting shareholder democracy require further consideration. From the standpoint of a nominating shareholder, it is important to have a cumulative voting system in conjunction with shareholder proposal rights because this combination increases the likelihood that a director candidate he or she nominates will be elected, without having first to obtain consent of a majority of voting shares. Some shareholders who have exercised shareholder proposal rights for corporate elections have also made proposals to adopt cumulative voting systems to increase the chances that their nominees will be elected to the board.<sup>77</sup> In the same vein, if the 2010 election contest rule had been adopted in the United States, a number of nominating shareholders or shareholder groups might also have proposed adopting a cumulative voting system. Consequently, a cumulative voting system may pose a challenge to the belief that a shareholder or a group of shareholders having their own special interests, elected as directors by a shareholder proposal, can be restrained by a majority voting system;<sup>78</sup> a nominee could in theory be elected without actually obtaining the consent of a majority of the entire voting shares in a public firm with a cumulative voting system.

### *C. Voting Restrictions in Auditor Elections and Shareholder Proposals*

The status of shareholder proposals for auditor elections creates the suspicion that voting restrictions in auditor elections cause shareholders to submit more proposals, which however tend to lack sufficient support among other shareholders more often than in director elections (see Section III.G. and Tables 16 and 17 *supra*).

Voting restrictions in auditor elections were adopted in the 1980s

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<sup>76</sup> In general, it is known that one may calculate the number of votes necessary to ensure the election of a given number of directors by the following formula:

$$NS = [(ND \times TS) / (TD + 1)] + \text{one share}$$

NS: the number of shares needed to elect the desired number of directors;  
 ND: the number of directors that a shareholder desires to elect;  
 TS: the total number of shares to be voted at the election; and  
 TD: the total number of directors to be elected.

<sup>77</sup> Examples include Hyundai Securities (right exercised by labor union) and SK (a sovereign wealth fund).

<sup>78</sup> For the argument that special-interest shareholders may be restrained by a majority voting system, see *Bebchuk, supra* note 3, at 720–21.



to ensure the fairness with which auditor's duties are conducted, by discouraging large shareholders from electing an auditor under their control.<sup>79</sup> Assuming that the current voting restrictions remain in place, the necessity of setting stricter eligibility requirements for shareholder proposals for auditor candidates should be discussed to mitigate the risk of excessive managerial distraction in corporate auditor elections.

#### *D. Control Contests and Proxy Access*

The frequent use of shareholder proposal rights during control contests raises concern that current applicable laws and regulations allow people involved in hostile takeovers to take advantage of these laws and regulations at the expense of other shareholders and public firms. In particular, Table 11 above reveals that public firms in the KOSDAQ Market Division received more than three times the number of shareholder proposals for takeover attempts compared to firms listed on the Stock Market Division during the research period. Moreover, nominating shareholders engaged in control contests without conducting their own proxy solicitations in twenty-six cases for KOSDAQ firms, but only in five cases for KOSPI firms. These results are particularly drastic given that the number of public firms listed on the KOSDAQ Market Division was less than 1.5 times the number of public firms listed on the Stock Market Division. This finding may be reasonably explained by the general fact that relatively small KOSDAQ firms have difficulties in tackling frequent control contests and related shareholder proposals.<sup>80</sup>

To reduce the entrenchment costs of the board, shareholder proposals should be allowed to call for control contests as well as for the nomination of a small slate of directors. The difference between levels of access to a company's proxy card in control contests and nomination of small slates of directors and auditors also defies logic, since in both cases access is necessary to prevent the opportunity cost of overlooking competent director candidates.<sup>81</sup> On the other hand, the frequent exercise

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<sup>79</sup> See Jae-Beom Kim, *Euikyulkwonjedowa Hoisajibaeui Kaeseon* [Voting System and Improvement of Corporate Governance], 15 SANGSAPANLAIYOENKU [STUDY OF COURT DECISIONS ON COMMERCIAL TRANSACTIONS] 250–51 (2003) (stating that the purpose of voting restrictions limiting the influence of large shareholders on the elections of auditors or directors who are to serve as members of an audit committee is to ensure that auditors' duties are fairly administered).

<sup>80</sup> For an example of this difficulty, see Anup Agrawal & Jeffrey F. Jaffe, *Do Takeover Targets Underperform? Evidence from Operating and Stock Returns*, 38 J. FIN. & QUANT. ANALYSIS 721, 725 (2003).

<sup>81</sup> Facilitating Shareholder Director Nominations: Proposed Rule, 74 Fed. Reg. 29024 (proposed June 18, 2009) (to be codified at 17 C.F.R. pts. 200, 232, 240, 249 & 274), at 29074 ("To the extent that a company does not include shareholder nominees for director in its proxy materials, thereby reducing the pool of qualified nominees, an opportunity cost

of shareholder proposals may cause a large degree of managerial and operational distraction, especially in small public firms.

The current system does not differentiate between the exercise of shareholder proposals and shareholder access to a company's proxy materials, and the issue of whether or not to allow shareholder access in South Korea has not been addressed. The frequent usage of shareholder proposals in a hostile takeover context requires a policy discussion about whether or not the current system that enables such usage increases public firms' efficiency. To assess the benefits and costs of the current system, a detailed analytical study about control contest cases needs to be conducted.

#### *E. Need for Facilitating Shareholder Access*

Table 12 above shows that, in many cases, the shareholders who nominated only a small slate of director or auditor candidates conducted their own proxy solicitations separately for the purpose of asking other shareholders to delegate voting powers to them. As discussed in Section III.E.3 above, this phenomenon may have various implications. First, it may suggest that the current degree of shareholder access in South Korea is not particularly effective for the shareholder franchise. This may result from the necessity of having a shareholder conduct her own proxy solicitation to get a proxy delegated for herself or her designees and more actively influence votes. Second, it may also indicate that the costs of proxy solicitations are somewhat bearable in South Korea.

To more accurately assess the need for improving the current shareholder access system, analysts should first evaluate the average cost of proxy solicitations, and second, obtain comments from shareholders who availed themselves of shareholder access to determine what major institutional or practical impediments may still exist in relying solely on a company's proxy card and material.

#### *F. Disclosure of Sufficient Information on Nominating Shareholders and Nominees*

The current shareholder proposal and access system does not require public firms to provide detailed information in the company's proxy card or material about nominating shareholders, their nominees, the relationships between them, or the purpose of the nominations.<sup>82</sup> Thus, public firms have included shareholder nominees and certain information

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may be incurred by the company and thus the shareholders. Therefore, proposed Rule 14a-11 may reduce the opportunity costs to companies and shareholders.”)

<sup>82</sup> KCC amended by Act No. 5591, Dec. 28, 1998, art. 363-2 (S. Kor.); FISCMA, Act No. 8635, Aug. 3, 2007, art. 152 (S. Kor.); The Presidential Decree of the FISCMA, art. 163, para. 2 (S. Kor.).

about the nominees in their proxy documents, but they usually have not included other detailed information or material that would be needed to accurately inform other shareholders about such shareholders' candidates. Conversely, companies have sometimes included some negative information about the proposal shareholders and their nominees in their proxy materials.

To enable other shareholders to make an informed decision based on reliable knowledge, due deliberation is needed as to whether nominating shareholders should be required to provide sufficient information about themselves and their nominees, public firms required to include such information in their proxy documentation, and whether there exist ways to ensure that nominating shareholders are responsible for material omissions or falsehoods.

## V. CONCLUSION

This article provides the first analysis of the status of shareholder proposals and shareholder access in South Korea for public firms whose notices convening a general shareholder meeting were made over the years 2007, 2008, and 2009. This author has hand-collected a data set of shareholder proposals for corporate elections to conduct this analysis. The article uses this data to shed some light on what should be done to improve current shareholder proposal rights and the shareholder access system.

A majority of the shareholder proposals for corporate elections in South Korea have been exercised in small public firms with net assets of less than USD 100 million. More specifically, the data indicate that shareholder proposals have seldom been exercised for large public firms in South Korea, in particular for *chaebols*, or large Korean business groups. It is not entirely clear whether this skewed distribution of shareholder proposals has resulted as a reaction to relatively poor corporate governance at small public firms, or from excessively low minimum eligibility requirements for the exercise of shareholder proposal rights. Taking into account the prevailing ownership structure of large public firms in South Korea, this phenomenon raises a fundamental question of whether or not shareholder proposals for corporate elections can effectively address corporate governance issues in large public firms in South Korea.

Another focus of analysis should be directed to finding out whether shareholder proposals for corporate elections have contributed overall to the performance of public firms at issue, and so there is a need for further study of the performance of those firms where nominees were recommended by shareholder proposals.

The data suggest that the current standard for the graded shareholder eligibility requirement for shareholder proposals should be reconsidered. The net asset thresholds of KRW 100 billion and/or KRW 200 billion can provide a point of differentiation as to which firms should implement which eligibility requirements.

Having cumulative voting systems and voting restrictions in auditor elections entails greater risks that directors or auditors associated with special interests will be elected through shareholder proposals and shareholder access to a company's proxy card. This risk should be carefully weighed when assessing the appropriateness of cumulative voting systems and voting restrictions in auditor elections. Considering that there have been a relatively large number of unsupported auditor candidate nominations, the increase of a minimum shareholding threshold for auditor nominations may provide a solution to the problem.

Additionally, a majority of shareholder proposals have been made for the purpose of effectuating control contests. This fact reflects one of the major differences in proxy access between the 2010 election contest rule (which would allow the nomination of only one or a small slate of candidates) and the South Korean rule. This situation invites reexamination of the appropriateness of allowing the same shareholder proposal rights and degree of access to be used for the purpose of control contests. To this end, further study is necessary to assess the benefits and costs of shareholder proposals and shareholder access used for control contest purposes under the current system.

In spite of enjoying access to a company's proxy card, a large number of shareholders have submitted their own proxy statements and have conducted their own proxy solicitations. This raises questions as to the effectiveness of the current shareholder proxy access system and the costs of proxy solicitations. The considerable differences in proxy solicitation costs between South Korea and the United States, as well as the variable impact on large public firms given different stock ownership patterns, may explain the varying degrees of controversy over the adoption of shareholder proposal rights and shareholder access in the two countries.

The benefits and costs of shareholder proposals and shareholder access make experimentation with these systems in South Korea important. The findings detailed in this article regarding shareholder proposals and proxy access have implications both for understanding possible problems in shareholder proposal and access rules in the United States, and improving the current system in South Korea.

## VI. APPENDIX

**Table 2.** *Cases of Shareholder Proposals for Corporate Elections in Companies in the Stock Market Division of the KRX* (public disclosure of convening a shareholder meeting available between Jan. 1, 2007 and Dec. 31, 2009)

(Units: KRW MM)

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
1. HANSHIN MACHINERY	7/17/09	Control contest: a corporation shareholder (5.07%, 06/30/09)	<ul style="list-style-type: none"> <li>Election of 4 non-outside directors and 1 outside director</li> </ul>	42,949	27,397	X	10.41% (6/30/09)	No	Failure	None
2. Il-dong Pharmaceutical	6/29/09	An institutional shareholder, etc. (11.44%, 06/15/09)	<ul style="list-style-type: none"> <li>Election of 2 outside directors</li> <li>Election of 2 auditors</li> </ul>	278,323	190,758	X	21.50% (6/15/09)	No	Failure	Both
3. Sempio Foods <sup>83</sup>	3/25/09	An institutional shareholder (29.97%, 12/31/08)	<ul style="list-style-type: none"> <li>Election of 1 outside director</li> </ul>	169,803	130,747	X	34.27% (12/31/08)	No	Failure	Shareholder
4. Paper Core <sup>84</sup>	3/27/09	Control contest (8.45%, 12/31/08)	<ul style="list-style-type: none"> <li>Election of 7 non-outside directors and 2 outside directors</li> <li>Election of 2 auditors</li> </ul>	384,594	167,130	X	26.58% (3/31/09)	No	Failure	Both

<sup>83</sup> The Securities and Futures Commission penalized Sempio Foods in 2007 because of an instance of accounting fraud in fiscal year 2006. *See also infra* notes 88 and 97.

<sup>84</sup> A court heard and decided on charges of embezzlement that were raised against directors in 2008.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
5. DAEHAN FLOUR MILLS	3/20/09	An institutional shareholder (less than 5% as of 12/31/08)	<ul style="list-style-type: none"> <li>Election of 1 auditor</li> </ul>	579,921	428,691	X	33.57% (12/31/08)	No	Failure	Company
6. Whan In Pharm	3/20/09	An institutional shareholder (8.21%, 12/31/08)	<ul style="list-style-type: none"> <li>Election of 1 outside director</li> <li>Election of 1 auditor</li> </ul>	107,580	97,843	X	18.63% (12/31/08)	No	Failure	Both
7. Chokwang Leather	3/20/09	An individual shareholder	<ul style="list-style-type: none"> <li>Election of 1 outside director</li> </ul>	106,847	90,147	X	20.6% (12/31/08)	No	Failure	None
8. Tae Won Mulsan	3/17/09	Control contest: a corporate shareholder (w/ tender offer) (6.25%, 12/31/08)	<ul style="list-style-type: none"> <li>Election of 1 non-outside director</li> <li>Election of 1 auditor</li> </ul>	35,930	26,076	X	36.00% (12/31/08)	No	Failure	Both
9. Hankook Cosmetics	3/06/09	Control contest: a corporate shareholder (18.96%, 12/31/08)	<ul style="list-style-type: none"> <li>Election of 2 non-outside directors and 1 outside director</li> <li>Election of 1 auditor</li> </ul>	148,050	125,773	X	35.07% (12/31/08)	No	Failure	Both
10. Hae In	1/22/09	Control contest (w/ tender offer) (13.72%, 12/30/08)	<ul style="list-style-type: none"> <li>Election of 2 non-outside directors</li> </ul>	144,761	84,780	X	28.87% (12/31/08)	No	Failure	Company

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
11. KOJE <sup>85</sup>	1/19/09	A corporate shareholder : the largest shareholder	<ul style="list-style-type: none"> <li>Election of 2 non-outside directors</li> <li>Election of 1 auditor</li> </ul>	37,191	21,964	X	25.13% (12/31/08)	No	Failure	None
12. Seoul Food Industrial	8/11/08	Control contest (11.51%, 7/01/08)	<ul style="list-style-type: none"> <li>Election of 4 non-outside directors and 2 outside directors</li> <li>Election of 1 auditor</li> </ul>	31,177	21,145	X	15.35% (6/30/08)	No	Failure (Not addressed)	Both
13. SG Choongnam Spinning (formerly SG Global)	7/22/08	An institutional shareholder	<ul style="list-style-type: none"> <li>Election of 1 auditor</li> </ul>	166,659	152,312	X	74.93% (6/30/08)	No	Failure	Company
14. Hyundai Securities	5/30/08	Labor union	<ul style="list-style-type: none"> <li>Election of 2 outside director</li> </ul>	8,900,288	2,259,166	O	23.16% (3/31/08)	No	Failure	Both
15. SG Choongnam Spinning (formerly SG Global)	4/22/08	An institutional shareholder (7.68%, 4/18/08)	<ul style="list-style-type: none"> <li>Election of 1 auditor</li> </ul>	166,659	152,312	X	77.66% (3/31/08)	No	Failure	Both
16. CHIN HUNG INTERNATIONAL	3/26/08	Control contest: among the largest shareholder group	<ul style="list-style-type: none"> <li>Election of 6 non-outside directors and 1 outside director</li> <li>Election of 1 auditor</li> </ul>	634,636	164,331	X	19.53% (12/31/07)	No	Failure	None

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
17. Sambu Construction	3/21/08	An institutional shareholder	• Election of 1 outside director	867,483	340,544	X	24.39% (12/31/07)	No	Failure	Company
18. Dong Yang Express Bus	3/28/08	An institutional shareholder	• Election of 1 auditor	97,274	82,265	X	53.81% (12/31/07)	No	Failure	Company
19. Daehan Flour Mills	3/21/08	An institutional shareholder (5.09%, 12/31/07)	• Election of 1 auditor	639,387	489,611	X	31.93% (12/31/07)	No	Failure <sup>86</sup>	Both
20.		An institutional shareholder (5.36%, 12/31/07)	• Election of 1 auditor						Failure <sup>87</sup>	Company
21. LIVART FURNITURE	3/21/08	An institutional shareholder (5.12%, 12/31/07)	• Election of 1 auditor	209,550	106,734	X	24.76% (12/31/07)	No	Failure	None
22. Byucksan Engineering & Construction	3/21/08	An institutional shareholder (5.3%, 12/31/07)	• Election of 1 auditor	1,014,041	323,590	O	58.7% (12/31/07)	No	Failure	Both
23. Sempio Foods <sup>88</sup>	3/19/08	An institutional shareholder (29.97%, 12/31/07)	• Election of 1 outside director	142,218	126,712	X	31.46% (12/31/07)	No	Failure	None

<sup>85</sup> KOJE was delisted on April 23, 2010 because of an outside auditor's objection to giving an opinion.

<sup>86</sup> Daehan Flour Mills successfully prevented the shareholder's proposal from being put to a vote by amending its articles of incorporation to limit the number of auditors.

<sup>87</sup> See *supra* note 86.

<sup>88</sup> The Securities and Futures Commission penalized Sempio Foods in 2007 because of accounting fraud in the fiscal year of 2006. See also *supra* note 83 and *infra* note 97.



Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
24. Sungjee Construction	3/21/08	An institutional shareholder (5.11%, 03/05/08)	<ul style="list-style-type: none"> <li>Election of 1 auditor</li> </ul>	365,661	187,832	X	14.31% (12/31/07)	No	Failure	Both
25. Hankuk Electric Glass <sup>89</sup>	3/17/08	An institutional shareholder (3.75%, 01/31/08)	<ul style="list-style-type: none"> <li>Election of 1 auditor</li> </ul>	442,654	430,050	X	51.47% (12/31/07)	No	Success <sup>90</sup>	Shareholder
26. Paper Korea <sup>91</sup>	2/18/08	Control contest	<ul style="list-style-type: none"> <li>Election of 8 non-outside directors and 2 outside directors</li> <li>Election of 2 auditors</li> </ul>	277,599	107,800	X	25.40% (12/31/07)	No	Failure	None
27. Dong-A Pharmaceutical	10/31/07	Family dispute (16.18%, 10/19/07)	<ul style="list-style-type: none"> <li>Election of 2 non-outside directors and 3 outside directors</li> </ul>	594,319	317,552	X	6.87% <sup>92</sup> (10/11/07)	No	Failure	Both
28. Oyang	9/14/07	Control contest between CEO and the largest shareholder	<ul style="list-style-type: none"> <li>Election of 6 non-outside directors and 3 outside directors</li> </ul>	94,740	9,997	X	47.63% <sup>93</sup> (9/30/07)	No	Success	Both

<sup>89</sup> Hankuk Electric Glass voluntarily delisted its shares on January 28, 2011.

<sup>90</sup> Even though the largest shareholder alone held a majority of voting shares, the activist corporate governance fund was able to succeed in electing its auditor nominee due to a voting restriction in an auditor election.

<sup>91</sup> See *supra* note 84.

<sup>92</sup> This shareholder proposal was exercised in the course of disputes within the controlling shareholder family. Since the shareholding ratio of the largest shareholder group in a periodic report overstates the amount of shareholding by including shareholding of the entire family (especially, the family members who initiated shareholder proposals and proxy solicitations to challenge the management rights of the other family members), the shareholding ratio of the largest shareholder group in the table is instead derived from the proxy solicitation statement filed by the firm.

<sup>93</sup> The CEO held 43.99% of the voting shares at that time.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
29. Aains (formerly Bestech-com Holdings)	8/03/07	Control contest: the largest shareholder	<ul style="list-style-type: none"> <li>Election of 6 non-outside directors and 2 outside directors</li> <li>Election of 1 auditor</li> </ul>	58,876	31,344	X	25.43% (7/07/07)	No	Success	Shareholder
30. Hyundai Securities	5/25/07	Labor union	<ul style="list-style-type: none"> <li>Election of 1 outside director</li> </ul>	7,752,529	1,518,752	O	23.84% (6/30/07)	No	Failure	Company
31. Dong-A Pharmaceutical	3/29/07	Family dispute (18.44%, 03/13/07)	<ul style="list-style-type: none"> <li>Election of 2 outside directors</li> </ul>	594,319	319,157	X	15.56% <sup>94</sup> (12/31/06)	No	Success <sup>95</sup>	Both
32. Aains (formerly Bestech-com Holdings)	4/11/07	Control contest: the largest shareholder	<ul style="list-style-type: none"> <li>Election of 5 non-outside directors and 2 outside directors</li> </ul>	58,876	31,344	X	11.75% (3/31/07)	No	Success <sup>96</sup>	Shareholder
33. Art One Paper (formerly EN PAPER MFG.)	3/30/07	Control contest (21.16%, 12/31/07)	<ul style="list-style-type: none"> <li>Election of 3 non-outside directors and 1 outside director</li> </ul>	658,123	277,885	O	27.12% (12/31/06)	No	Failure	None

<sup>94</sup> This shareholder proposal was exercised in the course of disputes within the controlling shareholder family. Since the shareholding ratio of the largest shareholder group in a periodic report includes the entire family's shareholding, a part of this equity portion needs to be excluded from the shareholding of the largest shareholder and its related persons.

<sup>95</sup> The success resulted from the conclusion of an agreement between the nominating shareholder and the management before the shareholding meeting. Dong-Yoon Kim, Kangshinho Hoichang "Chanam Tateutake Majihaketa" [Chairman Shin-ho Kang said "I will Warmly Welcome my Second Son"], THE KOREA ECONOMIC DAILY, Mar. 26, 2007 (S. Kor.), <http://www.hankyung.com/news/app/newsview.php?aid=2007032639561&sid=0104&nid=004&ltype=1>.

<sup>96</sup> The shareholders' proposal was approved as amended by nominating shareholders at a shareholder meeting. Four directors were elected.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
34. Korea Petroleum Industrial	3/30/07	A minority shareholder	• Election of 1 auditor	57,252	26,390	X	27.38% (12/31/06)	No	Failure	None
35. Sempio Foods <sup>97</sup>	3/21/07	An institutional shareholder : a private equity (24.12%, 12/31/06)	• Election of 1 non-outside director and 1 outside director	138,429	122,391	X	30.88% (12/31/06)	No	Failure	None
36. Dae Dong Industrial	3/09/07	A minority shareholder	• Election of 1 auditor	299,822	154,559	X	48.86% (10/31/06)	No	Failure	None
37.		A minority shareholder	• Election of 1 outside director • Election of 1 auditor						Failure	None

Notes to Table 2:

The above data has been organized and re-arranged from information extracted from a number of sources, mainly DART and KIND. Please note the following:

Company Name: Shareholder proposals for corporate elections were classified into two groups: (i) 37 shareholder proposals for public firms on the Stock Market Division of the KRX, and (ii) 73 shareholder proposals for public firms on the KOSDAQ Market Division of the KRX.

Characteristic of Nominating Shareholder: The information in column “Characteristic of Nominating Shareholder” is derived from the public notices convening a shareholder meeting, proxy statements filed by nominating shareholders, and the relevant parts of the companies’ periodic reports describing control disputes over the company and the exercise of shareholder proposal rights, which are available at DART or KIND. If the appropriate information was not sufficient, other media sources such as news articles were also referenced as secondary resources. Even if the section regarding control disputes in a relevant

<sup>97</sup> The Securities and Futures Commission penalized Sempio Foods in 2007 due to instances of accounting fraud that occurred in the fiscal year 2006. *See also supra* notes 83 and 88.

company's periodic report does not mention the details of relevant shareholder proposals and control contests, some of them are classified as "control contests" if a nominating shareholder or a group of shareholders nominated a majority of directors or expressed their intention to take over control power over the target company through their own proxy statements (available on DART) or news media.

Contents of Shareholder Proposal: The column titled "Contents of Shareholder Proposal" is mainly derived from the public notices convening a shareholder meeting, available on DART.

Asset: The "Asset" column shows the size of assets of a company based on its audited financial statement as of the end of an immediately preceding fiscal year to the date of a pertinent shareholder meeting, which is included in an annual report that is available on DART.

Net Asset: The "Net Asset" column shows the size of net assets of a relevant company based on its audited financial statement as of the end of an the fiscal year immediately preceding the date of a pertinent shareholder meeting, which is included in an annual report that is available on DART.

Paid-in Capital: The "Paid-in Capital" column shows whether the paid-in capital of a pertinent company exceeds KRW 100 billion as of the end of an immediately preceding fiscal year, based on the company's audited financial statement. This information is included in an annual report that is available on DART. "O" indicates that the paid-in capital of the company exceeds KRW 100 billion; "X" indicates the company's paid-in capital is less than KRW 100 billion.

Largest Shareholder: The "Large Shareholder" column reflects the amount of the voting shares held by the largest shareholders and their specially-related persons as defined by the FISCMA. A public firm is required to disclose the status of shareholding of its largest shareholder and its specially-related persons in its period report, which is available on DART. Since the shareholding distribution on the record date is not publicly available, this information is based on the most recent annual, semi-annual or quarterly report from the scheduled shareholder meeting date as well as a report on large-scale shareholding. Since most public firms set the last date of each fiscal year as the record date for their annual shareholder meeting, the shareholding information as of the end of each fiscal year will generally show the voting rights of relevant parties if a shareholder meeting at issue is an annual shareholder meeting.

Cumulative Voting: The "Cumulative Voting" column indicates whether or not a company at issue excludes a cumulative voting system. The relevant information comes from the articles of incorporation of each researched company, which is attached to the most recent annual report from the date of a relevant shareholder meeting and available on DART.

Results: The “Results” column shows the result of voting at a shareholder meeting. This information comes from the public disclosure of the results of shareholder meetings, which is posted on KIND.

Proxy Statement: The “Proxy Statement” column shows whether a company or a shareholder, or both, used a proxy statement. “Both” means that both a company and a nominating shareholder submitted their own proxy statement, respectively.

“Company” or “shareholder” means that only a company or a nominating shareholder, or a group of nominating shareholders, submitted its proxy statement.

“None” means that neither a company nor a nominating shareholder conducted a proxy solicitation. Proxy Statements are disclosed on DART.

\* \* \*

**Table 3.** *Cases of Shareholder Proposals for Corporate Elections in Companies in the KOSDAQ Market Division of the KRX* (public disclosure of convening a shareholder meeting available between Jan. 1, 2007 and Dec. 31, 2009)

(Unit: KRW MM)

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
38. NEXTECH <sup>98</sup>	12/11/09	Control contest	<ul style="list-style-type: none"> <li>Election of 4 non-outside directors and 1 outside director</li> <li>Election of 2 auditors</li> </ul>	49,971	44,514	X	15.41% (9/30/09)	No	Failure	None
39. Stom E&F <sup>99</sup> (formerly De Chocolate E&TF)	11/12/09	Control contest (11%, 11/02/09)	<ul style="list-style-type: none"> <li>Election of 4 non-outside directors and 2 outside directors</li> <li>Election of 2 auditors</li> </ul>	36,818	25,619	X	3.3% (10/12/09)	No	Failure	Shareholder
40. Inochip Technology	06/30/09	Control contest: a venture capitalist and the second largest shareholder (35.38%)	<ul style="list-style-type: none"> <li>Election of 6 non-outside directors</li> <li>Election of 1 auditor</li> </ul>	64,895	49,237	X	45.88% (6/30/09) <sup>100</sup>	No	Failure	Both

<sup>98</sup> NEXTECH was delisted later on November 26, 2011 because of the KRX's merit review of its sustainability, transparency, and other factors.

<sup>99</sup> Stom E&F was delisted on April 13, 2011 due to the excessive impairment of its capital.

<sup>100</sup> The shareholding ratio of the largest shareholder and its related persons had been increased from 12.41% (03/31/09) to 45.88% (06/30/09) during a takeover dispute as a result of an acting-in-control arrangement between the largest shareholder and its white knight who purchased treasury shares from the company.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
41. Genexel-Sein <sup>101</sup>	5/22/09	A group of individual shareholders	<ul style="list-style-type: none"> <li>Election of 3 non-outside directors and 3 outside directors</li> <li>Election of 1 auditor</li> </ul>	40,290	33,283	X	12.23% (5/15/09)	No	Failure	Company
42. Jinsung T.E.C.	3/31/09	An institutional shareholder (less than 5%)	<ul style="list-style-type: none"> <li>Election of 1 auditor</li> </ul>	267,000	13,257	X	43.92% (12/31/08)	No	Failure	None
43. SFA Engineering	3/27/09	An institutional shareholder (less than 5%)	<ul style="list-style-type: none"> <li>Election of 1 outside director</li> </ul>	416,963	222,704	X	32.4% (12/31/08)	No	Failure	Company
44. NEO MTEL	3/27/09	Control contest: the largest shareholder and others (19.77%)	<ul style="list-style-type: none"> <li>Election of 3 non-outside directors and 2 outside directors</li> <li>Election of 1 auditor</li> </ul>	24,291	23,117	X	34.33% (excluding current management 18.38%)	No	Failure	Both
45. Terraum (formerly NeoWave)	3/24/09	Control contest	<ul style="list-style-type: none"> <li>Election of 5 non-outside directors</li> </ul>	59,892	18,302	X	9.01% (12/31/08)	No	Failure	Company

<sup>101</sup> Genexel-Sein was delisted on April 15, 2010 because of an outside auditor's objection to giving an opinion for the limited scope of the audit and the ambiguity of remaining a firm having going-concern value. The group of individual shareholders are known to have lost their incentive to pursue the success of their shareholder proposal around the time of the general shareholders' meeting after hearing the company's public announcement to the effect that the largest shareholder of the company would be changed; this news caused the share price of the company to increase dramatically. Jin Cheol Lee, *Jukakeupdeungyi Kyungyoungkwonboonjaeng Jamjaewooda [The Drastic Increase in Share Price Calms Down Control Contests]*, EDAILY, May 7, 2009, <http://cn.moneta.co.kr/Service/stock/ShellView.asp?ArticleID=2009050714360403260&LinkID=529>.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
46. WOOJEON & HANDAN (formerly HANDAN BroadInfo-Com)	3/27/09	An institutional shareholder (11.66%, on 12/31/08)	<ul style="list-style-type: none"> <li>Election of 2 outside director</li> <li>Election of 1 auditor</li> </ul>	72,580	53,121	X	15.50% (12/31/08)	No	Partial success <sup>102</sup>	Both
47. NUVOTEC	3/27/09	Not available	<ul style="list-style-type: none"> <li>Election of 2 non-outside directors</li> <li>Election of 1 auditor</li> </ul>	32,792	14,674	X	7.46% (12/31/08)	No	Partial success <sup>103</sup>	Company
48. S&K Polytec	3/27/09	Three individual shareholders (at least 8.35%, on 12/31/08)	<ul style="list-style-type: none"> <li>Election of 1 outside director</li> </ul>	37,418	33,888	X	31.40% (12/31/08)	No	Failure	Company
49. Tong Yang Magic <sup>104</sup>	3/20/09	Not available	<ul style="list-style-type: none"> <li>Election of 1 outside director</li> </ul>	171,459	70,594	X	63.55% (12/31/08)	No	Failure	None
50. C-motech <sup>105</sup>	2/26/09	Control contest (10.82%, on 12/31/08)	<ul style="list-style-type: none"> <li>Election of 4 non-outside directors and 2 outside directors</li> </ul>	77,580	44,958	X	21.91% (12/31/08)	No	Failure	Both
51.		An individual shareholder (10.17%, on 12/31/08)	<ul style="list-style-type: none"> <li>Election of 1 non-outside director and 1 outside director</li> </ul>						Failure	Company
52. R&S Networks	2/27/09	A group of individual	<ul style="list-style-type: none"> <li>Election of 5 non-</li> </ul>	30,302	18,520	X	11.40% (12/31/08)	No	Failure	Both

<sup>102</sup> One director and one auditor were elected.

<sup>103</sup> One director, who became a co-CEO later, was elected.

<sup>104</sup> Tong Yang Magic was delisted on September 4, 2011 because of its merger with Tong Yang.

<sup>105</sup> C-motech was delisted on September 23, 2010 because of an outside auditor's objection to giving an opinion for the limited scope of the audit and the ambiguity of remaining a firm having going-concern value.



Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
		shareholders <sup>106</sup> (5.84%, on 02/16/09)	outside directors • Election of 1 auditor							
53. Young Poong Precision	2/27/09	An individual shareholder (The largest shareholder, 23.94%, on 12/31/08)	• Election of 1 non-outside director	135,182	100,004	X	74.67% <sup>107</sup> (12/31/08)	No	Failure	None
54. OCI Materials (formerly SODIFF Advanced Materials)	2/26/09	Control contest: the largest shareholder <sup>108</sup>	• Election of 1 non-outside director and 2 outside directors	393,775	172,840	X	36.77% (12/31/08), the second largest shareholder 12.53% (12/31/08)	No	Success	Company
55. NEXTECH	2/06/09	Control contest	• Election of 8 non-outside directors	49,971	44,514	X	15.41% (12/31/08)	No	Failure	None
56.		A corporate shareholder: the largest shareholder (15.41%, on 12/31/08)	• Election of 3 non-outside directors						Failure	None

<sup>106</sup> This proposal of agenda was made in conjunction with the application for convening an extraordinary general shareholders' meeting.

<sup>107</sup> While the largest shareholder and other co-founders' family members held 74.67% of the aggregate voting shares, the largest shareholder was not able to be elected as a director at a shareholder meeting, since he was not able to get the support from those other co-founders' families.

<sup>108</sup> This proposal of agenda was made in conjunction with the application for convening an extraordinary general shareholders' meeting. The largest shareholder commenced this procedure to acquire management power over the second largest shareholder and the existing management.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
57. DIBOSS <sup>109</sup>	2/05/09	Control contest: an individual shareholder	<ul style="list-style-type: none"> <li>Election of 3 non-outside directors and 1 outside director</li> <li>Election of 1 auditor</li> </ul>	41,196	1,921	X	14.83% (12/31/08)	No	Partial success <sup>110</sup>	None
58.		Control contest: the largest shareholder	<ul style="list-style-type: none"> <li>Election of 5 non-outside directors and 2 outside directors</li> <li>Election of 2 auditors</li> </ul>						Failure	None
59. VO INDUSTRIA L <sup>111</sup> (formerly Mora Resource)	12/26/08	Control contest (5.26%, on 12/31/08)	<ul style="list-style-type: none"> <li>Election of 3 non-outside directors and 2 outside directors</li> <li>Election of 1 auditor</li> </ul>	11,577	6,777	X	33.43% (12/31/08)	Yes	Partial success <sup>112</sup>	Both
60. KCP	12/05/08	Control contest: among the largest shareholder group (35.55%, on 11/20/08)	<ul style="list-style-type: none"> <li>Election of 3 non-outside directors and 1 outside director</li> </ul>	27,919	7,500	X	32.64% (11/06/08)	No	Failure	Both
61. Asia Media Holdings (formerly	12/04/08	Control contest (20.59%, on	<ul style="list-style-type: none"> <li>Election of 3 non-outside</li> </ul>	7,028	4,933	X	21.97% (12/31/08)	Yes	Failure	Both

<sup>109</sup> DIBOSS was delisted on October 7, 2009 according to the KRX decision because of the excessive impairment of its capital.

<sup>110</sup> Two directors were elected.

<sup>111</sup> VO Industrial was delisted on July 22, 2010 because of the KRX's merit review of its sustainability, transparency, and other factors.

<sup>112</sup> Five directors were elected.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
<i>Eugene Data</i> ) <sup>113</sup>		11/28/08)	directors and 2 outside directors  • Election of 1 auditor							
62. OullimElses (formerly Netsecure Technology)	11/28/08	Control contest (22.53%, on 11/19/08)	• Election of 4 non-outside directors and 2 outside directors  • Election of 1 auditor	32,731	26,849	X	27.79% (11/13/08)	No	Failure	Shareholder
63. LuBo Industries (formerly Jeda Industries)	9/26/08	Control contest (4.70%, on 09/23/08)	• Election of 5 non-outside directors and 1 outside directors	38,073	21,612	X	11.62% (8/24/08)	No	Failure	Both
64. Testech <sup>114</sup>	7/25/08	Control contest: the largest shareholder	• Election of 1 non-outside director and 2 outside directors  • Election of 2 auditors	36,655	18,374	X	13.52% (6/27/08)	No	Success	None
65. Trais (formerly WINDSKY)	7/18/08	Control contest	• Election of 3 non-outside directors	27,190	2,554	X	21.42% (6/30/08)	No	Success	None
66.		Control contest	• Election of 2 non-outside directors						Partial success <sup>115</sup>	None

<sup>113</sup> Asia Media Holdings was delisted on November 22, 2011 because of the KRX's merit review of its sustainability, transparency, and other factors.

<sup>114</sup> Testech was delisted on November 10, 2011 because of the excessive impairment of its capital as well as an outside auditor's objection to giving an opinion.

<sup>115</sup> One director was elected.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
67.			and 1 outside director • Election of 1 non-outside director and 1 outside director						Failure	None
68.	VirtualTek	7/10/08	Control contest: the largest shareholder • Election of 1 outside director	42,742	40,075	X	21.49% (5/15/08)	No <sup>116</sup>	Success	None
69.	LuBo Industries (formerly Jeda Industries)	6/09/08	An individual shareholder • Election of 1 outside director • Election of 1 auditor	38,073	21,612	X	11.62% (5/15/08)	No	Failure	None
70.	Edu-Pass <sup>117</sup>	5/21/08	Control contest: the largest shareholder • Election of 3 non-outside directors	29,734	17,224	X	17.50% (3/31/08)	Yes <sup>118</sup>	Partial success <sup>119</sup>	None
71.			Control contest • Election of 1 non-outside director						Failure	None
72.			Control contest: the former CEO • Election of 4 non-outside directors						Failure	None
73.	Ceratech <sup>120</sup>	3/31/08	Control contest: the largest • Election of 1 outside director	53,448	27,939	X	36.96% (12/31/08)	No	Success	None

<sup>116</sup> Cumulative voting was excluded at the same general shareholders' meeting, before the agenda for electing directors was put to a vote.

<sup>117</sup> Edu-Pass was delisted on June 9, 2011 because of the KRX's merit review of its sustainability, transparency, and other factors.

<sup>118</sup> Edu-Pass excluded a cumulative voting right from the articles of incorporation after this shareholder meeting.

<sup>119</sup> Two directors were elected.

<sup>120</sup> Ceratech was delisted on August 25, 2010 because of the KRX's merit review of its sustainability, transparency, and other factors.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
		shareholder	and 1 non-outside director							
74. SFA Engineering	3/28/08	An institutional shareholder (6.40%, on 3/12/08)	<ul style="list-style-type: none"> <li>Election of 2 outside directors</li> <li>Election of 1 auditor</li> </ul>	377,151	202,313	X	5.6% (12/31/07)	No	Failure	Both
75. FUTURE VISION <sup>121</sup>	3/28/08	An individual shareholder	<ul style="list-style-type: none"> <li>Election of 1 non-outside director and 1 outside director</li> </ul>	9,799	(6,830)	X	10.5% (12/31/07)	No	Failure	None
76. Hismartech <sup>122</sup>	3/28/08	An individual shareholder (1.21%, on 03/20/08)	<ul style="list-style-type: none"> <li>Election of 2 auditors</li> </ul>	29,249	12,776	X	14.8% (12/31/07)	No	Failure	Both
77. Winova (formerly AI)	3/28/08	Control contest	<ul style="list-style-type: none"> <li>Election of 6 non-outside directors</li> <li>Election of 2 auditors</li> </ul>	49,085	37,014	X	12.02% (12/31/07)	No	Partial success <sup>123</sup>	Shareholder
78. Actoz Soft	3/28/08	A group of individual shareholders	<ul style="list-style-type: none"> <li>Election of 1 auditor</li> </ul>	78,985	65,045	X	50.01% (12/31/07)	No	Failure	None
79. LuBo Industries (formerly Jeda)	3/28/08	Control contest: an individual shareholder	<ul style="list-style-type: none"> <li>Election of 4 non-outside directors and 1 outside director</li> </ul>	38,073	21,612	X	4.99% (10/09/07)	No	Partial success <sup>124</sup>	Both

<sup>121</sup> FUTURE VISION was delisted on April 12, 2008 due to the excessive impairment of its capital.

<sup>122</sup> Hismartech was delisted on May 10, 2010 due to the excessive impairment of its capital.

<sup>123</sup> The proposing shareholder suggested the revision of the list of director candidates at the general shareholders' meeting, and all of such 5 director candidates as re-proposed were elected.

<sup>124</sup> One non-outside director was elected.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
80. Sundo Soft	3/25/08	Not available	• Election of 1 auditor	20,625	9,631	X	48.90% (12/31/07)	No	Success	None
81. Hallim Venture Capital	3/21/08	An individual shareholder	• Election of 1 auditor	13,219	11,904	X	26.27% (12/31/07)	Yes	Failure	None
82. SENIT	3/21/08	An institutional shareholder: the largest shareholder	• Election of 3 outside directors	37,721	17,344	X	11.80% (12/31/07)	No	Success	None
83. Top Engineering	3/21/08	Control contest (5.94%, on 12/31/07)	• Election of 4 outside directors • Election of 1 auditor	93,500	81,035	X	16.46% (12/31/07)	No	Failure	Both
84. Webzen	3/28/08	Control contest (6.33%, on 12/31/07)	• Election of 2 non-outside directors and 5 outside directors	158,157	141,002	X	22.97% (12/31/07)	No	Failure <sup>125</sup>	Both
85.		Control contest	• Election of 4 non-outside directors and 2 outside directors						Failure	Both
86. Dongwon Development	3/21/08	An institutional shareholder (5.93%, on 12/31/07)	• Election of 1 outside director	225,368	182,273	X	41.50% (12/31/07)	No	Success <sup>126</sup>	Company
87. SVH <sup>127</sup> (formerly)	3/25/08	An institutional shareholder:	• Election of 1 auditor	80,023	51,283	X	16.11% (12/31/07)	No	Success	None

<sup>125</sup> Webzen bought more than 10% of the voting shares of the company which tried to take over its control power, depriving this company of voting rights in Webzen.

<sup>126</sup> This success came from the agreement between an activist fund and the management of Dongwon Development that had been concluded just prior to the date of a shareholder meeting.

<sup>127</sup> SVH was delisted on February 14, 2011 because of the KRX's merit review of its sustainability, transparency, and other factors.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
<i>ElimEdu</i> )		the largest shareholder								
88. Plus Profit <sup>128</sup>	3/17/08	Not available	<ul style="list-style-type: none"> <li>Election of 2 non-outside directors</li> <li>Election of 1 auditor</li> </ul>	4,517	1,264	X	19.18% (2/14/08)	No	Failure	Company
89. VirtualTek	2/25/08	Control contest: the largest shareholder	<ul style="list-style-type: none"> <li>Election of 1 non-outside director and 1 outside director</li> </ul>	42,742	40,075	X	21.44% <sup>129</sup> (3/31/08)	Yes	Partial success <sup>130</sup>	Both
90. Dongwon Development	1/03/08	An institutional shareholder (5.93%, on 12/31/07)	<ul style="list-style-type: none"> <li>Election of 1 auditor</li> </ul>	225,368	182,273	X	41.50% (12/31/07)	No	Failure	Both
91. Hismartech	12/06/07	Control contest	<ul style="list-style-type: none"> <li>Election of 2 non-outside directors and 1 outside director</li> <li>Election of 1 auditor</li> </ul>	28,524	10,145	X	12.27% (11/14/07)	No	Partial success <sup>131</sup>	Company
92. Kuk Young G&M	12/28/07	Control contest: the former largest shareholder)	<ul style="list-style-type: none"> <li>Election of 5 non-outside directors and 2 outside directors</li> <li>Election of 1 auditor</li> </ul>	30,673	19,465	X	12.55% (12/13/07)	Yes	Failure	None

<sup>128</sup> Plus Profit was delisted on November 9, 2009 because of an outside auditor's objection to giving an opinion for the limited scope of the audit.

<sup>129</sup> This figure excludes the equity held by management.

<sup>130</sup> One non-outside director was elected.

<sup>131</sup> One non-outside director was elected.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
93. Shinji Soft <sup>132</sup>	11/30/07	Control contest: an individual shareholder)	<ul style="list-style-type: none"> <li>Election of 4 non-outside directors</li> </ul>	19,807	18,960	X	34.40% (9/30/07)	No	Partial success <sup>133</sup>	Company
94.		Control contest: an individual shareholder)	<ul style="list-style-type: none"> <li>Election of 5 non-outside directors</li> </ul>						Failure	Company
95. Dae Dong Gear	11/28/07	Four individual shareholders (2.37%, on 11/19/07)	<ul style="list-style-type: none"> <li>Election of 1 auditor</li> </ul>	56,899	25,061	X	53.54% (10/31/07)	No	Failure <sup>134</sup>	Both
96. Terraum (formerly NeoWave)	8/14/07	Control contest	<ul style="list-style-type: none"> <li>Election of 5 non-outside directors and 2 outside directors</li> <li>Election of 2 auditors</li> </ul>	47,184	36,392	X	6.01% (8/06/07)	No	Failure	Company <sup>135</sup>
97. DVS Korea	7/31/07	Control contest: the former largest shareholder	<ul style="list-style-type: none"> <li>Election of 4 non-outside directors and 1 outside director</li> <li>Election of 1 auditor</li> </ul>	35,833	11,183	X	11.69% (6/30/07)	No	Failure	None
98.		Control contest: the largest	<ul style="list-style-type: none"> <li>Election of 4 non-outside</li> </ul>						Success	None

<sup>132</sup> Shinji Soft was delisted on February 27, 2010 because it was unable to maintain the minimum requirement for market capitalization.

<sup>133</sup> Three directors were elected.

<sup>134</sup> Dae Dong Gear successfully prevented the shareholder proposal from going to a vote by proposing the amendment to the articles of incorporation to limit the total number of auditors.

<sup>135</sup> The employee stock ownership association of the company submitted solicitation statements in order to solicit shareholders to delegate voting shares to the association, and to get these shareholders to consent to the agenda proposed by the board of directors of the company and object to the agenda proposed by minority shareholders.



Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
		shareholder	<ul style="list-style-type: none"> <li>directors and 2 outside directors</li> <li>Election of 1 auditor</li> </ul>							
99. Trais (formerly Windsky, Geomento and Tinia Tech)	7/30/07	Control contest (10.05%, on 5/16/07)	<ul style="list-style-type: none"> <li>Election of 5 non-outside directors</li> <li>Election of 1 auditor</li> </ul>	13,092	9,129	X	40.33% (6/27/07)	No	Failure	None
100. NUVOTEC	7/12/07	Control contest: the largest shareholder	<ul style="list-style-type: none"> <li>Election of 3 non-outside directors</li> </ul>	23,735	5,330	X	5.87% (7/08/07)	No	Failure	Both
101. FINEDIGITAL	7/06/07	An individual shareholder (23.50%, on 03/31/07)	<ul style="list-style-type: none"> <li>Election of 1 non-outside director</li> </ul>	73,961	60,338	X	29.75% (6/30/07)	No	Failure	None
102. GDCorp (formerly Eight Peaks) <sup>136</sup>	6/20/07	Control contest	<ul style="list-style-type: none"> <li>Election of 2 non-outside directors and 1 outside director</li> </ul>	3,352	(3,147)	X	22.67% (5/15/07)	No	Success	None
103. Terraum (formerly NeoWave)	3/30/07	Control contest: the largest shareholder	<ul style="list-style-type: none"> <li>Election of 4 non-outside directors and 2 outside directors</li> <li>Election of 1 auditor</li> </ul>	47,184	36,392	X	35.14% (12/31/07)	No	Failure	Shareholder
104.		Control contest	<ul style="list-style-type: none"> <li>Election of 2 non-outside directors and 1</li> </ul>						Failure	None

<sup>136</sup> GDCorp was delisted on June 17, 2009 because of the KRX's merit review of its sustainability, transparency, and other factors.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
			<ul style="list-style-type: none"> <li>outside director</li> <li>Election of 2 auditors</li> </ul>							
105. DAHUI <sup>137</sup> (formerly EG Greentech)	3/16/07	Control contest (4.97%, on 03/02/07)	<ul style="list-style-type: none"> <li>Election of 5 non-outside directors</li> <li>Election of 1 auditor</li> </ul>	17,476	12,613	X	9.06% (9/30/06)	No	Failure	Shareholder
106. BioSmart	3/27/07	Control contest: the largest shareholder	<ul style="list-style-type: none"> <li>Election of 3 non-outside directors and 2 outside directors</li> <li>Election of 1 auditor</li> </ul>	36,125	32,487	X	11.17% (12/31/06)	No	Partial success <sup>138</sup>	Both
107. AD Motors (formerly Prosonic)	3/23/07	Control contest: private equity (the largest shareholder)	<ul style="list-style-type: none"> <li>Election of 3 non-outside directors</li> </ul>	28,976	23,312	X	18.46% (12/31/06)	No	Failure	Both
108. Sunny Trends <sup>139</sup> (formerly EnterOne)	3/20/07	Not available	<ul style="list-style-type: none"> <li>Election of 2 non-outside directors and 2 outside directors</li> </ul>	23,608	10,950	X	3.49% (12/31/06)	No	Failure	Company
109. For Nature <sup>140</sup> (formerly KAFCO C&I)	1/31/07	An institutional shareholder (5.06%, on 01/25/07)	<ul style="list-style-type: none"> <li>Election of 2 non-outside directors and 1 outside</li> </ul>	10,351	5,952	X	21.33% (12/31/06)	No	Failure	Both

<sup>137</sup> DAHUI was delisted on October 1, 2010 because of the KRX's merit review of its sustainability, transparency, and other factors.

<sup>138</sup> Four directors and one auditor were elected.

<sup>139</sup> Sunny Trends was delisted on September 4, 2009 because of an outside auditor's objection to giving an opinion as well as the excessive impairment of its capital.

<sup>140</sup> For Nature was delisted on April 23, 2010.

Company Name	Date of Shareholder Meeting	Characteristic of Nominating Shareholder	Contents of Shareholder Proposal	Asset	Net Asset	Paid-in Capital	Largest Shareholder (incl. related persons)	Cumulative Voting	Results	Proxy Statement
			director							
110. FINEDIGITAL	1/31/07	Control contest (30.57%, on 1/03/07)	• Election of 2 non-outside directors and 2 outside directors	72,179	58,651	X	30.73% (12/31/06)	No	Failure	None

Notes to Table 3:

(See Table 2 for the explanations for each column.)

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