[Journal of Business & Technology Law](http://digitalcommons.law.umaryland.edu/jbtl)

Volume 1 | Issue 1 Article 13

Mutual Funds and Proxy Voting: New Evidence on Corporate Governance

Burton Rothberg

Steven Lilien

BURTON ROTHBERG AND STEVEN LILIEN*

Mutual Funds and Proxy Voting: New Evidence on Corporate Governance

I. INTRODUCTION

EVENTS OF THE PAST SEVERAL YEARS have refocused attention on the agency problem in American corporations. Two basic aspects of the modern corporation lead to the problem: Ownership is largely separated from management, and ownership itself is usually diffused. Unlike the entrepreneur-dominated firm of older theory, the owners of publicly listed companies may have only a small fraction of their net worth invested in any single firm. As Adolf Berle and Gardiner Means argue, it simply may not be worthwhile for these owners to make the effort needed to control their management hirelings effectively.[1] As a result, the managers can often put their own interests and pocketbooks above those of the fund owners. Eugene Fama provides a counterweight to this line based on an active market for executive services.[2] Nonetheless, the examples of management predation uncovered in the last few years show that the problem is with us still.

Several strands of action have developed to counteract the unbridled wielding of management power, including more targeted management contracting, independent directors, threatened or actual takeovers, and concentrated ownership.[3] These strands can work together or even substitute for one another. This Article focuses on the concentrated ownership of institutional investors and on their attempts to restrain management. Institutional investors serve as aggregators of the funds of smaller investors, providing them with expertise and diversification. Bernard Black and others have theorized that these institutions have the expertise and economies

---

* Steven Lilien is Weinstein Professor of Accounting and Director of the Center for Corporate Integrity at Baruch College of the City University of New York. The authors wish to thank Financial Executives International for its support.

1. ADOLF A. BERLE AND GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY (1932). Many consider this book to be the seminal work in the area. Berle and Means made this argument at a time when many academics and the public believed that the Henry Ford–style model of corporate governance was still predominant.

2. Eugene F. Fama, *Agency Problems and the Theory of the Firm*, 88 J. POL. ECON. 288, 292–95 (1980). Fama argues that corporate managers must rationally consider their long-term career paths. *Id.* at 292–93. In this light, maximizing shareholder value at their current jobs will lead to greater rewards at other jobs—possibly at other firms—in the future.

3. *See generally* Andrei Shleifer & Robert W. Vishny, *A Survey of Corporate Governance*, 52 J. FIN. 737 (1997). This is an excellent introduction for readers interested in economic thinking on the subject.

of scale required to provide needed oversight of management.[4] Of course, legal and cultural obstacles may prevent this oversight from occurring. Nonetheless, these obstacles can be changed. In fact, the data for this Article comes from one such change in the regulatory landscape—a change that was specifically designed to encourage activism by institutional shareholders.

This Article restricts itself to a subset of institutional investors: the mutual funds. We select this subset because of its large size—mutual funds own about twenty-four percent of U.S. equities[5]—and also because two new datasets about this activity have appeared in the public domain. According to Black,[6] Alan Palmiter,[7] and Mark Roe,[8] mutual funds have greater potential for active corporate governance than banks, insurance companies, or corporate pension funds. Their argument is that monitoring management is often constrained by conflicts of interest with other goals of the institutional investor. Mutual funds are less likely to have these conflicts of interest. By law, each mutual fund must have its own board of trustees, and these trustees are legally bound to represent the interests of fundholders. Additionally, mutual funds are marketed by their performance. If superior governance can in fact improve a company,[9] it should be in the mutual fund's interest to undertake it.

But do the mutual funds undertake this oversight? And if they do, how is this oversight expressed? Until now, there has been only anecdotal or survey evidence. Palmiter offers examples from the financial press.[10] Gile Downes interviews mutual fund executives and finds they generally do not feel that shareholder activism adds value.[11] But how do they act on these views? No broad dataset was available.

One way owners can exercise their governance is through the formal process of proxy voting. Voting on issues put to shareholders is an important responsibility of ownership. For small shareholders, this may be the only part of corporate governance in which they participate. Shareholders normally vote on key issues, such as

4. Bernard S. Black, *Shareholder Passivity Reexamined*, 89 MICH. L. REV. 520, 569 (1990).

5. These numbers are partially estimated. *See infra* Table 1.

6. Black, *supra* note 4, at 601–03.

7. Alan R. Palmiter, *Mutual Fund Voting of Portfolio Shares: Why Not Disclose?*, 23 CARDOZO L. REV. 1419, 1435–40 (2002).

8. MARK J. ROE, STRONG MANAGERS,WEAK OWNERS: THE POLITICAL ROOTS OF AMERICAN CORPORATE FINANCE 119–21 (1994).

9. The question as to whether shareholder activism and the possibility of enhanced governance actually improve corporate performance is not settled. Stuart Gillan and Lisa Starks list 23 studies on the issue and find divided results. Stuart L. Gillan & Lisa T. Starks, *A Survey of Shareholder Activism: Motivation and Empirical Evidence*, 2 CONTEMP. FIN. DIG. 10, 21–28 (1998), *available at* http://ssrn.com/abstract=663523. Paul MacAvoy and Ira Millstein attempt to quantify this effect and find a statistically significant return to good governance. PAUL W. MACAVOY & IRA M. MILLSTEIN, THE RECURRENT CRISIS IN CORPORATE GOVERNANCE 43–65 (2003). We have research in progress that indicates a substantial return to shareholder activism at smaller companies. Contact us at burt@rothberg.net for details.

10. Palmiter, *supra* note 7, at 1437.

11. GILE R. DOWNES, JR. ET AL., INSTITUTIONAL INVESTORS AND CORPORATE BEHAVIOR 34 (1999), *available at* http://www2.gsb.columbia.edu/faculty/ghubbard/Papers/DHH_Inst_Invest_Proj_AEI_12_99.pdf.

the election of directors, approval of auditors, CEO compensation, and issues involving mergers or takeovers. Management proposes most of the issues, but recent years have seen an increase in the number of issues concerned shareholders have raised. Many of the shareholder-raised issues concern the operation of the firm, particularly on social and ethical issues, as well as matters of general governance. In many cases, the shareholder vote is nonbinding; the board can, and sometimes does, act against a shareholder majority.[12]

In 2003, the Securities and Exchange Commission (SEC) promulgated two new rules that shed light on how the mutual funds are using the proxy process. The first rule requires funds to draw up and make public a set of policies on how they will make decisions on proxy votes.[13] The second rule requires them to disclose how they actually vote.[14] This Article analyzes the results of these rules and uses the results as evidence for certain questions important to the corporate-governance discussion.

The remainder of the Article is organized as follows. Section II describes the institutional background to the new rules and resulting datasets. Section III describes and analyzes the proxy-voting policy disclosures. Section IV describes the proxy-voting dataset. Section V uses the voting tabulations to answer questions about how mutual funds operate as corporate owners. We conclude and suggest further research in Section VI.

II. BACKGROUND

The past twenty years have seen a major increase in the equity assets under management of institutional investors, particularly of public mutual funds. From 1984 to 2004, the equity assets of mutual funds have grown from $83 billion to $4.49 *trillion*.[15] During that time, the number of equity and equity-hybrid funds has grown from 548 to 5,060.[16] Some of this growth is a direct result of the increase in stock prices during the period, but there has also been a major increase in new investments by fundholders. As stock investment has become a more important option for households' savings and retirement assets, net inflows to equity and equity-hybrid mutual funds rose from $5.5 billion in 1984 to a high of $321 billion

12. In a telephone communication with author Rothberg, Mr. Elliot Schwartz of the Council of Institutional Investors claimed that such occurrences are widespread. As an extreme example, he noted that Maytag Corp. ignored a majority vote to declassify for six years.

13. Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management, Securities Act Release No. 8188, Exchange Act Release No. 47,304, Investment Company Act Release No. 25,922, [2002–2003 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 86,826, at 87,143 (Jan. 31, 2003), *available at* http://www.sec.gov/rules/final/33-8188.htm [hereinafter "Disclosure of Proxy Voting Policies"].

14. *Id.*

15. *See infra* Table 1 for details and sources.

16. INVESTMENT COMPANY INSTITUTE, 2005 INVESTMENT COMPANY FACT BOOK 63 (45th ed. 2005), *available at* http://www.ici.org/pdf/2005_factbook.pdf.

in 2000.[17] Net inflows came down sharply in the bear market after that, but rebounded to $277 billion in 2004.[18]

One result of these trends is that institutional investors generally—mutual funds in particular—have become larger percentage owners of U.S. corporate equities. At the end of 2004, mutual funds held about twenty-four percent of U.S. stock market capitalization.[19] Much of the existing literature assumes that the existence of large-block owners can be a possible control mechanism to mitigate the agency problem. But do large-block owners actually perform this function?

Questions like these have important implications for American corporate performance. If owners abdicate their responsibilities in overseeing their investments, agency problems will develop, and the value of stock ownership will consequently fall. The rise of index mutual funds, which invest passively in the full market or in a defined sector, has increased the potential for these problems. Actively managed funds, if they dislike a company's governance, can at least sell the stock—the "Wall Street walk." The resulting decline in the firm's value may lead to self-correcting events. Index funds are wedded to a fixed basket and have no such flexibility.[20]

There is also a suspicion among some observers that mutual funds have incentives not to act against sitting management. According to this theory, mutual fund companies have conflicts of interest with their non–mutual fund business. A mutual fund company will normally have other asset-management businesses, such as pension fund or 401(k) management. Mutual fund executives are forced to consider the interests of these other businesses. If the fund is a division of a diversified financial services company, the conflicts of interest may extend to far larger profit centers such as investment banking and securities trading. Aggressively confronting management, the theory goes, would endanger these other businesses. Also, bad relationships with management might limit analyst access and result in poorer trading performance.

Until recently, some in the corporate-governance community thought mutual funds were not taking the proxy-voting process seriously enough. Hard data was unavailable, but anecdotal evidence indicated that some funds did not even bother to vote. Others were suspected of voting uncritically with management on all issues. In the post-Enron era, these suspicions received wide airing.

---

17. *Id.* at tables 11, 12, and 18. For this calculation, the authors assumed that hybrid equity/bond funds were invested 65% in equities.

18. *Id.*

19. This number is up from about 4.8% in 1984. *See infra* Table 1.

20. Diane Del Guercio & Jennifer Hawkins, *The Motivation and Impact of Pension Fund Activism*, 52 J. FIN. ECON. 293, 300 (1999). Moreover, because the object of an index fund is to replicate its index at low cost rather than outperform the index, the fund may not even have an incentive to monitor management. *Id.* at 305. *See infra* Table 3 for additional information.

The SEC had been following these concerns for many years. In 1980, SEC staff prepared a report that addressed some of these issues.[21] On September 20, 2002, the SEC proposed rules to address them.[22] The SEC apparently agreed with some of the criticism. It was clear about the intent of the new rules:

> *Traditionally, mutual funds have been viewed as largely passive investors, reluctant to challenge corporate management on issues such as corporate governance. Funds have often followed the so-called "Wall Street rule," according to which an investor should either vote as management recommends or, if dissatisfied with management, sell the stock. . . . Recent corporate scandals have created renewed investor interest in issues of corporate governance and have underscored the need for mutual funds and other institutional investors to focus on corporate governance.*[23]

The new rules apply to all investment companies registered under the Securities Act of 1933 and the Investment Company Act of 1940 whose assets under management exceed $100 million and require them to do the following:

- Draw up and disclose a set of policies for deciding how to vote their proxies. The form and content of these policies was left to the fund's discretion. The SEC gave examples of possible topics to address, but there was no requirement for funds to include any specific issue. The rules require that policy documents be disclosed in the fund's Statement of Additional Information and posted on the SEC's website.
- Draw up and disclose a set of procedures on how the proxy-voting process will be carried out. Again, there was no guidance favoring any particular type of process.
- Draw up and disclose procedures on how the fund will deal with potential conflicts between the interests of the fund and those of the fund company or its management. Again, the content of the procedures, including which conflicts of interest are considered, was left unspecified.
- Disclose its vote on each proxy for all companies in its portfolio. The disclosures had to be made by August 31, 2004, for the previous twelve months. The form of the disclosures was left open but had to include the following:
    - What company was making the disclosure and what the nature of the proposal was;

---

21. SECURITIES AND EXCHANGE COMMISSION, STAFF REPORT ON CORPORATE ACCOUNTABILITY 60–63 (1980).

22. Disclosure of Proxy Voting Policies and Proxy Records by Registered Management Investment Companies, Securities Act Release No. 8131, Exchange Act Release No. 46,518, Investment Company Act Release No. 25,739, 67 Fed. Reg. 60,828 (proposed Sept. 20, 2002), *available at* http://www.sec.gov/rules/proposed/33-8131.htm.

23. Disclosure of Proxy Voting Policies, *supra* note 13, at 87,144–45 (internal citations omitted).

- Which group initiated the proposal (management, shareholders, or the fund itself);
- Whether the fund voted on the proposal;
- How the fund voted; and
- Whether the fund voted for or against management.[24]

Table 2 describes the timeline of the rule's proposal and adoption.

The comment period after the rule's proposal was unusually active. According to the SEC, its "proposals resulted in an extraordinary level of public interest and vigorous debate and over 8,000 comment letters."[25]

Many fund companies opposed the new rule.[26] During the comment period, they voiced several threads of complaint. First, they noted that preparing the new policies and disclosures added to their costs. Second, some funds thought investors did not want or need the new information. Third, they thought that disclosing their actual votes would make them potential targets for single-issue special-interest groups, particularly on social and ethical issues unrelated to the economic mission of the corporation. Nevertheless, the rule was made effective on April 14, 2003.[27]

III. DATASET ONE: PROXY-VOTING POLICY STATEMENTS

We collected the proxy-voting policy disclosures from the SEC website[28] or from the individual funds' websites. All of the policy statements are textual; they include no data tables or databases. The statements vary widely in size and content. We examined the disclosures of the top ten mutual fund families based on equity assets. These fund families account for about two-thirds of the industry total assets under management. Data on equity assets comes from a variety of sources, including Morningstar and the *Mutual Fund Fact Book.*[29]

A mutual fund company has to decide at what level to make the proxy-voting decision. Each fund family in this dataset made proxy decisions at an aggregate level, either by the fund family itself or by the entity that managed the fund's assets. The decisions were not made by the individual fund trustees or management. Because all families had many funds—some in the hundreds—proxies could be voted as a block across all the manager's funds. In fact, AIM was the only fund company to specify that different funds might be able to vote oppositely on a proxy.[30] A fund managed by a particular manager would vote the same way on an issue whether the fund was long-term or short-term oriented and whether it was an actively managed fund or an index fund. Eight of the ten fund families had one policy statement for

---

24. *Id.* at 87,143.
25. *Id.* at 87,146 (internal citation omitted).
26. *Id.* at 87,148.
27. *Id.* at 87,142.
28. *See* http://www.sec.gov.
29. Table 3 lists these data sources.
30. *Id.*

all their funds. One family, Fidelity, had two very similar statements.[31] Another family, Janus, used the services of many managers with their own policy statements, four of which are included in this Article.[32]

The statements vary greatly in length and comprehensiveness, ranging from 30 to 450 lines of text. All the statements lay down a general principle that the interests of the fund holders would be preeminent and that all proxies would be voted in a way to maximize fundholder value. We picked through the statements and created data tables to summarize the issues the funds thought were important and how they would vote. There was substantial variation in the level of detail disclosed. Also notable was the amount of exclusionary boilerplate. Virtually every fund made it clear that its guidelines could be contravened for stated and unstated reasons. In spite of the broad leeway in content the SEC allowed, there were numerous common themes.

Table 4 describes the voting procedures used at the ten largest fund families. The most common way of organizing the voting decision was to create a committee of more senior fund management company executives (as opposed to employees of the fund itself) to draw up guidelines on voting policies and to oversee the voting process. In matters that were routine or on votes in which the guidelines were clear, the actual voting decision was made at a lower level. This could be a fund's portfolio manager or even an analyst, but more typically the fund would outsource to an independent proxy-voting service, which was sometimes unnamed but was often Institutional Shareholders Services (ISS). The service would apply the fund's guidelines, vote the proxy, and keep all voting records. In cases where there were no guidelines or where the fund manager wanted to vote in contravention of the guidelines, the matter would go to the overseeing committee. In a few cases, the matter would go to the fund's CEO or general counsel.

The SEC also required the funds to create procedures for handling conflicts of interest.[33] The funds' response to this is shown in Table 5. This section of the disclosures was typically short, averaging only eighteen lines. The typical procedure for resolving corporate conflicts is to send the conflict before a more senior committee to rule. The type of corporate conflict most mentioned was a potential relationship with the fund's parent company. In cases of a potential conflict of interest between the proxy vote and the individual doing the voting, the normal procedure was for the individual to recuse herself.

The conflict-of-interest issue raises the question of whether the funds vote in the interest of their fundholders or with consideration to the other parts of the fund company's interests. These published fund disclosures support the independence argument; mutual funds claim they vote on behalf of their investors. Nonetheless,

31. Fidelity Investments, Fidelity Proxy Voting Guidelines (all Fidelity funds except equity index funds) and (Fidelity equity index funds only), 2004.

32. Janus Capital Group, Statement of Additional Information, various funds, 2004.

33. *See* Disclosure of Proxy Voting Policies, *supra* note 22, at 87,146–47.

the overall lack of specificity gives the impression the funds were just as concerned about the need to cover themselves from future criticism or even litigation. We will test the hypothesis of fund independence in the voting data.

Tables 6 through 8 summarize the funds' policies on substantive issues. Table 6 concerns antitakeover issues. This is an area of broad agreement among the ten fund families. Virtually all were opposed to takeover defenses. Eight of the ten were against dual classes of common stock.[34] Seven were against supermajority voting[35] and classified boards.[36] Five of the ten were in favor of restrictions on poison pills,[37] and two favored anti-greenmail action.[38] One fund, T. Rowe Price, did not mention any of these specific issues but did claim to oppose antitakeover strategies. The unity of the funds on antitakeover issues is the strongest pattern we identify across the various voting issues in the database.

This opposition to antitakeover tactics is both intellectually and practically important. It further supports the argument that the funds' primary motivation is increasing the value of their holdings. It shows that the funds are willing to confront sitting management on an issue that cuts clearly into management's self-interest. Practically, this opposition to antitakeover measures may already be influencing management behavior. During 2003, when these policies were drawn up, the number of takeover defenses among the S&P 500 decreased by about four percent.[39]

Table 7 concerns executive compensation. Three of the fund families said they would generally go along with the board's recommendation, and three others would do so unless the compensation was "excessive."[40] On the other hand, the funds were against specific types of compensation they thought was unfair. Seven were opposed to repricing existing employee stock options.[41] Morgan Stanley, in an interesting twist, said it would agree to repricing, but only if the employee was given options of equal value, not equal shares.[42] Five were against issuing employee

34. Dual-class common is an ownership structure in which one class of stock, often controlled by the founders or management, has equal economic interest but superior voting powers.

35. Supermajority voting is a governance structure in which a greater than 50% majority (often 75%) is needed to accept a takeover offer.

36. A classified board is one in which the election of the board of directors is staggered over time, often to prevent takeover attempts.

37. A poison pill is a device meant to prevent a hostile takeover by increasing takeover costs, often through the issuance of new shares that carry severe redemption penalties.

38. Greenmail is the practice of buying a stake in a target company and then getting the company to buy back its own shares at a premium to prevent a takeover.

39. Press Release, TrueCourse, Companies Dismantle Takeover Defense Arsenals in 2003 (Jan. 22, 2004), *available at* http://www.sharkrepellent.net/pub/2003_year_end_review.pdf.

40. See Table 3, *infra*, for data sources.

41. Repricing is the practice of lowering the strike price on executive stock options after a company's stock has fallen. Some investors think the practice rewards management failure.

42. See Table 7, *infra*.

options with strike prices below the actual market, and two others would restrict any such discount to fifteen percent.[43]

Importantly, eight of the ten mentioned some dilutive bound on issuing stock options. The actual size of the bound ranged from one percent to two percent per year.[44] Many companies allowed for greater dilution for growth companies than for mature ones. This level of dilution is quite restrictive relative to many technology companies and might lead to serious conflict with managers.

Policies concerning corporate control and capital structure are shown in Table 8. All the funds specified that they would consider voting to withhold authority from a board if it did not have a majority of independent directors.[45] Other than failure to discharge their duties, this was the most often stated reason the funds gave for voting to withhold. Five of the top ten funds also wanted a majority—or all—of their boards' compensation, audit, and nominating committees to be independent directors. Although most of the funds would support management on its choice of auditor, four of the ten wanted to restrict the auditor's nonaudit business with the company.[46] There was no mention of policy toward companies that had restated their financial statements or that suffered from a poor internal control system.

All but four of the fifteen managers had some sort of policy restricting their support for changes in a company's capital structure.[47] Four of them would be opposed to increases in common shares that would more than double (triple for Fidelity) the number of outstanding shares. Two said they would deal with them case by case. These are broad guidelines and indicate that the funds are willing to give corporate management a wide berth on capital-structure issues that do not specifically involve takeovers or other control issues. Note that five specifically mentioned opposition to "blank check" preferred stock issuance, a technique often used as an antitakeover measure. We found no mention of restrictions on changes in debt. In all, we find that the funds' policies on capital-structure issues leave most cases to management's discretion.

Finally, there was little support for a social or political activist agenda. Three of the fund families specifically said they would vote with management. Fidelity said it would abstain. Several others either did not mention the issue or passed it off to the ISS guidelines. It is important to remember that the fear of such special-interest conflicts was a major reason for fund opposition to the new proxy-voting rules. So far at least, the funds appear to be coping well. The funds' attitude toward these issues makes it clear they favor leaving operational issues to management discursion.

---

43. *Id.*
44. *Id.*
45. *See* Table 8, *infra.*
46. *See id.*
47. *See id.*

IV. DATASET TWO: PROXY VOTES

The funds' lists of their actual votes were released by August 31, 2004, for the previous twelve months of voting. This data was made available both to the SEC and to fundholders, usually on the fund's website. The SEC decided not to require any specific format for the data presentation. Some funds have set up their websites so that an interested party can easily find how the fund voted on a specific vote, but downloading all the votes into a database is more difficult. On the SEC website, all votes are in one place but stored in textual format. Extracting this data required writing a computer program that could parse the text documents and create a data table. Because most fund families had different text formats, separate programs had to be written for each. With text-parsing programs it is impossible to ensure that all data are accurately processed. Errors and inconsistencies in spelling, indentation, or alignment can lead to corrupted data. Our error checking and hand verification gives us confidence that our database has extremely high accuracy for all fund families except one. A sample of typical text input is shown in Table 9.

In order to get a somewhat wider selection of funds that will go to the research questions below, our database contains five of the large fund families, four other fund families that are small parts of large financial services companies, and six "long-term stock pickers" who tend to hold a small selection of stocks for many years. We eliminated stocks that do not trade on U.S. exchanges because the proxy-voting rules and procedures are often vastly different between the United States and other countries. We did this by eliminating all stocks without a proper U.S. CUSIP (Committee on Uniform Securities Identification Procedures) or ticker. Note that we left ADR (American Depositary Receipt) securities in the database. We thought that since ADR securities are subject to SEC regulation, they are at least partly within the scope of the U.S. legal system. We also eliminated any intrafund family holdings. (Some funds in some families hold shares of other funds in the family and are thus entitled to vote in those funds.)

After a proper database had been created, duplicate votes were eliminated. Duplicates occurred because a company might be in the portfolios of more than one of the funds in a family. This is particularly true for large-cap firms; some companies were in more than twenty funds of several fund families. A table of summary statistics for five of the top fund families is shown in Table 10.

V. RESEARCH QUESTIONS

Question One: Did the Mutual Funds Vote Their Proxies and When Did They Vote Against Management?

The major mutual funds studied here did vote their proxies. The average of all five funds was around ninety-eight percent. Because public data for prior years does not exist, it is unknown whether the funds have always voted at this level or whether the new required disclosures have altered their behavior. Nonetheless, the record in 2004 would seem to indicate that the funds are taking this part of their ownership responsibilities seriously.

Second, the major fund families voted their funds as a block. In the case of Fidelity, we recorded 192,451 separate votes by all funds on all issues.[48] We counted only 1,573 cases in which one fund voted differently from another on a proposal—0.8% of the total. Many of these were cases in which one fund voted "against" and another voted "abstain," suggesting a possible communication or clerical error.

The five large mutual funds voted against management an average of seventeen percent of the time. This data ranged from a high of twenty-nine percent at Vanguard to a low of eight percent at T. Rowe Price. In examining the data, we could uncover no obvious simple patterns, such as "vote with management on all board elections." This lack of simple global rules provides evidence that the funds voted individual proposals on their merits rather than applying a single standard.

Value Maximizing and Principal-Agent Issues

In the proxy policy disclosures, the funds were clear about their desire to oppose management on issues that directly affect the value of their investments. The votes reflect this intent. Table 11 describes how the big five funds voted on certain issues. Because reading all of the more than 100,000 proposals was infeasible, a computerized search was conducted to isolate issues deemed important. For example, one issue that has been commented on is excessive executive severance payments, the so-called golden parachutes. To isolate these, we searched all the proposals for the word *severance*. These records were isolated and hand examined for relevance. They were then tabulated in Table 11.

Although the average vote was seventeen percent against management, there were much higher percentages in areas highlighted in the proxy policy statements. For example, the funds voted against management more often on antitakeover issues. Searching through the words used for typical takeover defenses, we found a total of 481 proposals. The funds voted against management fifty-nine percent of the time on these issues, including a seventy-percent vote against management on poison pills.

The funds also voted more often than average against management on issues of executive compensation, voting against thirty-four percent of the time. Interestingly, the funds voted "no" on forty-seven percent of stock-option compensation proposals but on only nine percent of bonus compensation proposals. On the question of executive severance payments, or golden parachutes, the funds voted "no" sixty-seven percent of the time.

On other important issues, the results were less clear. The funds voted thirty-one percent against proposals to issue additional common stock. This might indicate

48. This number includes different funds voting for the same proposal.

that the funds were protecting the value of their assets from dilution. Many of these issuances, however, were likely associated with stock-option compensation packages, so these results may simply verify the compensation votes. Likewise, the funds voted twenty-nine percent against preferred stock issuances. We were unable to determine from the proposals how many of these were "blank check" preferred, normally used as an antitakeover device.

Corporate Governance and Control Issues

On votes regarding the election of directors, the funds voted against management fourteen percent of the time. This data ranged from a high of twenty-seven percent at Vanguard to a low of four percent at Fidelity. The funds did not provide a reason for rejecting a board nominee. In the proxy policy disclosures, however, the reason most often cited was that the funds planned to vote against boards without a majority of independent directors. This moderately high level of voting against boards is at least consistent with the funds' desire to achieve this governance goal.

Operational and Social/Ethical Issues

In the policy disclosures, several funds mentioned that they did not wish to look over management's shoulder on operational issues. In fact, management proposed few purely operational issues. On one such issue, auditor ratification, a large portion of the funds voted strongly with management—ninety-four percent—to ratify the existing auditor.

In the proxy policy statements, all funds indicated they would be wary of shareholder social or ethical proposals. This was also borne out in the voting data. Of the 327 proposals isolated in the database, there were only seventeen (five percent) "for" votes. The low percentage of "for" votes holds throughout all types of ethical proposals, with the exception of fair labor treatment proposals, which received fifty-percent approval.

Question Two: Do Voting Patterns Vary with the Type of Investment Manager?

There are reasons to believe that different types of mutual fund managers will have different proxy-voting patterns. Certain managers, which we will call long-term-stock pickers, tend to hold positions in stocks for a relatively long time—sometimes for many years. Often, these managers have relatively fewer stocks in their portfolios than other mutual funds of similar size. Their approach is to conduct in-depth research on and monitoring of these companies and invest two to ten percent of their assets in each. Some of these managers have had considerable success; a few have become household names among followers of investing. We hypothesize that these managers will vote more often with management than the average fund manager. We expect that a part of what these managers like in the companies they own is the quality of management. If one is buying a company for three to five years, one had better have confidence in its leadership.[49]

To get a sample of managers in this category, we used six funds. These funds were featured in the October 22, 2004, issue of the *Wall Street Journal* as exemplars of this type.[50]

Fund	Approximate Assets ($ Billion)	Number of Stocks Voted On
Legg Mason Value Trust	10.5	33
Clipper Fund	6.9	20
Fidelity Dividend Growth Fund	18.7	120
Sequoia Fund	4.4	17
Torray Fund	0.9	49
White Oak Growth Stock	1.6	18

Table 12 shows the proxy-voting results for these six funds compared with the average of the big five. These funds voted with management ninety-five percent of the time, compared with only eighty-one percent for the big five, supporting the hypothesis. Many readers will know that these six funds have had excellent performance; we are not implying any relationship between voting patterns and performance.

Another possible relationship between investing style and proxy voting might be in the difference between active and passive investing. Active managers have the option of selling a stock if they do not like management; index funds have no such option. This might lead one to hypothesize that index fund managers might be holders of some stocks in whose management they have little confidence. Note that the Vanguard Group, the leader in index mutual funds, has the highest rate of voting against management. On the other hand, because the goal of an index fund is to replicate the target index at the lowest possible cost, one could hypothesize that index managers would not want to spend the money to vote effectively.

To test this hypothesis, we attempted to pick at random one index fund and one actively managed fund from each of the big five fund families. Unfortunately, we could not locate any pure index funds in two of the big five, Janus and Putnam. We replaced these families with Merrill-Lynch and AIM/Invesco. The results are shown in Table 13. The index funds voted against management thirteen percent of the

49. The managers we are considering do not make a business of hostile takeovers. Naturally, we would expect that managers who participate in hostile takeovers would vote the opposite. These tend to be mostly hedge funds and private equity rather than mutual funds.

50. Karen Damato, *How Some Mutual-Fund Hotshots Fell Behind: Managers With Great Records Make Big Bets and Hang Tough When They Hit a Rough Patch*, WALL ST. J., Oct. 22, 2004, at C1.

time, compared with eleven percent for the actively managed funds. This difference is small and may not reflect the index versus actively managed distinction. The difference is also wholly attributable to the Vanguard Group, a leader in indexing and the family that voted most often against management. Other authors have speculated that cultural factors might influence voting, and some believe that Vanguard has a particularly independent culture.[51]

Question Three: Do the Voting Decisions of the Funds Appear To Be Influenced by Nonfund Business Relationships?

All the large fund families claim that they vote their proxies for the benefit of their fund holders—they vote so as to maximize the value of their holdings. Is this true? The general press has speculated that mutual funds vote to further the interests of the fund company, including its nonfund businesses. Gerald Davis and Han Kim analyze the votes of funds in companies in which they do asset-management business.[52] They find that in the aggregate, funds are no less likely to vote against management in client firms.[53] On certain policy issues, however, such as poison pills and option expensing, they do find a greater likelihood to vote with management on shareholder proposals.[54]

Four of the big five fund families used in the previous analysis are largely asset-management companies. These four do more than pure mutual funds—pension/retirement management, for example. Mutual funds and related services, however, are the core of their businesses. One of them, Putnam, is part of Marsh & McLennan, an insurance brokerage.[55] To test whether nonfund businesses are intruding on proxy-voting decisions, we added a sample of three more financial services companies. These companies were chosen because their main businesses were in areas other than mutual funds or asset management generally.

- Goldman Sachs (proprietary trading, capital markets, investment banking)
- Barclays (banking, investment banking, capital markets)
- St. Paul Travelers (insurance)

The technique here is to compare the voting records of the two groups of funds. If influence by nonfund businesses was a factor, we would expect the companies with large nonfund interests to be more affected. Table 14 shows the results of this analysis.

51. *See* Black, *supra* note 4, at 562–64.

52. *See generally* Gerald F. Davis & E. Han Kim, *Would Mutual Funds Bite the Hand That Feeds Them?: Business Ties and Proxy Voting* 1 (University of Michigan, Stephen M. Ross School of Business, 2005), *available at* http://ssrn.com/abstract=667625.

53. *Id.* at 30.

54. *Id.* at 32.

55. Putnam provided 14% of Marsh's revenue and net income during 2004. Marsh & McLennan Cos., 2004 Summary Annual Report 69 (2004), *available at* http://www.mmc.com/about/Annual_2004.pdf.

One of the large financial services companies, Barclays, does not disclose its voting for each individual director. Instead it classifies its vote on the entire board as either "For," "Withhold," or "Split." This practice reduced the number of elections in the data. The results of Table 14, however, show that the two groups of firms are quite similar. The four "mostly mutual fund" families vote with management in eighty-one percent of the votes while the four "financial services conglomerates" vote with management in eighty-seven percent. On election of directors, the funds in large financial services companies voted against management more often by seventeen to thirteen percent. With these results we find no evidence that the funds are allowing nonfund considerations to affect their proxy-voting decisions.

VI. CONCLUSIONS AND POSSIBLE FUTURE RESEARCH

The past several years have seen important changes in corporate governance and control. The Sarbanes-Oxley Act requires CEOs and CFOs to sign their financial statements and to document and validate the controls used to prepare these statements.[56] Several regulatory and certificatory organizations have expressed a preference for boards with majority independent directors, often compensated on long-run performance. Finally, the SEC has instituted new rules encouraging institutional investors to exercise their proxy-voting processes more seriously.

In this Article, we have described and analyzed the new data produced by the SEC's new rules on proxy votes. We conclude that the mutual funds sampled did vote their proxies and voted in general accordance with the policies they laid out in their proxy policy disclosures. In particular, the funds often voted against managements' recommendations on issues of executive compensation, on board independence, and on possible takeovers. The funds generally voted with managements' recommendations on operational or capital-structure issues. This pattern of voting is precisely what one would expect in a principal-agent form of corporate governance, and we conclude that the funds are operating from this model.

Further research needs to be done on institutional investors' approach to boards of directors. Some observers consider this one of the key factors in improving governance.[57] The funds in our sample disclosed their votes, but did not give reasons for them. Certain institutional investors, including CALpers and Merrill-Lynch, also disclosed the reasons for their votes. Analysis of this data would be productive.

We also conclude that different types of investment managers have different voting patterns. In particular, stock pickers with a long investment horizon tend to vote more with management. It would be useful if a sample of institutions that are known to specialize in takeovers were examined. It would also be interesting to see if certain types of voting patterns might precede unusual stock returns. For exam-

56. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, § 302(a)(2), 116 Stat. 745, 777.

57. *See* MACAVOY & MILLSTEIN, *supra* note 9, at 45–46.

ple, it might be that a rise in votes against management in an out-of-favor company might lead to management improvement.

Finally, we conclude that there is no evidence to show that mutual funds let the nonfund parts of their companies influence their votes. This is good news, but our analysis is based on a relatively small sample. Over time we intend to expand our proxy-voting database.

TABLE 1: EQUITY ASSETS OF U.S. MUTUAL FUNDS[58]

	1	2	3	4 = 3 + 4 + 5	5	6 = 4 / 5
	Long-Term Open-Ended[59]	Exchange-Traded, U.S.-only[60]	Closed-End U.S.-only	Total Assets	Total Value of U.S. Equities[61]	Percent Held by Mutual Funds
1984	83	0	<10	<86	1,789	4.8%
2004	4490	184	63	4,215	17,254	24.4%

TABLE 2: TIMELINE OF SEC ACTION[62]

20 September 2002	SEC proposes proxy-voting rules
14 April 2003	New rules adopted
1 July 2003	Beginning of period for which proxy votes must eventually be disclosed
1 July 2003	Proxy-voting policy statements must be filed on new or amended registrations
30 June 2004	End of period for which proxy votes must eventually be disclosed
31 August 2004	Deadline for disclosing proxy votes since Sept. 1, 2003

58. INVESTMENT COMPANY INSTITUTE, *supra* note 16.

59. *Id.* Table 28. Short-term funds are ignored because they do not invest in equities but in money-market instruments.

60. *Id.* Table 12. Exchange-traded and traditional closed-end funds both trade as individual assets on organized stock exchanges. Closed-end funds are normally actively managed. Conversely, exchange-traded funds replicate an entire index. Closed-end funds can, and often do, trade at premiums or discounts to net asset value (NAV). In contrast, exchange-traded funds trade very close to NAV.

61. Flow of Funds Account of the United States: Annual Flows and Outstandings 1975–1984, at 84 (Bd. of Governors of the Fed. Res. Sys. 2005), *available at* http://www.federalreserve.gov/releases/z1/20050609/annuals/a1975-1984.pdf; Flow of Funds Accounts of the United States: Flow and Outstandings First Quarter 2005, at 90 (Bd. of Governors of the Fed. Res. Sys., 2005), *available at* http://www.federalreserve.gov/releases/z1/20050609/z1.pdf.

62. *See* Disclosure of Proxy Voting Policies, *supra* note 13, at 87, 142–43.

TABLE 3: MUTUAL FUND FAMILIES AND POLICY DATA SOURCE

Fund Family	Estimated Percent of Total Mutual Fund Equity Assets	Source for Proxy-Voting Statement	Length of the Proxy-Voting Statement (in lines)
Fidelity (2 statements)	17	Company website	196–250
Vanguard	17	Company website	230
American Funds	12	Company website	162
Putnam	5	SEC website	450
Janus (4 statements)	3	SEC website	88–300
Franklin-Templeton	3	SEC website	130
AIM	3	SEC website	225
T. Rowe Price	2	Company website	51
Morgan Stanley	2	Company website	135
Oppenheimer/ Mass. Mutual	2	SEC website	30
Total of Top 10	66		
Industry Total	100		

Note: We estimated data on the percent share of each fund company based on a variety of sources, including Morningstar and the *Mutual Fund Fact Book.*

TABLE 4: PROXY-VOTING PROCEDURES

Fund Family	Which Investment Managers	How Many Lines in the Proxy-Voting Procedure?	Is the Process Described Generally or in Detail?	Who Actually Makes Proxy Decisions?	Who Oversees the Decision?	Do They Use an Outside Consultant?
Fidelity (excl. Index Funds)	FMR	12	General	FMR legal dept.	Funds' Board	Not mentioned
Fidelity (Index Only)	Geode Capital Management LLC	16	Detailed	An "established proxy advisory service"	An Operations Comm. of senior officers	Yes. Name not mentioned
Vanguard	All managers of the fund family	25	General	The proxy-voting group	A Proxy Oversight Committee	Not mentioned
The American Funds	All managers of the fund family	21	Detailed	The Manager's Investment Committee	Not mentioned	Not mentioned
Putnam	All managers of the fund family	30	Detailed	A proxy-voting service	A Committee of Independent Fund Trustees	Yes. Name not mentioned
Janus	Janus Capital Management LLC	25	Detailed	Portfolio managers	A Proxy-Voting Committee	Yes. Name not mentioned
Janus	Enhanced Investment Technologies LLC	20	Detailed	ISS	Not mentioned	ISS
Janus	Perkins Wolf McDonnell LLC	29	Detailed	Portfolio managers	A Proxy-Voting Committee	Yes. Name not mentioned
Janus	Bay Isle Financial LLC	60	Detailed	Chief Investment Officer	Comm. Chaired by Chief Investment Officer	Yes. Name not mentioned
Franklin-Templeton	All managers of the fund family	15	Detailed	Research analyst and portfolio manager	The proxy group of the legal dept.	ISS
AIM/Invesco	All managers of the fund family	33	Detailed	A comm. of the legal, investment, and finance depts.	Not mentioned	ISS
T. Rowe Price	All managers of the fund family	25	Detailed	Portfolio managers	A Proxy Committee	ISS
Morgan Stanley Dean Witter	All managers of the fund family	40	General	Devolved to the management company's. Details not given.	A Proxy Review Committee	ISS
Oppenheimer (Mass. Mutual)	All managers of the fund family	7	General	An unaffiliated third party	Not mentioned	Not mentioned
Typical Answer		25	Detailed	Lower Level Managers or ISS	Committee of Senior Management	Yes, usually ISS

TABLE 5: CONFLICT-OF-INTEREST (COI) PROCEDURES

Fund Family	Investment Manager	How Many Lines in the Process?	What Potential COIs are Mentioned?	Procedures for Dealing with Corporate COI	Procedures for Dealing with Personal COI
Fidelity	FMR	5	Other Fidelity companies' relationships	Not described	Not described
Fidelity	Geode Capital Management LLC	20	Business relationship with Geode	Not described	Not described
Vanguard	All managers in the fund family	18	Sales, client relationships	Proxy Committee does not include anyone with sales/client relationships	Individual recuses himself
The American Funds	All managers in the fund family	7	Fund Director is also a director of company	The Proxy Committee is alerted and may seek a third-party recommendation	Proxy Committee is alerted
Putnam	All managers in the fund family	24	Business relationship with Putnam, personal or family business	Legal and Compliance Depts. will issue written reports	Individual recuses himself
Janus	Janus Capital Management LLC	13	None	Not described	Not described
Janus	Enhanced Investment Technologies LLC	35	Relationships with Janus Funds	Attempts to influence the process will be reported to the CEO	Not described
Janus	Perkins Wolf McDonnell LLC	17	None	Proxy-Voting Committee will review contra-guideline votes	Not described
Janus	Bay Isle Financial LLC	18	Corporate or personal financial relationship	Proxy Committee is responsible for monitoring and resolving	Individual recuses himself
Franklin-Templeton	All managers in the fund family	10	None	Fund manager is allowed to make decision	None
AIM/Invesco	All managers in the fund family	50	Benefits administration, other business relations, personal relationships	Review by Proxy Committee	Individual recuses himself
T. Rowe Price	All managers in the fund family	18	Business or other relationship	Responsibility of the Proxy Committee	Not described
Morgan Stanley Dean Witter	All managers in the fund family	8	None	Decided by a Proxy-Review Committee	Not described
Oppenheimer (Mass. Mutual)	All managers in the fund family	4	None	Not described	Not described
Typical Answer		18 Lines	Relationships with Other Parts of the Fund's Parent	Sent up to Committee	Not described

TABLE 6: ANTITAKEOVER ISSUES

Fund Family	Which Investment Managers	Classified Boards	Supermajority Voting	Dual-Class Stock	Cumulative Voting	Poison Pills	Anti-Greenmail Proposals
Fidelity	FMR	Oppose	Oppose	Oppose	Generally approve	Oppose without shareholder approval	Approve
Fidelity	Geode Capital Management LLC	Oppose	Oppose	Oppose	Generally approve	Oppose without shareholder approval	Approve
Vanguard	All managers of the fund family	Oppose	Oppose	Oppose	Oppose	OK if shareholders can vote on them within a year	Not mentioned
The American Funds	All managers of the fund family	Oppose	Not mentioned	Not mentioned	Generally approve	Support their elimination	Not mentioned
Putnam	All managers of the fund family	Oppose	Oppose	Oppose	Not mentioned	Case by case	Not mentioned
Janus	Janus Capital Management LLC	Not mentioned	Oppose	Oppose	Not mentioned	Case by case	Case by case
Janus	Enhanced Investment Technologies LLC	Uses ISS recommend	Uses ISS recommend	Uses ISS recommend	Uses ISS recommend	Uses ISS recommend	Uses ISS recommend
Janus	Perkins Wolf McDonnell LLC	Not mentioned	Not mentioned	Oppose	Not mentioned	Not mentioned	Not mentioned
Janus	Bay Isle Financial LLC	Generally uses ISS guidelines	Generally uses ISS guidelines	Generally uses ISS guidelines	Generally uses ISS guidelines	Generally uses ISS guidelines	Generally uses ISS guidelines
Franklin-Templeton	All managers of the fund family	Oppose	Oppose	Oppose	Case by case	Supports shareholder votes	Approve
AIM/Invesco	All managers of the fund family	Case by case	Case by case	Oppose	Case by case	Case by case, but oppose "dead hand" pills*	Case by case
T. Rowe Price	All managers of the fund family	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned
Morgan Stanley Dean Witter	All managers of the fund family	Not mentioned	Generally voted with management	Oppose	Generally voted with management	Case by case	Generally voted with management
Oppenheimer (Mass. Mutual)	All managers of the fund family	Oppose	Oppose	Not mentioned	Oppose	Not mentioned	Not mentioned
Typical Answer		Oppose	Oppose	Oppose	Oppose	Restrict in Some Cases	No Consensus

*"Dead hand" poison pills can be removed only by incumbent directors or their chosen successors.

TABLE 7: EXECUTIVE-COMPENSATION ISSUES

Fund Family	Which Investment Managers	Approval of Stock-option and Restricted Stock Plans	Repricing of Options	Stock Options with Below-Market Strikes	Proposals to Limit Management Compensation
Fidelity (excl. Index Funds)	FMR	Approve if within 1%/1.5% per-year rule*	Oppose	Oppose	Generally disapprove if Compensation Committee is independent and uses independent consultants
Fidelity (Index Only)	Geode Capital Management LLC	Approve if within 1% / 1.5% per-year rule*	Oppose	Oppose	Generally disapprove if Compensation. Committee is independent and uses independent consultants
Vanguard	All managers of the fund family	Wants dilution > 2% per year	Oppose	Oppose	Disapprove if pay not "excessive"
The American Funds	All managers of the fund family	Oppose excessive dilution	Oppose	Oppose	Oppose
Putnam	All managers of the fund family	Approve if dilution is > 1.67% per year	Oppose	Oppose	Case by case
Janus	Janus Capital Management LLC	Oppose excessive dilution	Oppose	Oppose	Case by case
	Enhanced Investment Technologies LLC	Uses ISS recommendation	Uses ISS recommendation	Uses ISS recommendation	Uses ISS recommendation
	Perkins Wolf McDonnell LLC	Oppose excessive dilution	Oppose	Oppose	Case by case
	Bay Isle Financial LLC	Generally uses ISS guidelines	Generally uses ISS guidelines	Generally uses ISS guidelines	Generally uses ISS guidelines
Franklin-Templeton	All managers of the fund family	Oppose if dilution >1%***	Oppose	Approve if discount <15%	Disapprove if "excessively dilutive"
AIM/Invesco	All managers of the fund family	Approve unless dilution is "excessive"	Approve equal-value repricing, not share for share	Approve if discount <15%	Generally support board's discretion
T. Rowe Price	All managers of the fund family	Approve unless dilution is "excessive to a few senior executives"	Oppose	Not mentioned	Case by case
Morgan Stanley Dean Witter	All managers of the fund family	Approve if within 5%/10% rule**	Not mentioned	Approve if discount <15% and offered to employees in general	Case by case
Oppenheimer (Mass. Mutual)	All managers of the fund family	Generally votes with management	Oppose	Not mentioned	Generally votes with management
Typical Answer		Restriction on Dilutive Effect of About 1% per year	Oppose	Oppose	Generally opposed to limits

* Cannot be more than 10% dilutive for large companies and 15% for small companies over the life of the option. Options are typically for 10 years.
** Cannot be more than 5% dilutive for mature companies and 10% for growth companies over the life of the option.
*** Wording is 10% for the life of the option. Options are typically for 10 years.

TABLE 8: GOVERNANCE AND OTHER ISSUES

Fund Family	Which Investment Managers	Independent Directors	Director and Management Insurance and Indemnification	Approving Management's Choice of Auditor	Approval of New Common Stock	Approval of New Preferred Stock	Social Issues
Fidelity	FMR	Prefers all independent on Compensation Comm.	Not mentioned	Not mentioned	Approve up to 3 times outstanding	Against "blank check" preferred*	Abstain
Fidelity	Geode	Prefers all independent on Compensation Comm.	Approve	Not mentioned	Approve up to 3 times outstanding	Against "blank check" preferred	Abstain
Vanguard	All managers of the fund family	Want majority of board, all of Audit, Nominating, Compensation Comm.	Not mentioned	Approve if audit fees are less than 50% paid to Audit Co.	Not mentioned	Not mentioned	Leave up to management
The American Funds	All managers of the fund family	Not mentioned	Not mentioned	Not mentioned	Approve up to 2 times outstanding	Against "blank check" preferred	Based on benefits to shareholders only
Putnam	All managers of the fund family	Want majority of board, all of Audit, Nominating, Compensation Comm.	Not mentioned	Leave to management	Generally leave to management	Against "blank check" preferred	Leave up to management
Janus	Janus Capital Management LLC	Want majority of board, all of Audit, Nominating, Compensation Comm.	Not found	Oppose auditors who have substantial non-audit relationship with company	Not mentioned	Not mentioned	Not mentioned
Janus	Enhanced Investment Technologies LLC**	Uses ISS recommendation	Uses ISS recommend	Uses ISS recommend	Uses ISS recommend	Uses ISS recommend	Uses ISS recommend
Janus	Perkins Wolf McDonnell LLC	Want majority of board, all of Audit, Nominating, Compensation Comm.	Not mentioned	Oppose auditors who have substantial non-audit relationship with company	Not mentioned	Not mentioned	Not mentioned
Janus	Bay Isle Financial LLC	Generally uses ISS guidelines	Generally uses ISS guidelines	Approve	Generally uses ISS guidelines	Generally uses ISS guidelines	Generally uses ISS guidelines
Franklin-Templeton	All	Want majority of Audit, Nominating,	Not mentioned	Case by case	Case by case	Case by case	Leave up to

Fund Family	Which Investment Managers	Independent Directors	Director and Management Insurance and Indemnification	Approving Management's Choice of Auditor	Approval of New Common Stock	Approval of New Preferred Stock	Social Issues
		Compensation Comm.					management
AIM Invesco	All	Wants majority of board to be *independent*	Not mentioned	A company should limit relationship to the audit engagement	Case by case	Case by case	Abstain
T. Rowe Price	All	Want majority of board, all of Audit, Nominating, Compensation Comm.	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Votes with management
Morgan Stanley Dean Witter	All	*Generally voted in* support of management	*Generally voted in* support of management	*Generally voted in* support of management	Approve *up to* double existing shares	Against "blank check" preferred	Oppose
Oppenheimer	All	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned
Typical Answer	Not applicable	Majority of Board and Comm. Independent	Not mentioned	Approve	Approve with restrictions	Approve with restrictions	Vote with management

* "Blank check" preferred authorization allows the board to set terms for the new issue. Sometimes used as a takeover defense.
** Makes investment decisions by a mathematical formula and does not consider individual company fundamentals.

TABLE 9: SAMPLE OF PROXY-VOTING DATA

MORGAN STANLEY ALLOCATOR FUND

3M CO

Ticker: MMM Security ID: 88579Y101
Meeting Date: MAY 11, 2004 Meeting Type: Annual
Record Date: MAR 12, 2004

#	Proposal Mgt Rec Vote Cast Sponsor
1.1	Elect Director Edward A. Brennan for Management
1.2	Elect Director Michael L. Eskew for Management
1.3	Elect Director W. James McNerney, Jr. For Management
1.4	Elect Director Kevin W. Sharer for Management
2	Ratify Auditors for Management
3	Increase Authorized Common Stock for Management
4	Separate Chairman and CEO Positions against Shareholder

ABBOTT LABORATORIES

Ticker: ABT Security ID: 002824100
Meeting Date: APR 23, 2004 Meeting Type: Annual
Record Date: FEB 25, 2004

#	Proposal Management Received Vote Cast Sponsor
1.1	Elect Director Roxanne S. Austin for Management
1.2	Elect Director H. Laurance Fuller for Management
1.3	Elect Director Richard A. Gonzalez for Management
1.4	Elect Director Jack M. Greenberg for Management
1.5	Elect Director Jeffrey M. Leiden for Management
1.6	Elect Director David A. Lord Owen for Management
1.7	Elect Director Boone Powell Jr. for Management
1.8	Elect Director Addison Barry Rand for Management
1.9	Elect Director W. Ann Reynolds for Management
1.10	Elect Director Roy S. Roberts for Management
1.11	Elect Director William D. Smithburg for Management
1.12	Elect Director John R. Walter for Management
1.13	Elect Director Miles D. White for Management
2	Ratify Auditors for Management
3	Drug Pricing Against Shareholder
4	Report on Political Against Shareholder Contributions/Activities
5	Prohibit Awards to Executives Against Shareholder
6	Report on Operational Impact of HIV/AIDS, Against Shareholder TB, and Malaria Pandemic

TABLE 10: SUMMARY STATISTICS OF BIG FIVE FUND FAMILIES

	Big Five Funds		Fidelity		Vanguard		T. Rowe Price		Janus		Putnam	
	Total	Percent of Total	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
Total Number of Counted Proposals	108,013	100	41,308	100	25,124	100	22,216	100	9,385	100	9,980	100
Total Votes	0											
With Management	88,678	82	35,628	86	17,735	71	20,322	91	7,231	77	7,762	78
Not with Management	17,245	16	4,106	10	7,255	29	1,722	8	2,096	22	2,066	21
Did Not Vote or N/A	2,091	2	1,574	4	135	1	172	1	58	1	152	2
			41,308									
Votes Initiated by Management	103,779	100	39,963	100	24,349	100	21,445	100	8,777	100	9,245	100
For Management	85,542	82	34,872	87	17,342	71	19,309	90	6,876	78	7,143	77
Not with Management	15,942	15	3,559	9	6,885	28	1,683	8	1,846	21	1,969	21
No Vote or N/A	2,195	2	1,532	4	122	1	453	2	55	1	33	0
Votes Initiated by Shareholders	4,219	100	1,330	100	775	100	771	100	608	100	735	100
For Management	2,614	62	741	56	392	51	507	66	355	58	619	84
Against	1,010	24	342	26	145	19	239	31	188	31	96	13
No Vote or N/A	102	2	42	3	13	2	25	3	3	0	19	3
Abstain*	493	12	205	15	225	29	0	0	62	10	1	0
Votes for Directors												
Total	77,235	100	30,060	100	18,859	100	15,006	100	6361	100	6,949	100
Withhold	10,040	13	1,123	4	5,103	27	1,141	8	1,052	17	1,621	23 t
Votes Proposed by the Fund												
Total			15	100								
With Management			15	100								

*Abstentions are noted separately in shareholder resolutions because they usually involve social/ethical issues.

TABLE 11: VOTES ON CERTAIN ISSUES, BIG FIVE FUND FAMILIES

Words Searched For*	**Number of Proposals**	**Number Against Management**	**Percent Against Management**
Executive Compensation			
Executive Compensation	319	40	13
Bonus	791	69	9
Incentive Plan	1,103	409	37
Severance	151	104	69
Stock-option Plan	1271	598	47
Total	**3,635**	**1,220**	**34**
Anti-takeovers			
Poison (pill)	233	163	70
Classified (board)	31	19	61
Cumulative (voting)	165	82	50
Supermajority (voting)	51	22	43
Dual class (stock)	1	0	0
Greenmail	0	0	n/a
Total	**481**	**286**	**59**
Other Issues			
(Issue) Common Stock**	1,513	470	31
Preferred Stock	157	46	29
Ratify Auditors	5,311	310	6
Auditor Independence	6	0	0

Social/Ethical Issues (Shareholder Only)	**Number of Proposals**	**For**	**Against**	**Abstain**	**None or N/A**	**Percent for Proposal**
Greenhouse or Global Warming	39	2	24	11	2	5
Equality (human)	5	0	2	2	1	0
Gender (bias)	20	1	15	4	0	5
Sex (preference bias)	17	5	10	0	2	29
Labor (treatment of)	18	9	9	0	0	0.5
Political (contributions or similar)	228	0	150	70	4	0
Total	327	17	210	87	9	5

*The first word(s) was the computerized search phrase. The words in parentheses indicate the hand sorting.
**Many of the proposals of issuance of new common stock were in conjunction with stock-option incentive plans. Some of this category should go into "Compensation."

TABLE 12: LONG-TERM STOCK PICKERS VS. BIG FUND FAMILIES

	For Management	Against Management	Total Votes	Percent For Management	Percent Against* Management
Long-Term Stock Pickers					
Legg Mason Value Trust	364	19	383	95	5
Clipper Fund	63	3	66	95	5
Fidelity Dividend Growth Fund	1217	65	1282	95	5
Sequoia Fund	131	1	132	99	1
Torray Fund	952	64	1016	94	6
White Oak Growth Stock	201	16	217	93	7
Totals	**2928**	**168**	**3096**	**95%**	**5%**
Big Fund Families					
Janus	7231	2154	9385	77	23
Vanguard	19593	8243	27836	70	30
T Rowe Price	25520	2618	28138	91	9
Putnam	7762	2065	9827	79	21
Fidelity	28252	5302	33554	84	16
Totals	**88358**	**20382**	**108740**	**81%**	**19%**

*Includes abstain as against.

TABLE 13: VOTING AGAINST MANAGEMENT INDEX VERSUS ACTIVELY MANAGED

	Average	**Fidelity**	**Vanguard**	**AIM/Invesco**	**T. Rowe Price**	**Merrill-Lynch**
Index Fund						
Name		Spartan 500	Inst. Index	SP500 fund	Equity Index 500	Master Small Cap Value Trust
Type		Large Cap	Large Cap	Large Cap	Large Cap	Small Cap
Number of Votes		4,656	4,720	3,965	4,369	989
Number Against Management		701	992	418	287	104
Percent Against Management	13	15	21	11	7	11
Actively Managed Fund						
Name		Magellan	Wellington	AIM Blue Chip	Large Cap Core Grow	Small Cap Value
Type		Large Cap	Large Cap	Large Cap	Large Cap	Small Cap
Number of Votes		2267	266	1868	951	951
Number Against Management		181	65	160	77	75
Percent Against Management	11	8	24	9	8	8

Table 14:
'Mostly Mutual Fund' Companies Compared
With 'Mostly Not Mutual Fund' Companies

	Four 'Mostly Fund'		Four 'Mostly Not Fund'	
	Total	Percent of Total	Total	Percent of Total
Total Number of Counted Proposals	90,279	100	30,597	100
Total Votes With Management	73,540	81	25,642	84
Not with Management	14,764	16	4,447	15
No Vote or N/A	1,976	2	508	2
Votes Initiated by Management	86,881	100	8,777	100
With Management	71,125	82	6,876	78
Not with Management	13,586	16	1,846	21
No Vote or N/A	2,170	2	55	1
Votes Initiated by Shareholders	3,398	100	608	100
With Management	1,908	56	355	58
Not with Management	879	26	188	31
No Vote or N/A	112	3	3	0
Abstain*	499	15	62	10
Votes for Directors Total	64,047	100	6,361	100
Withheld	8,288	13	1,052	17

*Abstentions are noted separately in shareholder resolutions because they usually involve social/ethical issues.